

Due Diligence, Certification and Legality Verification of Timber from the DR Congo

Country-focused commodity analysis in the context of
the Bio-Macht project

Freiburg,
December 2019

Project-ID: 031B0235B

Authors

Tobias Schleicher, Öko-Institut e.V.
Fafali Ziga-Abortta, Öko-Institut e.V.
Klaus Hennenberg, Öko-Institut e.V.

Head Office Freiburg

P.O. Box 17 71
79017 Freiburg
Street address
Merzhauser Strasse 173
79100 Freiburg
Tel. +49 761 45295-0

Office Berlin

Schicklerstrasse 5-7
10179 Berlin
Tel. +49 30 405085-0

Office Darmstadt

Rheinstrasse 95
64295 Darmstadt
Tel. +49 6151 8191-0

info@oeko.de
www.oeko.de

Table of Contents

List of Figures	5
List of Tables	6
List of Abbreviations	7
Abstract	8
1. Background	8
2. Timber in the context of the DR Congo	9
2.1. Overview	9
2.2. Timber Species from the DRC	11
2.3. Companies & DR Congo's role on the world timber market	11
2.4. Export of Timber from the DRC	12
2.5. Illegal Logging & Trade	13
3. International Forest Certification and Protection Schemes	14
3.1. Forest Stewardship Council (FSC)	14
3.2. Programme for the Endorsement of Forest Certification (PEFC)	15
3.3. Evaluation of Certification Schemes	15
3.3.1. Evaluation Method	15
3.3.2. Results	16
3.4. Convention on International Trade in Endangered Species of Wild Fauna and Flora	18
4. European Union Forest Law Enforcement, Governance and Trade Action Plan	19
4.1. Due Diligence in the European Union Timber Regulation	19
4.1.1. General Information	19
4.1.2. Due diligence system in practice	19
4.1.3. Case Study: FSC certification as a vital contribution to risk assessment and risk mitigation in DDS	20
4.1.4. The information obligation	20
4.1.5. The risk assessment obligation	20
4.1.6. The risk mitigation obligation	21
5. Due Diligence in the Context of the DRC	21
5.1. Due Diligence for Conflict Minerals and Timber from the DRC	21
5.2. Risk Assessment for Timber from the DRC	22
5.2.1. Background	22

5.3.	Legality Verification Systems	23
5.3.1.	Mandatory Legality Verification (MLV)	23
5.3.2.	Voluntary Legality Verification (VLV)	24
5.3.3.	Definition of Legality under the FLEGT-VPA and the EU Timber Regulation	24
5.3.4.	Requirements for Chain of Custody	25
5.3.5.	Stepwise Technical Support Programs	26
5.4.	Case Study: The SGS Legality Verification System	26
5.4.1.	General Information	27
5.4.2.	Components of the System	27
5.5.	Comparison of Legality Verification Systems	30
6.	Timber Governance in Ghana and the DR Congo	34
7.	Conclusions & Outlook	36
	References	38

List of Figures

Figure 2-1:	The Congo River Drainage Basin	10
Figure 2-2:	Export of Forest Products from the DRC	12
Figure 5-1:	Generic Timber Supply Chain	28
Figure 5-2:	Barcode tag provided by SGS	28
Figure 5-3:	Sample of a FLEGT-Licence	29

List of Tables

Table 2-1:	Official Timber Production and Trade Balance	10
Table 2-2:	Timber species exploited in the DRC between 2013 - 2016	11
Table 2-3:	Estimated Market Shares of Timber logging companies in the DRC	12
Table 3-1:	Evaluation method: Applied criteria	16
Table 3-2:	Results of the evaluation of FSC and PEFC Criteria	17
Table 5-1:	Differences in Due Diligence in the supply chain of Conflict Minerals and Timber	22
Table 5-2:	Related Reports on high-risk of sourcing Timber from the DRC	23
Table 5-3:	Lists of Voluntary Legality Verification Systems in the DRC	24
Table 5-4:	FLEGT Legality Assurance System vs. Voluntary Legality Verification Systems	25
Table 5-5:	Comparison of Legality Verification Systems	31
Table 6-1:	International Comparison of Timber Legality Governance	35

List of Abbreviations

CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CoC	Chain of Custody
DDS	Due Diligence System
DGF	Direction de la Gestion Forestière
DRC	Democratic Republic of Congo
EUTR	EU-Timber Regulation
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FLEGT	Forest Law Enforcement, Governance and Trade
FSC	Forest Stewardship Council
ISO	International Organization for Standardization
ITTO	International Tropical Timber Organization
MLV	Mandatory Legality Verification
OECD	Organization for Economic Cooperation and Development
PEFC	Programme for the Endorsement of Forest Certification
TLAS	Timber Legality Assurance System
VLV	Voluntary Legality Verification
VPA	Voluntary Partnership Agreement

Abstract

This report aims at a review of due diligence, certification and legality verification schemes in the context of timber from the Democratic Republic of Congo. Illegal logging and trade of timber is a major social, environmental and economic issue for the DRC such as deforestation, degradation, biodiversity loss and subsequently climate impacts. In order to face these challenges, the European Union has launched its Timber Regulation in 2010 setting mandatory due diligence requirements for timber imports into the EU. Furthermore, with FSC and PEFC, internationally acknowledged sustainability certification schemes have been developed in order to tackle the mentioned hot spots. However, in the context of the DRC, these voluntary sustainability certification schemes have not been applied yet. Instead, a number of legality verification schemes have been developed aiming to contribute to due diligence and legality verification. Hence, beyond the downstream perspective from the EU, this study also covers the most relevant legality verification mechanisms from the upstream perspective of the DRC. Subsequently, a brief comparison with the case of Ghana as an example of a more advanced timber governance system is elaborated. Finally, conclusions for the case of the DRC are drawn.

1. Background

Worldwide, around 1.6 billion people (20% of the world population) strongly depend on forests for their daily livelihoods. At the same time, half of all species on the planet live in forests. Forests regulate water supplies and the world's climate, are source of medicines and help to prevent floods and droughts.

Illegal logging and the associated trade in illegally produced forest products are causes of many social, economic and environmental problems (Brack, D., & Buckrell, J. 2011), (Lam 2010) not only for timber-producing and consuming countries but the world in general. It has been identified as a key driver of deforestation and degradation, leading to biodiversity loss and subsequent climate implications. The past two decades have seen deforestation and forest degradation rise to the top of the agenda for global political attention (Tegegne, Y. T. et al. 2014). Global attention often focuses on timber originating from the tropical region since it is responsible for most of the world's supply. The conservation and wise use of tropical forest resources is therefore of global concern.

In turn, economically, the EU is a large market for timber products. Altogether, the EU countries imported wood products at a value of 18.17 billion Euro in 2017. In the same year, wood products at a value of 3.78 billion Euros originated from tropical countries (EU FLEGT Facility 2019). Moreover, according to (EU FLEGT Facility 2019) up to 30% of the global timber trade refer to illegally logged timber. In particular, illegal logging and trade is one of the most important and most relevant "environmental crimes" (Nellemann, C. et al. 2016) which is defined as "illegal activities harming the environment and aimed at benefitting individuals or groups or companies from the exploitation of, damage to, trade or theft of natural resources". They estimate annual related government revenue losses of 50.7 – 152 bn. USD with major impacts for local livelihoods in related forests, species extinction, loss of endangered forests, national economies and the global climate crisis due to deforestation and forest degradation.

As a basic policy instrument to tackle this, the EU launched its Timber Regulation (EUTR) in order to prohibit operators to place illegally harvested timber on the EU market. The central element of the EUTR is the requirement of mandatory due diligence that includes a risk management approach for operators to assess the legal origin of the timber. Accordingly, under the EU Action Plan

on Forest Law Enforcement, Governance and Trade (FLEGT) the EU negotiates trade agreements on a bilateral base with timber-exporting countries in the tropics that aim to ensure trade in legal timber and timber products only (EU FLEGT Facility 2019).

By today, such bilateral trade agreements exist with Ghana, the Republic of Congo, Cameroon, Indonesia, the Central African Republic and Liberia. Furthermore, negotiations are concluded with Vietnam. Currently, negotiations are ongoing with Côte d'Ivoire, Gabon, Guyana, Honduras, Laos, Malaysia, Thailand and, most relevant for this study, with the Democratic Republic of the Congo (DRC) (European Commission 2019).

Based on this and in order to ensure that timber was logged legally, a FLEGT licence can be issued (see section 4). Accordingly, products that hold a FLEGT license automatically meet the EU timber regulation's requirements. Hence, importers of FLEGT licensed products do not need to verify the legal origin of the imported timber anymore. Currently, the FLEGT facility lists 26 ongoing FLEGT-Projects in the DRC.

This study aims to assess legality and sustainability verification and certification schemes for timber with a special focus on DRC. Hence, it covers current due diligence requirements under the EUTR (see section 4.1) and its implementation as well as the role of voluntary certification schemes. Beyond, the study aims to identify further instruments in order to tackle legality and sustainability hot spots in the timber sector of the DRC in the trade context of the EU. In particular, it is aimed to identify alternative approaches and innovative measures that have an effective potential to tackle illegal deforestation in the DRC and beyond (see section 7).

2. Timber in the context of the DR Congo

2.1. Overview

By area and population, the Democratic Republic of Congo (DRC) is the largest country of central Africa (Economic Commission for Africa 2019). DRC has approximately 152.6 million hectares of forest which covers 67.3% of the total land area of the country (FAO 2019; ITTO 2019). The country's forests cover (1) closed high rainforests, (2) open forests and (3) woody savannah as part of the Congo Basin together with Cameroon, Central African Republic, the Republic of the Congo, Equatorial Guinea and Gabon (see Figure 2-1). More than half of the remaining Congo basin rainforest which is the second largest rainforest in the world is on the territory of the DRC (World Resource Institute 2018; ITTO 2019).

