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A large stack of cut logs in a forest, with a tall evergreen tree in the background under a clear blue sky. The logs are stacked in a conical shape, and some have red markings on them. The ground is covered in gravel and some small plants.

WWF Enforcement Review of the EU Timber Regulation (EUTR)

EU Synthesis Report

Front cover: Timber by the side of the road © Ola Jennersten / WWF-Sweden

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Executive summary

1.1. Background

Illegal logging is a pervasive problem with global implications. It leads to forest degradation and it is often a precursor of deforestation, which is one of the drivers of climate change. Addressing illegal logging is therefore essential for the protection of forests and biodiversity, the reduction of emissions from the forest sector, as well as the sustainable management of forests. Forestry crimes, including corporate crimes and illegal logging, are valued at US\$51–152 billion annually.

The aim of the EU Timber Regulation (EUTR) is to ensure that timber and timber-related products on the European market are legal. The law prohibits the placing of illegally harvested timber and products made from illegal timber on the EU market and requires operators who place timber products on the EU market for the first time to exercise due diligence. With its adoption, the EU and its Member States acknowledged their responsibility to implement and enforce the law properly. They committed to fight against illegal logging and related trade, and with it to combat biodiversity loss and contribute to the European Union's climate change mitigation efforts.

The aim of this review was to assess whether the enforcement of the EUTR lives up to the regulation's core objective, to halt the trade in illegal timber. WWF reviewed the state of implementation of the EUTR across 16 Member States: Austria, Belgium, Bulgaria, Croatia, Denmark, France, Germany, Hungary, Italy, Netherlands, Portugal, Romania, Slovakia, Spain, Sweden and the UK. Based on the common gaps and best practices identified, we provide concrete recommendations and solutions for effective implementation, mobilization of the enforcement chain and harmonization in order to reconcile the EUTR's implementation and intent.

1.2. Methodology

This analysis is based on surveys WWF carried out with EUTR competent authorities

(CAs) of 16 Member States between October 2018 and March 2019.

Findings and recommendations

A number of main gaps and good practices were distilled from the survey results. On this basis, WWF formulated concrete recommendations to make the enforcement of the EUTR more effective. Gaps and/or good practices listed here do not necessarily apply to all the 16 Member States, although many of the gaps and shortcomings appear common and widespread. The majority of recommendations are relevant to all 16 countries analysed, and to Member States that were not part of the review.

For each aspect/domain of the EUTR, we present a summary of survey findings, main shortcomings and best practices, along with recommendations for Member States and the European Commission.

- **Effective, proportionate and dissuasive penalties and sanctions**

Maximum fines vary greatly among Member States and sanctions applied seem to have remained well below the maximum limits. Only 8 out of 16 Member States include criminal sanctions for EUTR infringements in their national legislation. Sanctions were often only applied in cases of repeated shortcomings and warnings. We question the effectiveness, proportionality and dissuasiveness of sanctions. In our view the current situation does not actively discourage the placing of illegal timber products on the EU market, and does not support the creation of a level playing field across the EU. Good practice was observed in a number of countries where penalties and fines were linked to the quantities and values of illegal timber products detected.

We recommend that the European Commission carry out an assessment of whether penalties at national level are effective, proportionate and dissuasive according to Article 19 of the EUTR and to set up a multi-stakeholder platform at European

level to discuss and define what constitute effective, proportionate and dissuasive penalties.

- **Checks**

Between March 2015 and February 2017, 14 out of the 16 Member States assessed in this review checked only 0.33% to 3.1%¹ of the operators importing timber yearly. The two remaining Member States checked 13.7% and 48.7% of the operators importing timber. For domestic timber, the proportion of operators controlled varies from 0% to 34.1%, in 14 Member States, with an average of 6%, while the number of domestic operators checked is unknown in two countries. Some Member States also lack knowledge concerning the numbers of operators. Checks often focused on controlling due diligence systems only, while the obligation to not place illegal timber products on the EU market is controlled less frequently. Checks focusing on both the due diligence and prohibition obligation should be a first step to identify risks of illegality.

We recommend that checks at national level are carried out according to regularly updated inspection plans based on a risk assessment of timber products. These plans should use the latest available information, cover both domestic and imported timber products, and set clear targets and timelines for inspection plans. Checks on operators should include an analysis of the risk level of products, assessing documentation of due diligence systems as well as documentation showing compliance with applicable legislation.

The Commission Expert Group on EU Timber Regulation and the Forest Law Enforcement, Governance and Trade (FLEGT) should prepare guidance for CAs that specifies criteria for checks to better analyse and evaluate the risk level of products, (sufficient) documentation of due diligence systems in use as well as (sufficient) documentation showing compliance with applicable legislation.

