

Briefing Note for the Competent Authorities implementing the EU Timber Regulation February - March 2018

EUROPEAN COMMISSION LAUNCHES A PUBLIC CONSULTATION ON EUTR PRODUCT SCOPE

Views from all stakeholders and the general public are being invited on a possible expansion of the product scope of EUTR, as part of an impact assessment. The consultation questionnaire is available in 23 EU languages and takes approximately 30 minutes to complete. The policy options provided are: no change in the product scope; add one or more additional categories of product; or include all products that contain timber, and if appropriate a list of exempt products. Each option may also involve the possibility to remove products which are currently covered by the regulation. The consultation on product scope of the EUTR is open from 29 January 2018 until 24 April 2018.

ENFORCEMENT OF EUTR



UK operator fined for failing to check legality of import from Cameroon (March 2018)

Hardwood Dimensions (Holdings) Ltd was fined GBP 4000 plus costs, totalling GBP 7443, on 2 March 2018 for breaching EUTR by failing to check the legality of an import of timber from Cameroon. This represented the first enforcement action of the new UK Office for Product Safety and Standards (the UK CA). The timber concerned **was FSC certified**, highlighting that certification alone does not guarantee compliance with the legal process and that importers must conduct thorough Due Diligence assessments.

The Danish Environmental Protection Agency reported enhanced supervision of operators (January 2018)

The Danish CA, the Environmental Protection Agency, **have announced** that they visited approximately 80 operators in 2016-17, issuing 20 injunctions and reporting three companies to the police. This was reported in their **annual report** and represents a doubling of surveys from the previous period.

Danish operator appealing court decision on breach of EUTR (January 2018)

A representative of the Danish CA noted that the Danish operator Fynian's appeal against the Odense district court conviction for violating EUTR would provide a welcome opportunity for prosecutors to raise issues of potential risks in trade in tree species from high-risk countries at the national court.

Swedish operator fined for breaching EUTR (March 2018)

The Swedish operator Dollarstore has been fined SEK 800 000, unless an appeal is lodged and is successful, due to the company failing to fulfil EUTR obligations. The company was reportedly unaware of the existence of EUTR, but was informed of the regulation by the Swedish Forest Agency (the Swedish CA) after a visit in 2016. They requested that the company address their concerns. Dollarstore continued to demonstrate deficiencies in documentation and did not conduct risk assessments on imports.

Swedish CA provides update on enforcement of EUTR (March 2018)

The Swedish CA has inspected two traders, six importers and four buyers of domestic timber since January 2018, with a current focus on furniture.

The Portuguese CA published indicators to monitor EUTR implementation (March 2018)

Portuguese CA have developed a new **website** that provides interactive data visualisations of a set of indicators, to assist in the monitoring of EUTR implementation. The website is linked to the Portuguese EUTR database, keeping the information up-to-date.

EIA released a report on the relationship between EUTR and the Lacey Act (February 2018)

The report suggests that EUTR would be a 'foreign law' under the Lacey Act, meaning that any violations to EUTR would also be an offence under the Lacey Act. EIA report that this results in all actors in the supply chain of EU products exported to the US being liable for infringement of the regulation. The report also points to weaknesses of both pieces of legislation, notably that, contrary to due diligence, the failure to exercise due care under the Lacey Act is not an offense in its own right. On the other hand, implementation is not harmonised across the EU, and effective measures to exclude illegal timber from the market, such as seizures, are rarely imposed for insufficient due diligence.

ILLEGAL LOGGING & TRADE



Proposed judgement on Poland's logging of the Natura 2000 Puszcza Białowieska given (February 2018)

The Advocate General of the Court of Justice of the EU issued a legal opinion on Poland's logging in the Natura 2000 Puszcza Białowieska site (Białowieża Forest) on 20 February 2018. In the opinion of the Advocate General, the actions taken by Poland to log the site infringe EU law, and he proposed that the Court rule that Poland has failed to fulfil its obligations under the Habitats and Birds Directives. The final ruling will be published in March.

Gabon adopt draft decree banning the exploitation of kevazingo (February 2018)

On 23 February 2018 the Council of Ministers of Gabon adopted a draft decree banning the exploitation of kevazingo (*Guibourtia* spp.). The General Confederation of Small and Medium Enterprises and Industries (CGPMEI) has **expressed concern** at the consequences of the prohibition.