Figure 2-1: The Congo River Drainage Basin



Source: © Wikipedia.com

In general, the legislative forest framework of the DRC categorizes the national forest territory into (1) public domain and (2) private domain. However, according to (ITTO 2019) almost 100% of the forest land area would be owned by the public. That notwithstanding, only around 10% of DRC’s forests would currently be designated for logging officially. The International Tropical Timber Organisation (ITTO 2016) furthermore reports that in 2014 the country produced 4.6 million m³ of logs, of which 2.4% would have been exported.

Table 2-1: Official Timber Production and Trade Balance

	Production Quantity (in 1000 m ³)	Import Quantity (in 1000 m ³)	Domestic Consumption (in 1000 m ³)	Export Quantity (in 1000 m ³)
Reported logging				
Logs (incl. Roundwood)	4,614	0	4,504	110
Sawnwood	150	1	104	47
Veneer	3	0	1	3
Plywood	1	3	3	0
Estimated logging	About 37,000			

Source: (ITTO 2019; 2016; Lawson 2014)

Official data by (ITTO 2019) provided by Table 2-1 is based on data by customs of timber receiving countries as authorities in the DRC would not have control over timber export outlets accordingly. Hence, several stakeholders (such as ITTO, Verifor, Chatham House) stress that actual timber production from the DRC is very difficult to quantify. According to (Lawson 2014) almost “90% of logging in the DRC is illegal or informal, small-scale logging to supply domestic and regional markets”. Furthermore, real timber production and related deforestation in the DRC is estimated to be up to eight times higher as compared to official numbers (Lawson 2014) with a fast rising trend.

2.2. Timber Species from the DRC

Generally, DRC’s forests are sub-classified into three categories: (1) State production forests, (2) Protected forests and (3) Permanent production forests. Regarding timber species, around 80 species of commercially valuable trees are found in DRC’s forests. However, only a handful dominates trade (FERN 2006). These include:

- Afrormosia (*Pericopsis elata*)¹,
- Doussie (*Afzelia bipedensis*),
- Iroko (*Milicia excelsa*),
- Sipo / Sapelli (*Entandrophragma spp.*).

Beyond the following species are reportedly exploited: Kambala, Ebene, Tiama, Sapele, Sipo, Acajou d’Afrique, Wenge, Limba, Bomanga, Limbali. Typically, the different types of wood do have different advantages and usages such as veneer, plywood, furniture, cabinetry, flooring, boatbuilding, musical instruments, turned objects and other small wooden specialty items. Regarding quantities, the following Table 2-2 illustrated the numbers of exploited timber species in tonnes.

Table 2-2: Timber species exploited in the DRC between 2013 - 2016

Timber Species	Quantity [t]
Afromosia	38,491.12 tons
Iroko, Kossipo, Bosse	23,673.56 tons
Sapele	10,877.03 tons
Iroko	5,951.16 tons
Sipo	3,818.42 tons

Source: Global Witness 2017, <http://drctimbertracker.globalwitness.org/>

2.3. Companies & DR Congo’s role on the world timber market

It is difficult to assess recent data on companies logging in the DRC. However, data from 2009 reveals that the market concentration of big companies comparably high. According to (DGF 2009) the two most relevant companies are Siforco and Sodefor. The following table provides a representation of the market shares in 2009.

¹ Aframosia is listed under CITES but is still being intensively exploited in Equateur Province (see section 3.4).

Table 2-3: Estimated Market Shares of Timber logging companies in the DRC

N°	Company	Volume (m ³)	Percentage (%)
1	SIFORCO	83,780.194	25.2
2	SODEFOR	64,692.412	19.9
3	TRANS-M	35,084.535	10.8
4	FORABOLA	26,250.785	8.1
5	SOFORMA	24,850.394	7.6
6	SEDAF	19,880.713	6.1
7	ITB	16,661.819	5.1
8	OTHERS	55,663.139	17.03
	Total	326,863.991	100

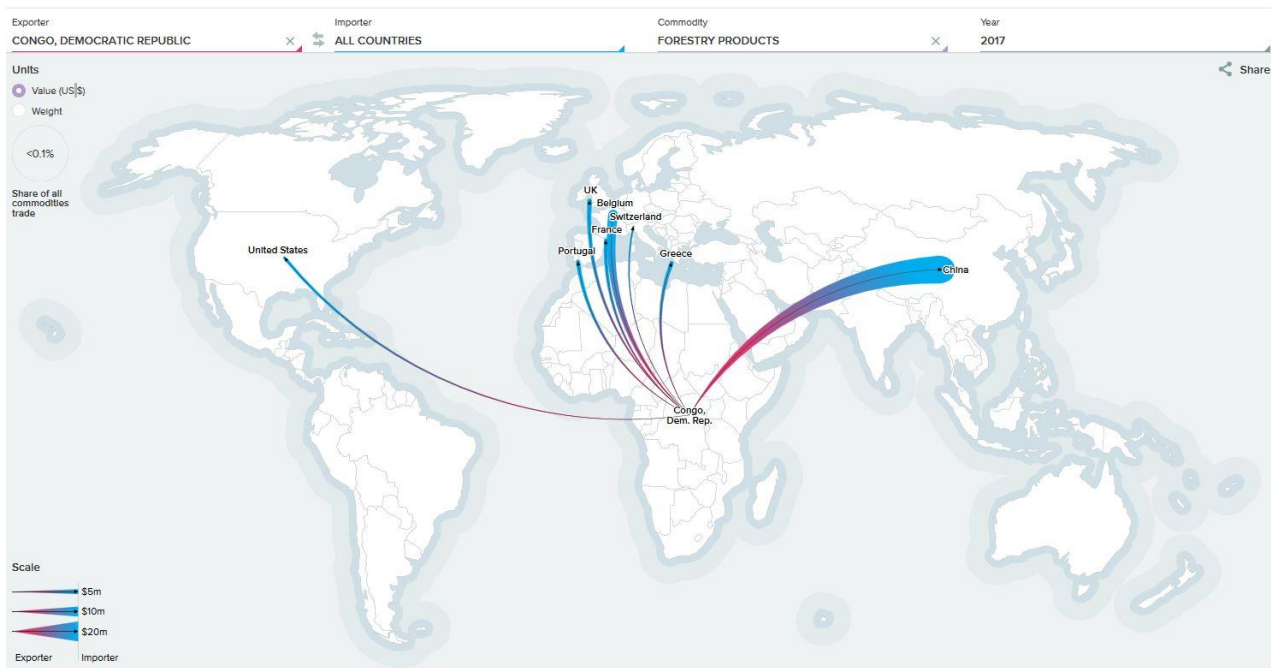
Source:(DGF 2009).

Table 2-3 shows that the market share of the two most relevant companies is above 45%.

2.4. Export of Timber from the DRC

Timber exports from the DRC are dominated by destinations to China and Europe with each receiving respectively 56.1% and 28.4 of total exports in 2014 (ITC 2015). This trend is owing to the fact that the country has very little domestic wood processing capacity.

Figure 2-2: Export of Forest Products from the DRC



Source: Chatham House (2018), 'resourcetrade.earth', <http://resourcetrade.earth/>

Beyond, more recent data from 2017 shows that trade flows mostly lead to China (e.g. 27 Mio. USD in 2017) and Europe (e.g. Belgium 10 Mio. USD in 2017). According to the official statistics by Chatham House (2018) the specific exported commodities sum up to (1) lumber and sawn wood (66.7 m USD / 98,300 t); (2) wood pulp, chips and waste products (272,000 USD / 49 t), (3) board and plywood (5.400 USD / 34 t) and (4) fuel wood & charcoal (97 USD, 2 t). The latter small official figures show that there is a high probability of low plausibility of official data.

2.5. Illegal Logging & Trade

The DRC is one of the world's most relevant hot spots for illegal logging and trade. As (Nellemann, C. et al. 2016) point out, during the past years transnational crime and advanced laundering has become more and more evident in the timber sector. Typical hot spots are illegal logging, smuggling or laundering of tropical timber via fraud plantations, laundering through paper mills or palm oil front companies. Whereas timber products themselves (e.g. roundwood, sawnwood and furniture products) have got most of the international attention (e.g. EU Timber Regulation), estimate around 62-86% of all suspected illegal tropical wood entering the EU or the US is imported as paper, pulp or wooden chips (Nellemann, C. et al. 2016).

Hence, apart from illegal logging alone, illegality comprises systems of fraud, tax fraud, forged permits and/or permits acquired by bribes, laundering of illegally procured wood and considerable smuggling worldwide. Finally, UNEP and INTERPOL summarize 30 different ways of conducting illegal logging and laundering illegal wood (Nellemann, C. et al. 2016) including:

- Logging in protected areas,
- Logging without permits in unprotected areas,
- Illegal logging in conflict zones,
- Logging in excess of permit or concession quotas,
- Logging with forged or re-used permits,
- Obtaining logging permits illegally through bribery,
- Establishing or expanding palm oil, bio-fuel or other plantations,
- Cattle ranching and soy production,
- Widening road corridors, mining or other felling without a permit.

Accordingly, the focus of international trade of timber products needs not only to be focused on timber alone, but also on derivatives such as paper and pulp as well as on the described loop-holes.