- **Follow up of control results and prosecution**

In many cases, taking action following the detection of non-compliance does not appear to be linked

to clear procedures or decision-making processes within CAs. “Phased” approaches still seem to be the custom, where sanctions are not issued the first time infringements are detected. Generally, prosecuting non-compliance with the EUTR appears to be difficult and varies greatly across the countries analysed. Good practice examples from EU Member States include the involvement of several people in the decision-making regarding next steps after controls, or written agreements by operators to become compliant within 28 days after the issuance of a notice of remedial action. WWF recommends that clear and thorough protocols are established at national level to determine whether an operator is compliant or not, and minimize room for interpretation.

At EU level, guidance/criteria should be developed to help specify when an operator should be given a notice of Remedial Action, a penalty or when other sanctions should apply. A first step to harmonize the approach would be an EU-wide analysis assessing the circumstances when a notice of remedial action or a penalty was issued: context; type of timber products; countries of origin; type of business/suppliers if known; nature of infringement or non-compliance etc.

- **Resources and staff training**

The resources for implementation of the EUTR vary greatly. CAs are often significantly understaffed, with on average one full-time equivalent (FTE) staff member for several thousands of operators (1,200 to 5,000 operators/FTE). Coordination along the enforcement chain at national level is often unstructured or is not formalized. Training for controllers has not been carried out in all countries. It is considered best practice if controllers in the competent authorities are forestry experts and/or have good knowledge of supply chains, and if training sessions are interdisciplinary, including external experts.

WWF recommends increasing capacities at national level to ensure good coverage of operators and allow for regular and frequent checks. Actions to educate operators should be increased, in order to ensure operators have a better understanding of the EUTR and their obligations.

¹ The percentage is obtained by calculating the ratio between the number of operators and the number of checks.

The European Commission should offer training to national CAs, and/or develop a training manual for CA staff and other bodies involved in the implementation of the EUTR.

- **Substantiated concerns by third parties**

From 2016 to 2018, 182 third party substantiated concerns were received by CAs, of which 95 triggered checks, on both domestic and imported timber. Of these checks, 49 resulted in either notices of remedial action, penalties or court cases. CAs interpret and assess “substantiated concerns” differently, including in how they accept evidence provided. However, it is to mention that more than half of the substantiated concerns that were raised led to checks.

At EU Member State level, clear timelines for responses by the CA towards third party concerns should be developed. Third parties who raised the concerns should be given the possibility to react to the decision of the CA.

We recommend the European Commission develop the existing EU guidance on third party concerns further, developing EU-wide criteria to assess whether a concern is “substantial” and reliable enough to be accepted. The process to develop this guidance should include all relevant stakeholders, to share lessons learned and discuss best practice.

- **Cooperation within and between countries**

Though collaboration between CAs is happening, there is still a lack of formalized cooperation and there is often a lack of timely communication between countries and among officials of the enforcement chain within countries. Setting up exchanges between neighbouring countries or joint inspections represents good practice. We recommend more pro-active exchanges between competent authorities and other relevant agencies in a country about experience with the implementation of the EUTR, including challenges and lessons learnt.

The EC expert group on the EUTR and FLEGT should facilitate more regular exchange between different agencies involved in the implementation of the EUTR (e.g. customs, police or others) from

different EU Member States to enhance cross-border cooperation.

- **Transparency of competent authorities**

Only 3 CAs out of the 16 interviewed are making sufficient efforts to disseminate information related to the enforcement of the EUTR. This represents a serious lack of transparency from CAs. A good practice observed was the publication of names and details of timber/timber products where a notice of remedial action was issued (including the name of the operator, product(s) checked, type of breaches and additional details).

WWF recommends CAs communicate much more regularly and transparently about enforcement actions, the register of checks and main infringements detected, and responses to substantiated concerns – for example via public websites, newsletters and press conferences. This would establish greater transparency towards the public and stakeholders.

1.3. Conclusions

Six years after the EUTR came into force, the implementation of the law does not live up to its spirit and intent – to stop the trade in illegal timber products on the EU market. Although the enforcement of the EUTR has improved in a number of EU Member States, the review detected severe shortcomings in the enforcement of the legislation. Due to the challenges with implementation, the EUTR was until now not able to stop imports of illegal timber products or illegal logging that takes place within the borders of the EU.