Lao People's Democratic Republic makes progress in tackling illegal logging (January 2018)

Lao PDR reported a 70% reduction in illegal logging and timber exports since April 2016. The reduction in illegal timber harvesting and export has been credited to be the result of high-level political will and more effective law enforcement under the Prime Ministerial Order 15 of 2016 and long-term action and commitment, including through development cooperation, to promote sustainable forest management by building capacities, improving forest monitoring through modern technology and provision of alternative incomes.

Illegal timber intercepted at Ukraine customs border (February 2018)

Customs officials from the Zhytomyr region seized 32 cubic metres of softwood valued at UAH 100 000 at the Ukraine customs border. The certificate of origin for the timber was found to have been obtained illegally during compliance checks, in violation of the Customs Code of Ukraine.

NGOs and Liberian law firm appeal against a refusal to investigate historical illegal timber trade in Liberia (January 2018)

Greenpeace France, the French NGO Sherpa, Global Witness and the Liberian law firm Green Advocates have appealed against an order of non-place (refusal to investigate) in the French court in the case of illegal timber being traded from Liberia by DLH during the Liberian Civil War (2000-2003). The investigating chamber is expected to issue a decision on the appeal in the coming months.

EIA released a report on possible illegalities within the Peruvian timber trade (January 2018)

The report, released in January 2018, focused on the alleged use of fraudulent documents to export illegal timber from Peru and efforts to tackle the issue within the country since EIA's 2012 report on illegal logging in Peru. EIA highlighted the strong enforcement effort that has taken place in Peru, leading to detentions and seizures that they suggest have generated protests and high-level pushback. EIA also highlight new documents suggesting the systematic export of illegal timber from Peru's main port of Callao in 2015.

Greenpeace released a report on fraud in the Brazilian forestry sector (March 2018)

An investigation by Greenpeace, focusing on alleged illegal extraction of Ipe (*Handroanthus spp.*) timber, found what they described as widespread fraud in the Brazilian forestry sector. Greenpeace highlighted weaknesses of the licensing process of Sustainable Forest Management Plans, including incorrect botanical identification, deliberate overestimation of tree volumes and addition of non-existent trees to forest inventories.

EarthSight released a report on the impact of industrial agriculture on forests of the Congo Basin (March 2018)

The report, on clearance of forests for industrial oil palm and rubber plantations in the Congo Basin, suggests that the largest logging firms in the region have poor reputations for illegalities and human rights abuses, with one company reportedly having helped fund armed conflict.

LEGISLATION & POLICY



European Union

The **FLEGT/EUTR Expert Group** met in Brussels on 26 February 2018. The Commission presented and discussed with Member States an updated version of the working paper towards a FLEGT Action Plan work plan 2018-2022, which integrates comments from Member States and stakeholders. Member States exchanged updates on the implementation of the FLEGT licensing scheme and the Commission gave a report on VPA implementation in Indonesia, noting that the Joint Implementation Committee will agree at its meeting on 1 March 2018 on a 2018 Joint Action plan which includes action to address recommendation from the first periodic evaluation (e.g. Independent Audit) of the Indonesian TLAS and other implementation issues. Updates were also provided on Ghana, Guyana, Republic of Congo and Liberia. The FLEGT Annual Synthesis Report for 2016 was to be translated in the week following the meeting and was to be published soon. An update to the FLEGT reporting template had been produced providing greater clarity and simplification where necessary. An Online Reporting System will be employed for reporting from this year with tests of the system by Member States being conducted. The Commission provided information on ongoing work on aligning environmental reporting obligations, including publishing an action plan to adjust legislative elements, following a 'fitness check' that revealed areas for improvement, with the EUTR and FLEGT regulation being covered by the exercise. Member States also exchanged on the implementation of the EUTR, including in relation to timber imports from Myanmar and reports of alleged illegal logging in Romania. A guidance document on mitigation measures was agreed.

EUTR event planned at the Thünen Institute (October 2018)

Since its foundation in 2013, the Thünen Institute has processed around 35 000 individual samples for the anatomical identification of wood species and nearly 1 500 wood samples for the genetic verification of the wood species and/or origin; it also provides analysis of fibreboard, paper and charcoal. Its work supports government agencies, the timber trade, consumers and associations. The Institute has now arranged an event on the 8-9 October 2018 in Hamburg to coincide with its five year anniversary. The event will allow opportunities to reflect on the experiences learnt so far and to consider future work on EUTR. Further information will be provided nearer to the event.

ClientEarth released a brief on the current state of national EUTR penalties (March 2018)

ClientEarth have conducted analysis on whether national EUTR penalties are sufficiently effective, proportionate and dissuasive based on publicly available information. ClientEarth found variation in the degree of enforcement across the EU and considered that current EUTR enforcement practice was not generally fit for the EU standard. They called for the EU to significantly increase transparency around enforcement action and encouraged all stakeholders to engage in scrutinising national enforcement policies.