3. International Forest Certification and Protection Schemes

3.1. Forest Stewardship Council (FSC)

FSC stands for Forest Stewardship Council. It is an international organization created in 1993 in order to “promote environmentally appropriate, socially beneficial and economically viable management of the world’s forest” (FSC 2019). The organization is governed by its members. Members are environmental NGO, forest certification organization, community forest groups or timber trade companies. In general, the certification process is voluntary. It is up to a forest owner to start the certification process, by asking for an independent certifier to inspect his property, and verify if the management of the forest respects the FSC requirements. Those requirements for certified organisations are based on 10 principles covered in the international FSC standard (FSC 2019):

1. The Organization shall comply with all applicable laws, regulations and nationally-ratified international treaties, conventions and agreements.
2. The Organization shall maintain or enhance the social and economic wellbeing of workers.
3. The Organization shall identify and uphold indigenous peoples’ legal and customary rights of ownership, use and management of land, territories and resources affected by management activities.
4. The Organization shall contribute to maintaining or enhancing the social and economic wellbeing of local communities
5. The Organization shall efficiently manage the range of multiple products and services of the Management Unit to maintain or enhance long term economic viability and the range of environmental and social benefits.
6. The Organization shall maintain, conserve and/or restore ecosystem services and environmental values of the Management Unit, and shall avoid, repair or mitigate negative environmental impacts.
7. The Organization shall have a management plan consistent with its policies and objectives and proportionate to scale, intensity and risks of its management activities. The management plan shall be implemented and kept up to date based on monitoring information in order to promote adaptive management. The associated planning and procedural documentation shall be sufficient to guide staff, inform affected stakeholders and interested stakeholders and to justify management decisions.
8. The Organization shall demonstrate that, progress towards achieving the management objectives, the impacts of management activities and the condition of the Management Unit, are monitored and evaluated proportionate to the scale, intensity and risk of management activities, in order to implement adaptive management.
9. The Organization shall maintain and/or enhance the High Conservation Values in the Management Unit through applying the precautionary approach.
10. Management activities conducted by or for the Organization for the Management Unit shall be selected and implemented consistent with The Organization’s economic, environmental and social policies and objectives and in compliance with the Principles and Criteria collectively.

If the forest exploitation is in full compliance with these requirements, then a FSC certificate is awarded. FSC certificate owners have an audit every year, verifying that the forest management stays on point with FSC requirements.

The application of the international FSC standard, however, requires an additional use of an approved set of indicators adapted to national, regional or local conditions. For DRC, the FSC Forest Stewardship Standard for the Congo Basin² applies.

In February 2018, 85 countries have FSC-certified forests; there are 199,922,392 hectares of FSC-certified forests, with 1,547 different certificates. In DRC, by today, none of the forests are FSC-certified.

3.2. Programme for the Endorsement of Forest Certification (PEFC)

PEFC is a non-governmental organization which aims for forest preservation, and long term forest management.

By 2019, 50 countries are part of it and more than 303 million hectares are PEFC certified. It was one of the first wood certification organizations in the world. PEFC underlines the transparency, the continuous amelioration, ethic, consensus and the compliance with local laws. Certificated parties must maintain or enhance biodiversity, change chemicals for natural alternatives, protect the worker's rights, encourage local employment, respect indigenous people's rights, and conduct their operations within the legal framework (see section 3.3). By today, the DRC does not have PEFC certified forests.

3.3. Evaluation of Certification Schemes

In this section the two mentioned certification schemes, FSC and PEFC shall be evaluated. The methodology is the same as compared to the evaluation of palm oil and cotton certification schemes elaborated within the Bio-Macht research project (Schleicher et al. 2019).

3.3.1. Evaluation Method

The applied evaluation method is primarily based ISO 13065 "Sustainability criteria for bioenergy". This international standard specifies principles, criteria and indicators for bioenergy supply chains to facilitate assessment of environmental, social and economic aspects of sustainability. However, ISO 13065 is not a standard of its own. Rather, it defines the framework conditions in which bioenergy standards should be developed.

The evaluation method used here asks to what extent the criteria as well as given examples for indicators given in ISO 13065 for environmental and social aspects are covered in a standard. Furthermore single aspects covered in the European Renewable Energy Directive (RED 2009)³ but missing in ISO 13065 (compare Table 3-1) were included.

Each aspect was evaluated between 0 and 100, whereby a score of 100 means that the indicators and requirements in ISO 13065 or RED 2009 are 100% fulfilled. With a rating of 0, the aspect is missing in the evaluated standard.

In addition to environmental and social aspects, systematic requirements are evaluated. They cover the applied type of supply chain monitoring (segregation, mass balance or book and claim), if the reliability has been proven by the EU Commission or if the standard has the membership of

² FSC-STD-CB-01-2012-EN Congo Basin Regional Standard EN, <https://africa.fsc.org/en-cd/standard-rjional-pour-le-bassin-du-congo>

³ RED 2009: Renewable Energy Directive 2009/28/EC

ISEAL (ISEAL 2018), and to what extent data collection requirements given in ISO 13065 are covered.

Table 3-1: Evaluation method: Applied criteria

Criterion	Source
Environmental aspects	
Biodiversity outside of protected areas	ISO 13065
Soil quality and fertility	ISO 13065
Soil erosion	ISO 13065
Water withdrawals	ISO 13065
Water contamination	ISO 13065
Air emission	ISO 13065
Waste management	ISO 13065
Obligation to label GMO	ISO 13065
Additional environmental aspects from RED 2009	
Biodiversity within protected areas	RED 2009
GHG-balance	RED 2009
Land with high carbon stock	RED 2009
Social aspects	
Human rights	ISO 13065
Labour rights	ISO 13065
Land use rights and land use change	ISO 13065
Water use rights	ISO 13065
Food security	ISO 13065
Systematic requirements	
Supply chain monitoring	RED 2009
Reliability of certification systems	RED 2009, ISEAL
Requirements for data collection	ISO 13065

Source: Oeko-Institut, based on ISO 13065 and RED 2009

3.3.2. Results

Generally, the results of the evaluation are summarized in Table 3-2. With regards to the FSC scheme, a special focus was set on the FSC-Congo version that was developed for an application in the Congo Basin Region (regional standard)².

Table 3-2: Results of the evaluation of FSC and PEFC Criteria

Certification system	PEFC	FSC	FSC-Congo	
Version	PEFC ST 1003:2010 / PEFC ST 2002:2013 (2011 / 2015)	V5-2 EN (2015)	FSC-STD-CB-01-2012-EN (2012)	
Product	Wood	Wood	Wood	
Geographic context	global	global	Congo Basin Region	
Particular assumptions	--	--	--	
Systematic requirements (RED 2009)				
Supply chain monitoring	Mass balance	Mass balance	Mass balance	
Reliability of certification systems	0	100	100	
RED 2009 requirements				
Biodiversity inside protected areas	100	100	100	
GHG-balance	0	0	0	
Land with high carbon stock	67	100	56	
Environmental aspects				
Mean value of environmental aspects	20	no evaluation	54	
Biodiversity within the area of operation, outside protected areas	52	83	90	
Soil quality and productivity	0	Not assessable on the basis of the International Generic Indicators (high degree of freedom in interpretation)	40	
Soil erosion	50		100	
Water withdrawals	0		50	
Water contamination	15		26	
Air emission	0		17	
Waste management	25		58	
<i>not included in the mean value</i>				
Obligation to label GMO	100		100	100
Social aspects				
Mean value of social aspects	25	41	39	
Human rights	0	17	0	
Labour rights	60	77	77	
Land use rights and land use change	67	100	100	
Water use rights	0	11	0	
Food security	0	0	17	
Systematic requirements				
Requirements for data collection	25	58	42	

Source: Öko-Institut e.V. Green: scores ≥ 80 ; yellow: scores ≥ 50 to 80 ; red : scores < 50.

The cornerstones of the evaluation and comparison can be summarized as follows:

- Both schemes take into account aspects of biodiversity in protected areas (100%),
- Regarding environmental aspects, the general scoring is higher for the FSC-Congo scheme (54%) as compared to the PEFC criteria (20%),
- In particular, the FSC-Congo scheme is well elaborated in terms of biodiversity within the area of operation and outside protected areas (90%) and the aspect of soil erosion (100%). Both aspects are also covered by PEFC, however, result in a lower scoring (52% and 50%).
- The FSC-Congo scheme also takes into account aspects such as water withdrawal (50%) and waste management (58%), however, only at a lower scoring. Both aspects are rather neglected in the PEFC scheme (0% and 25%).
- The aspects soil quality and productivity (40%), water contamination (26%) and air emission (17%) are part of the FSC-Congo scheme, however, do only reach low scorings. In the PEFC scheme, these aspects are not taken into account or only to a very low extend.
- Regarding social aspects, the FSC-Congo scheme covers land use rights and land use changes in a comparably good way (100%) whereas the PEFC scheme only reaches a medium scoring of 67% within this category.
- Beyond, the FSC-Congo scheme covers aspects such as labor rights (77%) and, to a lower extend, food security (17%). The PEFC scheme only covers labor rights (60%).

Finally, it has to be pointed out that the FSC-Congo standard has been applied in regions of the Congo Basin only that belong to Cameroon and Congo-Brazzaville. In the large region of the Congo Basin within the DRC, by today, the FSC or in particular the FSC Congo scheme has not been applied yet.

3.4. Convention on International Trade in Endangered Species of Wild Fauna and Flora

Beyond certification schemes, it is noteworthy that a prominent instrument to protect forests is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It is an international treaty for the protection of endangered species. It was created in 1973. Nowadays, more than 35,000 species are protected, with various degrees of protection. The members have an annual meeting to discuss the evolution of already protected species, and new ones to protect. The CITES relies on local authorities all over the world to enforce the protection of the species.

4. European Union Forest Law Enforcement, Governance and Trade Action Plan

4.1. Due Diligence in the European Union Timber Regulation

4.1.1. General Information

In 2010, the EU has issued a regulation on the timber importation, the EU-Timber Regulation (EU) No 995/2010. It was made to counter the trade of illegally harvested timber and timber products into the EU. Basically, the regulation has three criteria:

- It prohibits the placing on the EU market of illegally harvested timber, or its derived products.
- It requires EU traders to exercise “due diligence”.
- The traders have to keep records of their suppliers and customers, for better traceability.

The “due diligence” is the notion that traders take into account the fact that there is a risk of illegally harvested timber and it is of their responsibility to make sure that this risk is reduced to its minimum. There are three important elements in the “due diligence system”. First, the operator must have access to all the information describing the timber and timber product such as the country of harvest, species, quantity, details of the supplier and information on compliance with national legislation. Then, the operator has to assess the risk of illegal timber in his supply chain based on the information identified above and taking into account criteria set out in the regulation. Finally, if a risk is identified, it has to be reduced by asking for more information and verification.

For the risk assessment process, there are few specific criteria to check in order to be almost certain of the legality of the timber. First criterion is the area of exploitation. Some areas and countries are known for being of high risks. If it's not a high risk area, it is important to know if the legal rules are well enforced or if corruption is common. Then, it is important to be careful about what species are imported. It is important that the species is native from the country of origin and that it is not protected or trade restricted (e.g. CITES protected, see 3.4). Finally, the reputation of the supplier has to be taken into account. If the supplier is unknown there the risk for the timber to be illegal is higher.

The main aim of the European Union Timber Regulation (EUTR) is to ban illegal timber and products derived from such timber from the European Union (EU) market. Operators in the region have the obligation to ensure that their operations comply with the regulation. Operators according to the EUTR refer to natural or legal persons that place timber or timber products on the market which makes them different from traders (natural/legal persons who in the course of a commercial activity, sell or buy on the internal market). Here, focus is on the operators. They are required by the regulation to have a functioning due diligence system (DDS).

4.1.2. Due diligence system in practice

For operators who are merely placing timber from the domestic forests on the market, DDS is relatively simple. They must keep good records of their obligations and any available practical evidence of compliance (e.g. tax receipts). Contrarily, DDS is more sophisticated for operators importing timber products. It generally involves three key aspects; (1) *Information collection on the products planned to import*, (2) *A risk assessment with regard to the risk of handling illegal timber* and (3) *Risk mitigation, unless the risk is considered negligible*. In practice, these three points are often connected to high efforts and often pose a lot of difficulties. Operators that have problems with setting up their own DDS can choose to work with monitoring organizations (MOs) who help them

with providing a DDS and assisting in its implementation (FSC 2018). Although several operators continue to resort to MOs, their assistance may prove less necessary as far as FSC-certified and controlled materials are concerned.

4.1.3. Case Study: FSC certification as a vital contribution to risk assessment and risk mitigation in DDS

Beyond certification (see section 3), the Forest Stewardship Council (FSC) also provides guidelines for introducers of timber or derived products on the European Union market to self-organize their own due diligence systems. Requisite preparation towards the main obligations of the DDS include (1) *Establishing a timber sourcing policy*, (2) *Establishing a written procedure*, (3) *Defining responsibilities and training staff*, (4) *Establishing performance monitoring and already* (5) *Defining the scope of the DDS* (FSC 2018; 2018).

4.1.4. The information obligation

Firstly, an operator is expected to be able to collect and provide reliable information on the following (FSC 2018):

- Country (or sub-national region) of origin of the timber,
- Species contained in the product,
- Quantity,
- Name and address of the direct supplier,
- Name and address of the trader to whom the timber and products have been supplied,
- Other proofs of compliance with applicable legislation.

As the FSC scheme recognizes the challenges that bedevil the smooth acquisition of information at different levels, it provides several advice notes to ease up the task for operators. It further obliges chain of custody (CoC) certified suppliers to provide their clients with necessary information upon request. If suppliers do not have that information, they are obliged to use the advice note to go further up the supply chain until they have obtained the information.

4.1.5. The risk assessment obligation

This stage of DDS requires that operators must evaluate whether their products have been produced in compliance with the laws of the harvesting country as well as international sanctions. According to the EUTR, this entails the following.

- Assurance of compliance with applicable legislation,
- Prevalence of illegal harvesting of specific tree species,
- Prevalence of illegal harvesting or practices in the country (region) of harvest,
- Sanctions imposed by the UN Security Council or the Council of the EU on timber imports or exports,
- Complexity of the supply chain of timber and timber products.

It follows in practice that EU authorities have some reservations about total reliability on FSC system. However, the FSC dares to assure operators dealing in FSC-certified products to consider the risk of illegal timber to be 'negligible'. Aside the fact that there are specific procedures for im-

port/export of FSC-certified products, the justification for the risk negligibility is based on the idea that: (1) your direct supplier of FSC-certified products (or CW materials) carries an FSC CoC certificate then (2) you (as the operator) can be reassured that the supply chain prior to your supplier is completely covered by FSC certification. This is because FSC requires all certificate holders (throughout the supply chain) to control the validity and certification scope of their suppliers with each purchase. Additionally, if an operator trusts the FSC system enough the need to collect further information (such as additional evidence of compliance of the harvester with the relevant legislation) is minimal. Worth mentioning also are products imported with a FLEGT (*Forest Law Enforcement, Governance and Trade*) or CITES (*Convention on International Trade in Endangered Species*) license. These products are considered to have “negligible” risk by definition thus do not require any DDS to be demonstrated.

4.1.6. The risk mitigation obligation

The FSC scheme maintains (FSC 2018) that a risk mitigation is rarely necessary in the case of FSC-certified or controlled material and products. It holds that a thorough risk assessment would have logically concluded the risk is to be ‘negligible/low’ hence the DDS procedure also completed.

Nonetheless, it is advised that as long as the European Union or any active competent authority is concerned, operators should be ready to prove that they have performed their own assessment of the FSC scheme against official requirements. However, the FSC scheme remains a relevant instrument of applying due diligence especially in risk assessment and risk mitigation.

5. Due Diligence in the Context of the DRC

5.1. Due Diligence for Conflict Minerals and Timber from the DRC

Although due diligence could be specifically defined contextually, the general notion encompasses the act of consciously exercising a certain standard of care. In the context of minerals from the DRC for example, OECD maintains that ‘Due diligence is an on-going, proactive and reactive process through which companies can ensure that they respect human rights and do not contribute to conflict’ (OECD 2016). It follows closely the notion that the degree of risk involved in an endeavour that adequately informs the degree of due diligence the said endeavour requires. The idea is not different with regards to timber in the EU (EU-Timber Regulation, see section 4.1) as due diligence is said to encapsulate the notion that operators undertake a risk management exercise so as to minimize the risk of placing illegally harvested timber, or timber products containing illegally harvested timber, on the EU market.

A careful look into each context of due diligence reveal the following similarities:

- *Information Explicitness*: Observing due diligence thrives on access to information from all angles both upstream and downstream. For example, as mineral companies are expected to have robust managements and possess the ability to communicate, due diligence expectations both to the public and suppliers, timber operators are equally obliged to possess information describing the ‘timber and timber products, country of harvest, species, quantity, details of the supplier and information on compliance with national legislation’.
- *Risk Analysis*: Entities (mineral companies or timber operators) must identify any existing or foreseeable risks in their supply chains. While mineral companies are in turn required to assess risks of adverse impacts in light of the standards of their supply chain, timber operators likewise must assess the risk of illegal timber in their supply chain taking into account criteria set out in

the EU Timber Regulation. Thus, due diligence within both spheres of mineral and timber actually help companies to comply with international and domestic laws.

- *Risk Management:* Revealed existence of risks or any anticipations deserve to be managed in the process of due diligence. In the mineral supply chain, the identified risks are mitigated by adopting and implementing a risk management approach and involving all necessary stakeholders at different points in time. Likewise, risks are mitigated by requiring more information and verification from suppliers in the supply chain of timber.

While the OECD’s Due diligence guidance for minerals (OECD 2016) emphatically spells out Company Obligations of having to ‘Audit Due diligence practices’ and ‘Report publicly on them’ in the steps four and five respectively, the case is not the same with Due diligence practice in the EU Timber Regulations. Tabulated below are further differences that have been identified.

Table 5-1: Differences in Due Diligence in the supply chain of Conflict Minerals and Timber

Due Diligence in Supply Chain of Conflict Minerals	Due Diligence in Timber within the EU
<ul style="list-style-type: none"> • Clearly stated 5 step framework as guidelines 	<ul style="list-style-type: none"> • Ambiguous; Guidelines are not simplified
<ul style="list-style-type: none"> • Wider scope and more mainstream 	<ul style="list-style-type: none"> • Limited to the EU
<ul style="list-style-type: none"> • Suggests obligations along the whole supply chain (Upstream and downstream) 	<ul style="list-style-type: none"> • Seems to focus more on ‘Operators’ (who place Timber on the EU market)

Sources: (OECD 2016), (European Union 2019)

5.2. Risk Assessment for Timber from the DRC

5.2.1. Background

According to a new Forest Trends report, EU timber imports from conflict countries, which are at high risk of being illegal, have increased 14 %, despite the European Union Timber Regulation (EUTR) requirement that companies ensure that only legal timber enters the EU market (Saunders, J. & Norman, M. 2017). The U.S. and EU countries imported 19.8 million euros’ worth of Congolese timber in 2014, according to customs data (Ross 2015). The Democratic Republic of Congo can be easily said to provide a significant amount of EU’s Timber imports with countries like Belgium, France and Portugal topping the list with 11.7%, 6.6% and 4.3% respectively of the country’s 2014 exports (ITTO 2019).

Timber from the DRC is generally considered to be of high risk. Reports from the country’s Independent Observer of Forestry Control have found that all investigated industrial logging companies had been involved in illegal activity. Of what remains the second largest intact block of tropical rainforest left in the world, the Democratic Republic of Congo (DRC) holds the largest portion. About 152.6 million hectares of the country’s land area accounting for 67.3% is covered in forests. The biodiversity profile boasts of more than 10,000 species of plants, 409 species of mammals, 1117 bird species, and 400 species of fish (Forest Legality Initiative 2013).