International

Proposed changes to Australian illegal logging law for FSC and PEFC products disallowed (February 2018)

On 8 February 2018 the Australian Senate debated a reform to the Illegal Logging Prohibition Regulation 2012 that would have established a new 'deemed to comply' arrangement for FSC and PEFC certified products. The amendment was disallowed by the Senate meaning it will no longer be implemented. Companies dealing in FSC and PEFC certified products will still need to conduct a full due diligence process to comply with the Regulation.

Article suggested that EUTR raises questions over the importance of FSC certification (February 2018)

The trade magazine Print Business has questioned the importance of FSC certification now that EUTR is in place. The authors suggest that the printing industry no longer benefits from membership of FSC as legality is guaranteed under EUTR. It is argued that EUTR provides a simplification of the audits, administration and records that are an essential part of chain of custody schemes, although it does not provide the social aspect of good forest management.

FSC criticised by Yale Environment 360 as having little impact on tropical deforestation and illegal logging (February 2018)

An article published by Yale Environment 360 has raised concerns over the effectiveness of FSC certification. Critics of FSC have suggested that certification has had little to no impact on tropical deforestation and has, in some cases, contributed to the trafficking of illegal timber. A number of reports from NGOs have been used to support these claims. **FSC have replied** by claiming the article was one-sided and chose a number of negative examples rather than reflecting the perspectives of the wider FSC community. They highlight that FSC have taken action against organisations proven to have conducted illegal activities and can only legislate for the deforestation within FSC certified areas.

Greenpeace International announced they will not renew their FSC membership (March 2018)

Greenpeace announced their decision on 26 March, stating that they "no longer have confidence that FSC alone can consistently guarantee enough protection [to forests]", and that they called on FSC and other certification schemes to improve their transparency. They did note that when use of virgin wood fibre was necessary, they did still encourage the use of 100% FSC certified products, albeit with additional due diligence.

The Central African Republic and the EU reiterate their commitment to implementing their VPA (February 2018)

The commitment of both parties was reiterated at the fourth meeting of the Joint Implementation Committee (JIC) held on 7 February 2018. The financing agreement, signed in 2012, is about to be implemented, a further step toward the implementation of the VPA between the Central African Republic and the EU. It was agreed that the restoration of forest control on the ground is required prior to the deployment of a legality assurance system as part of the VPA.

FAO and CIFOR released a report on the forestry sector of the Central African Republic (February 2018)

The report was produced jointly by FAO and CIFOR and accompanies a [website](#) with information on the timber sector in the country, including production, allocation, development, processing and taxation. The report provides further detail on the website, with data up to 2016.

Ninth EU-China Bilateral Coordination Mechanism meeting on FLEG (March 2018)

The 2018 work plan for the EU-China Bilateral Coordination Mechanism (BCM) on Forest Law Enforcement and Governance (FLEG) was approved during the meeting, held on 7 March 2018. The plan covers elements such as setting up new policy and regulation in China on fighting illegal logging, cooperation in third countries in Africa and SE Asia, developing specific options for recognising FLEGT licenced timber (from Indonesia), and capacity building. In the afternoon session, representatives from the private sector and non-governmental organisations outlined their work and identified options for active support to the priority areas identified in the 2018 BCM work plan. Many of them welcomed the inclusion of activity 1.1, "Developing import management measures", in the 2018 BCM work plan. A summary report of the '**Feasibility analysis of the incorporation of timber legality requirements into Chinese laws or regulations to promote trade in legal forest products**', constituting an important milestone in the work of the BCM, was published before the meeting.

IIED released a report on discrepancies in timber trade data comparing China and Mozambique (March 2018)

IIED produced a report investigating trade data discrepancies by examining the documentation process and data collection of the customs and other relevant agencies in China and Mozambique. The report provides recommendations as to how the two countries might better regulate timber supply chains and manage customs procedures, as well as identifying opportunities for greater cooperation.

Ghana announces plans to test a FLEGT licensing regime (January 2018)

The Vice-President of the Ghana Timber Association has announced that plans are at an advanced stage to commence and test a FLEGT licensing scheme. This is hoped to allow for the issuance of FLEGT licenses guaranteeing legality of timber entering the EU market from Ghana.



Developed by UNEP-WCMC as a consultant of the European Commission in close cooperation with the EU Member States Competent Authorities.

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