The DRC is identified by the World Bank as a fragile and conflict-affected state amongst 34 others, ‘defined by their failure to deliver security and basic services to their citizens, suffer from a complex

array of weaknesses, in economic management, but also in political legitimacy, regulatory quality, social inclusion, and institutional effectiveness which often lead to conflicts' (Harwell 2010). The country's level of human development was ranked 176th out of 187 countries by the Human Development Index. Currently in 2018, approximately 600,000 Congolese have fled to neighbouring countries from conflicts in the centre and east of the DRC. It is said that two million children risk starvation and the fighting has displaced about 4.5 million people ("Democratic Republic of Congo,"n.d.). The displaced refugees are known for the most part to be largely responsible for the DRC's significant environmental problems. Some of which include deforestation, poaching, water pollution and mining.

Table 5-2: Related Reports on high-risk of sourcing Timber from the DRC

Timber Company	Detail	Source
Cotrefor	<ul style="list-style-type: none"> Illegal and destructive logging threatens endangered species such as the Bonobo and afromosia. 	(Greenpeace 2015a)
La Forestière	<ul style="list-style-type: none"> Italian-owned logging company trading in Afromosia, a CITES listed species. 	(Greenpeace 2015b)
Sodefor	<ul style="list-style-type: none"> One of the leading multinational logging companies included in a list published by CITES to be possessing 'unaccounted for' permits. 	(Greenpeace 2015b)
Forabola	<ul style="list-style-type: none"> 'Unaccounted for' permits 	(Greenpeace 2015b)
Siforco	<ul style="list-style-type: none"> A number of violations including local conflicts, 'unaccounted for' permits leading to FSC dismissal. 	(Swisspeace 2013)

Source: Own compilation.

In a recent publication in which Greenpeace calls upon parties to CITES to immediately suspend the DRC from trade in all species listed by the organization, it also recognizes that it remains nearly impossible to import timber from the DRC whilst at the same time complying with EUTR obligations. Greenpeace recommends that timber companies in Europe must apply due diligence on all imported timber and timber products and this should include CITES products in order to avoid any illegal wood entering their supply chain (Greenpeace 2015c).

5.3. Legality Verification Systems

In general, legality verification refers to the process of checking that the forest management and supply chain controls meet a defined set of requirements (Proforest 2011), also in the context of due diligence. In particular, two types of legality verification exist.

5.3.1. Mandatory Legality Verification (MLV)

Mandatory legality verification schemes are implemented by, or on behalf of, governments and are applicable at national or subnational levels. There are three main types of mandatory programmes globally:

- Legality assurance and export licensing required for Voluntary Partnership Agreement (VPA) under the EU FLEGT Action Plan,
- National or sub-national government regulation and documentation, and

- Control services delegated by governments to private sector firms, such as the Mandatory Legal Timber Validation (MLTV) services as offered by SGS for example (see section 5.4).

5.3.2. Voluntary Legality Verification (VLV)

Voluntary legality verification schemes refer to assistance offered by a range of organisations (Certification Bodies) in the market to meet market legality. They simply help forest management companies and manufacturers/traders in the supply chain to prove that the products supplied have been legally produced.

It is noteworthy, that typically, there is no accreditation for legality verification systems (i.e. no common approach on how legality verification systems are developed and managed, the⁴ ('how's' & 'what's'). Furthermore, VLV systems are not as well-developed as forest certification schemes (such as FSC/PEFC, see section 3) in the sense that they are not required to be following international good practice (such as ISO Guides) in standard setting process, certification, accreditation, product tracing and labelling.

The following table list provides an overview of the current timber legality verification schemes in the context of the DRC.

Table 5-3: Lists of Voluntary Legality Verification Systems in the DRC

Systems	Information
Timber Legality & Traceability Verification (TLTV) by SGS	<ul style="list-style-type: none"> • Verification of Legal Origin (VLO – 2 years max) and • Verification of Legal Compliance (VLC -no limit)
Verification of Legal Origin (VLO) and Verification of Legal Compliance (VLC) by SmartWood (SW)	<ul style="list-style-type: none"> • VLO (3 years max) • VLC (3 years max) after which Forest Certification (e.g. FSC) has to be sought
Origine et Légalité du Bois (OLB – origin and legality of wood) by Bureau Veritas (BV)	<ul style="list-style-type: none"> • Developed based on legality challenges in Central Africa. • No time bound requirement to move towards a higher level of forest certification
Legal Harvest Verification (LHV) by Scientific Certification Systems (SCS)	<ul style="list-style-type: none"> • Forest protection and Chain-of-custody scheme • No time bound requirement to move towards a higher level of forest certification
Legality Verification System by Certisource	<ul style="list-style-type: none"> • Certisource policy is to offer legality verification for a period of up to two years at which point commitment to achieve FSC certification is required

Source: Proforest 2010.

5.3.3. Definition of Legality under the FLEGT-VPA and the EU Timber Regulation

Although there is no universally agreed definition of legality, it is defined by the aspects of legislation required to be addressed at the forest management level. Components of legality may include:

- Legal right to harvest,

⁴ Voluntary legality verification systems are developed by certification bodies and there are differences how legality is defined, how verification is carried out, and what kind of public claims can be used.

- Compliance with legislation related to forest management, environment, labour and welfare, health and safety,
- Compliance with legislation related to relevant taxes and royalties,
- Respect for tenure or use rights to land and resources that may be affected by timber harvest rights,
- Compliance with requirements for trade and export procedures including CITES.

The definition of legality under the FLEGT-VPA, EU Timber Regulation and under the UK, Denmark, Belgium and Netherlands' public procurement policies are addressing the same aspects and are therefore broadly consistent.⁵

Table 5-4: FLEGT Legality Assurance System vs. Voluntary Legality Verification Systems

FLEGT VPA PROCESS	VERIFICATION OF LEGAL ORIGIN (VLO) AND VERIFICATION OF COMPLIANCE (VLC)
<ul style="list-style-type: none"> • VPA is mandatory legality verification • Programme and broadly consistent with EUTR 	<ul style="list-style-type: none"> • A two-step voluntary legality verification used to support producers especially in tropical countries.
<ul style="list-style-type: none"> • Applies at the national level 	<ul style="list-style-type: none"> • Apply only at forest management unit level
<ul style="list-style-type: none"> • Requires national level stakeholder agreement on the interpretation of contentious areas of forest legislation through multi-stakeholder processes, including government, which result in clear and transparent requirements and promote good governance of the forest sector. • The FLEGT VPA process reduces the costs and challenges of effective FMU-level control and certification and thereby compliments and supports the move towards forest certification. 	<p>Two steps can be described as follows:</p> <ul style="list-style-type: none"> • VLO verifies that timber comes from a known and licensed source and that the entity that carried out the harvest had a documented legal right to do so. • VLC expands upon the basic component of VLO by verifying that timber harvesting and other relevant management activities in the forest where it was harvested complied with all applicable and relevant laws and regulations.

Source: Own elaboration.

While the SGS and SmartWood schemes offer VLO and VLC services, others like BV, SCS and Certisource do not differentiate these two levels of legality and only offer a legal compliance service. Differences between these two in terms of what aspects of legality they cover are offered in the document (Lam 2010). For more information on the legality verification systems, see section 5.5.

5.3.4. Requirements for Chain of Custody

All voluntary legality verification systems include chain of custody control requirements through the supply chain from the forest source to the point of supply. One major requirement for this is that companies are not allowed to mix verified and unverified materials during processing, storage and transport. Some voluntary legality verification systems like SmartWood do not allow for mixing while others like BV allow mixing of other verified materials.

⁵ See Table 2 on page 3 in Lam (2010).

5.3.5. Stepwise Technical Support Programs

Stepwise technical support programmes are NGO initiatives aimed at helping companies to achieve forest certification. Examples of these are WWF’s Global Forest and Trade Network (GFTN), The Forest Trust (TFT) and Rainforest Alliance’s SmartStep. They are not designed to be used as legality verification per se. Nonetheless participants of these programmes have to demonstrate legal compliance as part of validating progress towards forest certification. Another two NGO initiatives which focus on achieving legality verification but are not legality verification systems in themselves are the Tropical Forest Foundation (TFF) and Timber Trade Action Plan (TTAP).

Example: UK government procurement policy and the EU-Timber Regulation

The EU Timber Regulation does not pre-approve specific legality verification or forest certification schemes to meet its requirements. However in applying the necessary Due Diligence System required on the part of operators to assess the level of risk associated with the trade of a specific timber product, the voluntary legality verification systems which verify legal compliance in the country of residence are likely to be low risk. This is because they cover applicable laws on right to harvest, payments for harvest rights and other duties, forest management and environmental legislation, third parties’ legal rights, trade and customs legislation.

The UK Government’s timber procurement policy requires that all timber and timber products originate from either Legal and Sustainable or FLEGT licensed or equivalent sources. FSC and PEFC have been assessed by the Central Point of Expertise on Timber (CPET) and found to ensure compliance with the legality and sustainability requirements.

Apart from PEFC, FSC and FLEGT licensing, all other evidence of legality and sustainability is required to be assessed on a case by case basis. However, where a specific timber species or product type is required and where there is no sustainable timber or FLEGT-licensed timber or alternative available, timber which can be verified to meet the UK government requirements for legality will be accepted. Voluntary legality verification systems can therefore play an important role in ensuring legality and ensuring compliance with the UK government’s timber procurement policy where no sustainable source is available.

Source: (Lam 2010)

5.4. Case Study: The SGS Legality Verification System

With its headquarters located in Geneva, Switzerland, SGS considers itself as the world’s leading inspection, verification, testing and certification company. They are recognized as the global benchmark for quality and integrity with more than 94,000 employees operating a network of more than 2,600 offices and laboratories around the world⁶. SGS provides services in 4 broad categories: Inspection, Testing, Certification and Verification.

With regards to timber legality verification, the SGS renders assistance in improving transparency and traceability in the forestry sector throughout the supply chain. The TLTV (Timber Legality & Traceability Verification) service was created for this purpose. The Service is owned by SGS SA headquarter in Switzerland, Geneva, Governments & Institutions Services (GIS) Division, managed by the Forestry Monitoring Programme (FMP). The TLTV is a generic standard hence is operational anywhere in the world. For instance, legality verification of forests (TLTV-LP VLO/VLC) is found in Rep. of Congo, Democratic Rep. of Congo, Cameroon, Tanzania, Papua New Guinea, Indone-

⁶ <https://www.sgs.com/en/our-company/about-sgs/sgs-in-brief>

sia and Malaysia. Chain-of-Custody statements are also issued to companies in Europe (Netherlands, Belgium, Germany, UK, France, Denmark, Switzerland), USA, Malaysia, PNG, Indonesia, Australia (Lam 2010).

In light of the EU's recent FLEGT initiative, SGS offers a timber "Traceability and Legality Verification System" that assists governments and institutions to properly monitor and control the forestry activities throughout the timber supply chain in a given country. SGS has developed its generic timber traceability and legality verification system called "SGS-LegalTrace" (SGS 2017). SGS emphasizes that this system has been designed to comply with national regulations and international initiatives such as the Forest Law Enforcement, Governance and Trace (FLEGT) Action Plan of the European Union.

5.4.1. General Information

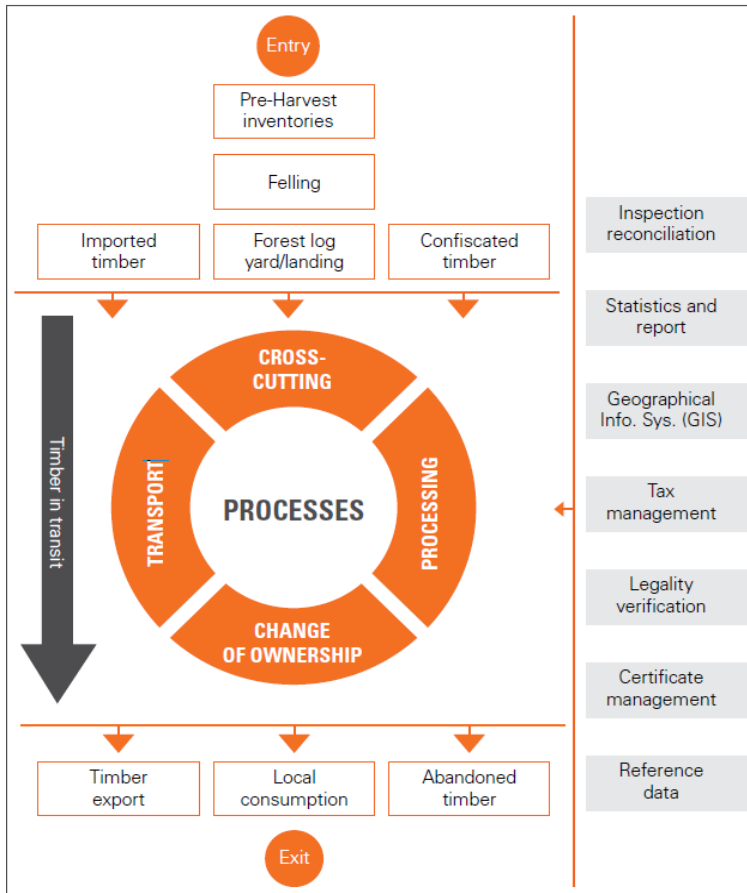
Referring to the SGS LegalTrace (SGS 2017), the system promises the following:

- Reinforce national capacities with the use of new technologies,
- Optimize tax recovery,
- Promote national timber on the international market,
- Safeguard access to any market requiring evidence of legality,
- Improve the image of the country on the international scene,
- Tackle illegal logging and deforestation.

5.4.2. Components of the System

As presented by SGS, the "SGS-LegalTrace" has the following major components (SGS 2017). In general, according to (SGS 2017) the "SGS-LegalTrace" system is a generic web application customizable to meet the needs of governments and institutions in charge of monitoring the forestry activities.

Figure 5-1: Generic Timber Supply Chain



Source: (SGS 2017).

Furthermore, the system focusses at a comprehensive recording of the forestry activities along the timber supply chain from pre-harvesting, harvesting to export or local consumption as shown Figure 5-1. Beyond, timber operators are requested to apply a unique identifier (such as barcode tag or carved/painted alphanumeric codes) on each timber item (log or batch of products). This identifier is to be declared in “SGS LegalTrace” with the timber product characteristics.

Figure 5-2: Barcode tag provided by SGS




Source: (SGS 2017)

Finally, the “SGS LegalTrace” system manages the issuance of Certificates of Legality and Export Permits (SGS 2017). Therefore, the system checks for 3 things to issue export permits:

- *Traceability*: Are all timber products included in the Export Permit Request marked with a unique identifier? If yes, can the system go back to the origin/source of the timber product? Is it a duly registered legal origin/source?
- *Fiscality*: Has the operator paid all the due taxes due to the Government?
- *Legality*: Do timber operators have a certificate of legality?

If the criteria above are met, the system allows the issuance of a valid export license certifying that the consignment of timber products can be legally exported. In the framework of the European Union FLEGT Voluntary Partnership Agreement (VPA), the export licenses are called FLEGT Licenses.

Figure 5-3: Sample of a FLEGT-Licence

ORIGINAL	1 Issuing Authority Name Liberia Licencing Department Address		2 Tax identification number 123456789 Destination EU-France	
	3 FLEGT licence number EU-FR/2014/000002		4 Expiry Date 06 16 2015 MM DD YYYY	
	5 Country of Export LIBERIA		7 Means of transport Method Sea Boat Vessel Voyage No. 12	
	6 ISO Code LR			
	8 Licensee (name and address) Africa Timber Ltd. Old Road – Monrovia- LIBERIA			
	9 Commercial Description of timber products Round Logs: 2 AMP (11.0242 m3)		10 HS heading 4403	
	More details available in attached packing list No "EU-FR/2014/000002"			
	11 Common or scientific names AMP		12 Countries of harvest LIBERIA	13 ISO Codes LR
14 Volume (m³) 11.0242	15 Net weight (kg)	16 Number of units 2		
17 Distinguishing marks Marks made by seller: test distinguish mark More details available in attached packing list No "EU-FR/2014/000002"				
18 Signature and stamp of issuing authority David Pellet Place and date Monrovia, 12.16.2014				

Source: (SGS 2017)

5.5. Comparison of Legality Verification Systems

Whereas in the previous chapter 5 the concepts of due diligence and legality verification are elaborated, this chapter broadens the scope towards the four most relevant legality verification systems in the context of timber from the DR Congo. In order to allow for an effective overview the comparative information on the schemes in (1) Name, (2) Type, (3) General Overview, (4) Period of Validity, (5) Status of Operation and Region, (6) Status of standard/legality definition, (7) Status of generality and/or local/regional adoption, (8) Existence of chain of custody (CoC) control from point of supply to forest source, (9) Allowance for a mix of non-verifiable raw materials (e.g. mass balance), (10) Type of documentation for public claims (e.g. certificate, licence, statement) and (11) Execution of verification mechanisms of forest source and CoC.

The following certification systems are analysed and covered:

- Smart Wood (SW)
- Bureau Veritas (BV)
- Scientific Certification Systems (SCS) and
- Certisource

The results of the analysis can be taken from Table 5-5.

Table 5-5: Comparison of Legality Verification Systems

Name	Smart Wood (SW)	Bureau Veritas (BV)	Scientific Certification Systems (SCS)	Certisource
Type	<ul style="list-style-type: none"> • Verification of Legal Origin (VLO) and Verification of Legal Compliance (VLC) 	<ul style="list-style-type: none"> • Origine et Légalité du Bois (OLB – origin and legality of wood) 	<ul style="list-style-type: none"> • Legal Harvest Verification (LHV) 	<ul style="list-style-type: none"> • Legality Verification System
General Overview	<ul style="list-style-type: none"> • VLO and VLC are run by SmartWood, a programme of Rainforest Alliance based in New York, US. • The first generic SmartWood VLO and VLC standards were developed in November 2007. 	<ul style="list-style-type: none"> • The standard for OLB (“Origine et Légalité du Bois” Origin and Legality of Wood) was developed in 2004 by Eurocertifor (which later became part of Bureau Veritas Certification) based in Paris, France. 	<ul style="list-style-type: none"> • The LHV standard is a relatively new verification standard developed and managed by Scientific Certification Systems (SCS). The second standard consultation phase was concluded in March 2010. 	<ul style="list-style-type: none"> • The Certisource Legality Verification System was launched in March 2007 as a means to verify the legality of merbau timber products from Indonesia.
Period of Validity	<ul style="list-style-type: none"> • Verification statement lasts for 3 years 	<ul style="list-style-type: none"> • Certificate lasts for 5 years 	<ul style="list-style-type: none"> • Verification statements lasts 3 years, contingent upon results of annual surveillance audits 	<ul style="list-style-type: none"> • Certificates are specific to a batch of logs of a single species.
Status of Operation and Region	<ul style="list-style-type: none"> • VLO and VLC standards are operational and applicable worldwide. 	<ul style="list-style-type: none"> • Yes, it is applicable worldwide and is currently operational in Gabon, Cameroon and CAR. 	<ul style="list-style-type: none"> • Not operational (as at 2014). The standard has been designed to demonstrate conformity to a set of generic legal principles that can be adapted to any country’s 	<ul style="list-style-type: none"> • The Certisource legality system is operational in Indonesia.

laws.

Status of Standard/legality definition endorsed by the government	<ul style="list-style-type: none"> • 4 national standards developed in China, Malaysia, Indonesia and the Philippines but not endorsed by the government of the respective countries. 	<ul style="list-style-type: none"> • The standard is not endorsed by the governments of Gabon, CAR and Cameroon. 	<ul style="list-style-type: none"> • No, this is not a standard requirement. 	<ul style="list-style-type: none"> • Certisource does not create its own standard but uses WWF GFTN guidelines as a foundation and combines these with relevant local standards. • The Certisource standard is not endorsed by the government.
Status of Generality and/or local/regional adoption	<ul style="list-style-type: none"> • The VLO and VLC standards are generic; • however, local standards in China, Malaysia, Indonesia and the Philippines have been developed. 	<ul style="list-style-type: none"> • OLB is a generic standard and no local/regional standard has been developed. 	<ul style="list-style-type: none"> • Generic standard. Specific country adapted standards are developed as needed. Adapted standards are currently being developed for Paraguay, Russian Far East and China. 	<ul style="list-style-type: none"> • Originally developed based on GFTN guidelines incorporating the Indonesian legality standards developed by LEI (Eco-Labeling Institute) into the Certisource Legality standard. • Certisource has approval from the Rainforest Alliance/ SmartWood to use their copyrighted generic VLO and VLC standards.
Existence of chain of custody (CoC) control from point of supply to forest source	<ul style="list-style-type: none"> • Yes, the VLO and VLC standard include principles on CoC 	<ul style="list-style-type: none"> • Yes. CoC Standard is present. 	<ul style="list-style-type: none"> • The SCS LegalHarvest Verification Program includes a separate CoC standard also for forest product manufacturers. 	<ul style="list-style-type: none"> • Yes. CoC is present.
Allowance for a mix of nonverifiable raw materials (e.g. mass balance)	<ul style="list-style-type: none"> • No. 	<ul style="list-style-type: none"> • Partially by a method called • ‘Segregation 	<ul style="list-style-type: none"> • No. Offers a secure system of physical separation for all verified products to be sold as SCS LegalHarvest Verified (LHV). 	<ul style="list-style-type: none"> • No, it does not allow mixing of non-verifiable raw materials.

<p>Type of documentation for public claims (e.g. certificate, licence, statement)</p>	<ul style="list-style-type: none"> • By means of a Verification Statement that Smart-Wood issues.’ 	<ul style="list-style-type: none"> • Within the scope of certification, certain specific information and documents must be made public. 	<ul style="list-style-type: none"> • A Verification Statement is issued and off-product promotional claims can be made but must be reviewed by SCS prior to use. 	<ul style="list-style-type: none"> • There are two types of documentation used in making public claims: • The first one is Certisource Container Dockets. The second one is a Certisource Certificate.
<p>Execution of verification mechanisms of forest source and CoC</p>	<p>Audits are carried out by auditors of SmartWood programme.</p>	<ul style="list-style-type: none"> • Bureau Veritas auditors. 	<ul style="list-style-type: none"> • SCS auditors or contract auditors 	<ul style="list-style-type: none"> • Verification of forest source and CoC against the Certisource standards and system is carried out by an independent Certification Body. • Certisource appoints Double Helix Tracking Technologies (Double-Helix) to act as its Certification Body.

Source: Own compilation based on (Lam 2010).

6. Timber Governance in Ghana and the DR Congo

Finally, this chapter aims at an international comparison of timber governance schemes from an African country that is more advanced and has already elaborated a VPA with the EU within the FLEGT process. Hence, for this purpose the case of Ghana was selected in order to derive recommendations and important findings for the adaptation in the context of the DRC in the following section 7.

In many timber-producing countries such as Ghana and DR Congo, illegal logging and trade is a daily practice and contributes immensely towards forest degradation (Wiersum, K. F., & Elands, B. H. M. 2013). To address tropical deforestation and forest degradation, several international forest governance regimes have come into being. Although several domestic or international forest policies have been implemented in individual countries, the EU FLEGT Action Plan⁷ seems to be the most ambitious so far. The Action Plan identifies seven broad measures, one of which is to promote legal timber trade through the negotiation of VPAs⁸ between the EU and timber exporting countries outside the EU. Essentially, Ghana and the DRC are amongst 7 partner countries that have signed VPAs with the EU to improve their internal regulation systems in their bid to curb illegal logging and strengthen governance of the forest sector (see section 4).

Each VPA includes a definition of legal timber which represents a central element of the timber legality assurance system that has to be negotiated and agreed between the two sides before the signing of the VPA. Timber and timber products from a producing country must comply with this legal definition in order to receive FLEGT licencing (Tegegne, Y. T. et al. 2014). Consequently, an annex on the legality definition may include several legality matrices that apply different standards to different sources of timber, such as community forests, plantations or logging concessions (Kleinschmidt 2016). For instance, while Ghana has a single legality matrix that applies throughout the supply chain for timber and timber products from all types of forest, the DRC has two legality matrices for assessing the legality of timber produced in natural forests and forest plantations respectively⁹.

In assessing the state of timber governance in a country, several factors such as, total land area, size of forest cover, nature of existing forest laws, implemented policies, political will and situation may play different roles. Conspicuous in the case of Ghana and DR Congo vis-à-vis the implementation of the EU FLEGT VPA in both countries; a sure attempt at improving forest governance and law enforcement are several differences with regards to progress in implementation. They are compared and illustrated in the following table Table 6-1.

⁷ European Union's Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, established in 2003 aims to reduce illegal logging by strengthening sustainable and legal forest management, improving governance and promoting trade in legally produced timber (FLEGT Briefing Note 2).

⁸ A Voluntary Partnership Agreement (VPA) is a legally binding trade agreement between the European Union and a timber-producing country outside the EU (<http://www.euflegt.efi.int/vpa>). It seeks to ensure that timber and timber products imported into the EU from a partner country comply with the laws of that country (FLEGT Briefing Note 6).

⁹VPA between EU and Ghana, retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22010A0319\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22010A0319(01)&from=EN) VPA between EU and DRC, retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22011A0406\(03\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22011A0406(03)&from=EN)

Table 6-1: International Comparison of Timber Legality Governance

Ghana	DRC
<ul style="list-style-type: none"> • VPA negotiations with the EU began in March 2007 and agreement was reached in September 2008, the VPA was signed in November 2009 and ratified by both sides in March 2010. 	<ul style="list-style-type: none"> • Negotiation for the VPA with the EU commenced in June 2008.
<ul style="list-style-type: none"> • Forest law enforcement structures in Ghana are comparatively robust. • Strong collaboration among sector stakeholders and government agencies exist significantly minimizing illegalities. 	<ul style="list-style-type: none"> • Forest law enforcement structures in the DRC are deeply flawed in all key respects: enforcement is under-resourced and inadequately coordinated. • Infractions are therefore rarely uncovered and penalties applied are insufficient to deter illegal practices.
<ul style="list-style-type: none"> • Timber from Ghana is increasingly gaining trust on the EU market. Little or no Due Diligence shall be required in importing Timber from Ghana once the final Joint Assessment is done. 	<ul style="list-style-type: none"> • Timber from DRC is generally considered as high-risk. • High-level of media attention in contrast with other countries reflect the different extent of the problem there.
<ul style="list-style-type: none"> • Ghana has been testing FLEGT licensing procedures and issuing “dummy FLEGT-licenses” since September 2018. 	<ul style="list-style-type: none"> • The DRC is still in the process of developing a TLAS (Timber legality Assurance System) amidst several challenges.
<ul style="list-style-type: none"> • As of July 2019, Ghana feels ready to issue FLEGT licenses. • The time-lag is only as a result of few areas of improvement in the maintenance of the online WTS¹⁰. 	<ul style="list-style-type: none"> • Political unrest and insufficient political will have drastically impeded VPA implementation in the DRC. • Negotiation processes had to be halted within certain periods (Lam 2010)¹¹.

Source: Own comparison.

¹⁰ “Ghana feels ready to start FLEGT-licensing – and shares experience with other VPA Partner Countries” Article retrieved from <http://www.flegtimm.eu/index.php/newsletter/flegt-policy-news/91-ghana-feels-ready-to-start-flegt-licensing-and-shares-experience-with-other-vpa-partner-countries>

¹¹ “Illegal Logging in the Democratic Republic of the Congo” revised version (July 2014) by Sam Lawson retrieved from https://indicators.chathamhouse.org/sites/files/reports/201404DRC_illegal_logging.pdf

7. Conclusions & Outlook

This final chapter aims at a review of the results above as well as at drawing conclusions for an improvement of the situation for timber legality and due diligence in the context of the DRC in the following.

1. The DRC is an areal state of 152.6 million hectares of forest (section 2.1), the second largest connected forest area worldwide. Large parts are not developed infrastructurally or accessible. Hence, a coherent execution of mandatory legality verification schemes is related to very large challenges nationwide. Without structural reforms addressing the effectiveness of regulatory frameworks and enforcement, (also voluntary) verification schemes are prone to failure.
2. Also, the many regions of the DRC repeatedly face violence (Manhart, A. & Schleicher, T. 2013). In several parts of the country multiple militias dominate timber exploitation and trade but also other assets such as the so called conflict minerals (see section 5.1). Without a successful comprehensive country-wide peace building and developing process, sustainability and forest protection governance schemes are severely hampered.
3. At least two internationally recognized sustainability (section 3) schemes for timber have been developed worldwide. However, by today, also due to the above mentioned reasons both have not been applied in the DRC yet. Hence, beyond the development of tailored regional systems (e.g. FSC-Congo) it remains a most relevant challenge to create a suitable economic and institutional environment that allows for the application of both, legality and sustainability certification.
4. As a result of section 2.4, a majority of the timber export from the DRC reach out to China. This fact hampers the the degree of influence into the value chain from the European perspective. However, this fact cannot absolve European stakeholders to further engage in a proactive role towards more sustainable and legally verified timber sources. This also covers a financial engagement into the development of sustainable value chains from the demand side.
5. Both, due diligence and legality verification represent instruments for a better transparency within the value chain. However, the instruments itself do not provide economic incentives for a change of behaviour per se, for smallholders but also for companies. As illegal logging are a typical example of realising “dead-weight effects” in the context of environmental externalities, government plays a crucial role in the creation of a suitable regulatory framework for all concerned actors. Only if reliable disincentives for illegal logging as well as positive incentives for very moderate and focussed logging (e.g. based on criteria for sustainability certification) are in place, the related market failures can be corrected effectively.
6. The role of international enterprises, however, can be to support reliable “regions of stability” where moderate and certified timber is cultivated. However, this translates into higher costs (due to internalised environmental and social externalities) and reliable market conditions (e.g. acceptance guarantee). However, such a roadmap needs to be embedded within the necessary institutional policy commitment (see above).
7. Both, legality verification within mandatory due diligence (step 1) and sustainability certification (step 2) can be parts of a suitable roadmap to (1) limit illegal logging and (2) stabilize and limit environmental impacts from widespread unsustainable logging activities. However, as isolated instruments, the latter do not have the potential to take a stand within an unlevelled economic playing field.

8. In the long run, from an economic perspective, forest protection and sustainable logging, hence, are a matter of finance. In particular, only if forests do receive an economic value as such (certificates connected to values, increased stumpage fees etc.), (dis-)incentives for forest protection are provided and promise to be successful.
9. Beyond, as elaborated in chapter 2.5, often timber products are not exported as roundwood but in the form of various derivatives. As (Nellemann, C. et al. 2016) show most of the illegal trade refers to loopholes in the context of derivative products such as pulp or paper. Hence, it is of utmost importance for the legality verification schemes but also within due diligence guidance to take into account wood derivative products and close existing loopholes.
10. Finally, in particular with regards to smallholders, peace building, legal and sustainable logging can only be successful if suitable (possibly also alternative) employment possibilities are created. As this is related to higher costs there is a clear imperative for downstream actors (companies, consumers) to accept comparatively higher prices for timber products.

References

- Brack, D., & Buckrell, J. (2011): Controlling Illegal Logging: Consumer-Country Measures. Chatham House (ed.), 2011. Online available at <https://www.chathamhouse.org/publications/papers/view/109642>.
- DGF (2009): Direction de la Gestion Forestière, République Démocratique du Congo, 2009.
- Economic Commission for Africa (2019): African Statistical Yearbook. African Development Bank Group & African Union Commission (ed.), 2019. Online available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/African_Statistical_Yearbook__2019.pdf.
- EU FLEGT Facility (2019): Closing the EU market to illegal timber, FLEGT Factsheet. EU FLEGT Facility (ed.). Online available at <http://www.euflegt.efi.int/documents/10180/452147/FLEGT+factsheet+Trade+and+market.pdf/5ceb3405-3161-26a8-a03c-de87eba7dc5a>.
- European Commission (2019): FLEGT Regulation — FLEGT Voluntary Partnership Agreements (VPAs), European Commission. Online available at <http://ec.europa.eu/environment/forests/flegt.htm>.
- European Union (2019): Official Website on the EU-Timber Regulation. Online available at https://ec.europa.eu/environment/forests/timber_regulation.htm.
- FAO (2019): Country Profile Democratic Republic of Congo, Food and Agriculture Organization of the United Nations. FAO (ed.). Online available at <http://www.fao.org/countryprofiles/index/en/?lang=en&iso3=COD>.
- FERN (2006): Forest governance in the Democratic Republic of Congo, 2006. Online available at <https://www.fern.org/>.
- Forest Legality Initiative (2013): Democratic Republic of the Congo, Forest Legality Initiative. Online available at <https://forestlegality.org/risk-tool/country/democratic-republic-congo>.
- FSC (2018): EU Timber Regulation, Implementation guide for companies trading FSC-certified materials in the European Union, 2018.
- FSC (2019): Official Website of the Forest Stewardship Council. Online available at <https://fsc.org/en>.
- Greenpeace (2015a): DR Congo's logging companies and international timber traders continue to profit from impunity. Online available at <https://www.greenpeace.org/archive-africa/en/Press-Centre-Hub/DR-Congos-logging-companies-and-international-timber-traders-continue-to-profit-from-impunity/>.
- Greenpeace (2015b): Importing timber from the Democratic Republic of Congo: A high-risk business for Europe, Case study III: DRC Afrormosia from La Forestière exported to Belgium. Greenpeace (ed.). Online available at http://www.greenpeace.org/archive-belgium/Global/belgium/report/2015/la_forestiere.pdf, last accessed on 16 Apr 2019.
- Greenpeace (2015c): Trading in Chaos, The impact at home and abroad of illegal logging in the DRC, 2015. Online available at https://www.greenpeace.org/archive-africa/Global/africa/publications/forests/2015/Trading_In_Chaos.pdf.
- Harwell, E. (2010): Forests in fragile and conflict-affected states, Program on Forests.
- ISEAL (2018): Alliance is a global membership association for credible sustainability standards. Online available at <https://www.isealliance.org/>.
- ITTO (2019): Timber Trade Portal, Democratic Republic of the Congo, The International Tropical Timber Organization (ITTO), European Sustainable Tropical Timber Coalition (STTC), French

- Fund for the World Environment (FFEM), and the European Union. ITTO (ed.). Online available at <http://www.timbertradeportal.com/countries/drc/>.
- ITTO (ed.) (2016): Review and Assessment of the World Timber Situation. International Tropical Timber Organisation, 2016. Online available at https://www.itto.int/annual_review/.
- Kleinschmidt, D. e. a. (2016): Illegal Logging and Related Timber Trade – Dimensions, Drivers, Impacts and Responses: A Global Scientific Rapid Response Assessment Report. In: *IUFRO World Series* (35), pp. 1–146.
- Lam, J. (2010): Review of timber legality verification schemes. proforest, 2010. Online available at <https://www.proforest.net/proforest/en/files/review-of-timber-legality-verification-schemes.pdf>.
- Lawson, S. (2014): Illegal Logging in the Democratic Republic of the Congo. Chatham House (ed.), 2014. Online available at https://indicators.chathamhouse.org/sites/files/reports/201404DRC_illegal_logging.pdf.
- Manhart, A. & Schleicher, T. (2013): Conflict minerals - An evaluation of the Dodd-Frank Act and other resource-related measures, 2013. Online available at <https://www.oeko.de/en/publications/p-details/conflict-minerals-an-evaluation-of-the-dodd-frank-act-and-other-resource-related-measures/>.
- Nellemann, C. et al. (2016): The Rise of Environmental Crime – A Growing Threat To Natural Resources Peace, Development And Security, A UNEP-INTERPOL Rapid Response Assessment. In collaboration with Henriksen, R.; Kreilhuber, A.; Stewart, D.; Kotsovou, M.; Raxter, P.; Mrema, E. et al. Nations Environment Programme and RHIPTO Rapid Response–Norwegian Center for Global Analyses (ed.), 2016. Online available at https://wedocs.unep.org/bitstream/handle/20.500.11822/7662/-The_rise_of_environmental_crime_A_growing_threat_to_natural_resources_peace%2C_development_and_security-2016environmental_crimes.pdf.pdf?sequence=3&isAllowed=y.
- OECD (2016): OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (3rd Edition), 2016. Online available at <http://dx.doi.org/10.1787/9789264252479-en>.
- Ross, A. (2015): Logging companies plundering Congo's rainforest: Report, 2015. Online available at <https://www.reuters.com/article/us-congodemocratic-environment/logging-companies-plundering-congos-rainforest-report-idUSKBN0OJ00E20150603>.
- Saunders, J. & Norman, M. (2017): Timber Imports from Conflict Countries to EU Increasing, 2017. Online available at <https://www.forest-trends.org/blog/timber-imports-conflict-countries-eu-increasing/>.
- Schleicher, T.; Hilbert, I.; Manhart, A.; Hennenberg, K.; Ernah; Vidya, S.; Fakhriya, I. (2019): Production of Palm Oil in Indonesia, 2019. Online available at <https://www.oeko.de/fileadmin/oekodoc/BioMacht-palm-oil-report.pdf>.
- SGS (2017): SGS Legaltrace, Timber Traceability and Legality Verification, SGS Group Management SA. Online available at <https://www.sgs.com/-/media/global/documents/brochures/sgs-gis-forestry-legal-trace-brochure-lr-a4-en-17-05.pdf>.
- Swisspeace (2013): Assisting Danzer and Siforco in Meeting Their Obligations towards the Communities of Bumba, Final Report, 2013.
- Tegegne, Y. T. et al. (2014): Comparative analysis of the interactions between the FLEGT and REDD+ regimes in Cameroon and the Republic of Congo. In: *International Forestry Review* 16 (6), pp. 602–614. Online available at <https://doi.org/10.1505/146554814814095311>.

Wiersum, K. F., & Elands, B. H. M. (2013): Opinions on legality principles considered in the FLEGT/VPA policy in Ghana and Indonesia. In: *Forest Policy and Economics* (32), pp. 14–22, last accessed on <https://doi.org/10.1016/j.forpol.2012.08.004>.

World Resource Institute (2018): Tracking Deforestation in DRC's Forest Concessions Is Complicated, World Resource Institute. Online available at <https://www.wri.org/blog/2018/08/tracking-deforestation-drcs-forest-concessions-complicated>.