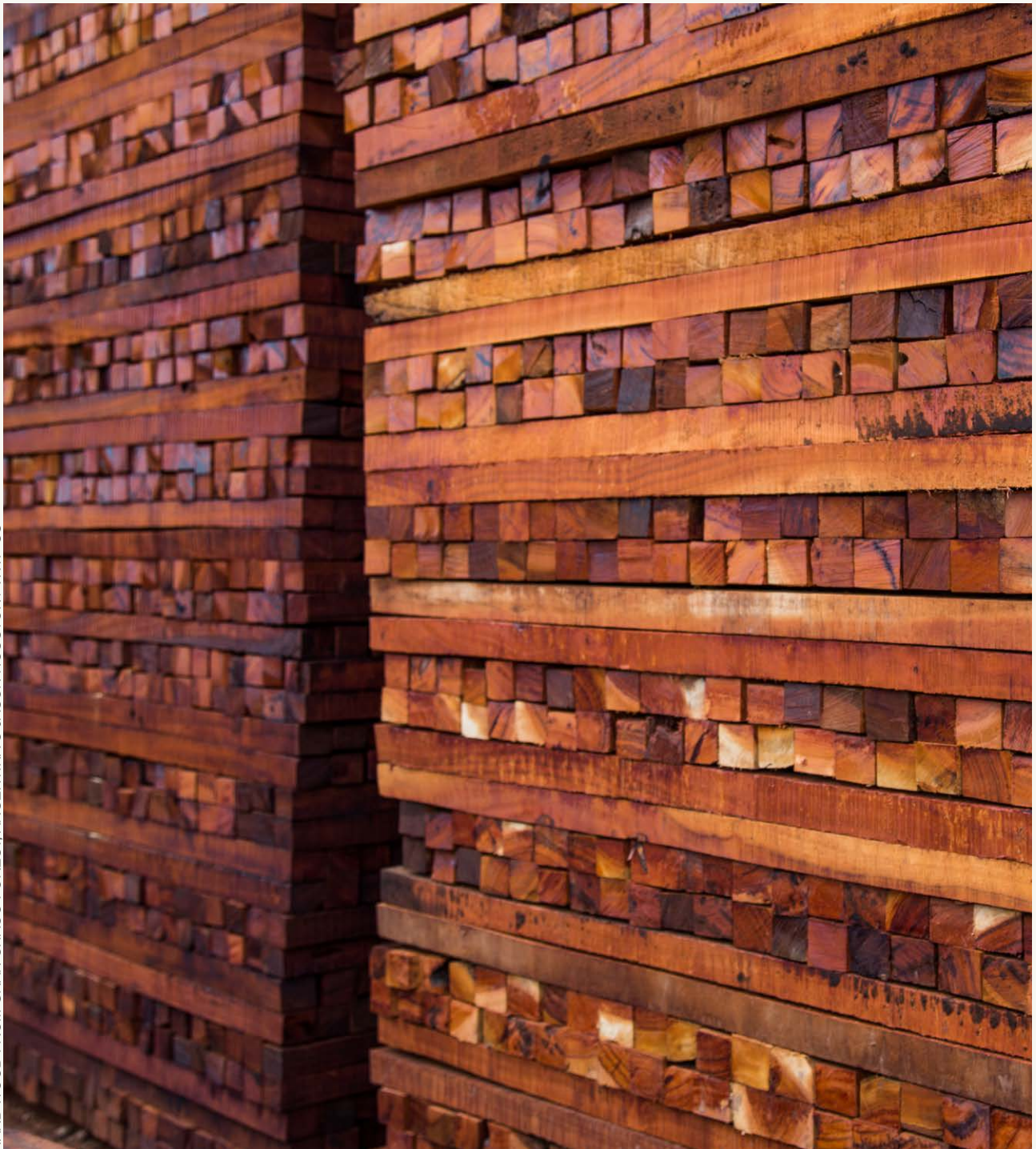
What is needed to make the EU Timber Regulation work?

The implementation of the EUTR requires action that reflects its spirit – to combat illegal timber trade. Action needs to be taken within all Member States but also at EU level. Member States must now (re)affirm their commitment to properly control the implementation of the EUTR, and to take action in case of infringements through administrative or criminal proceedings and sanctions. The EUTR must be a truly effective tool, rather than simply a statement of good intentions.

The European Commission, as the guardian of the EUTR, needs to step up efforts to harmonize implementation across all Member States and must hold them accountable to their commitment to eliminate products made from illegal timber on the EU market. Proper implementation of the EUTR can start today.

If the EUTR is not properly implemented, illegal logging is not being addressed. This gives the message that the EU and its Member States are not prepared to fulfil their international

commitments to tackle deforestation and forest degradation or climate change, as made under the Sustainable Development Goals (SDGs) or the Paris climate agreement. The next review of the EUTR is foreseen for 2021. Considering that the European Commission has so far failed to deliver improvements on the product scope, a problem which was already raised in the EUTR review from 2016, WWF urges more than ever all key stakeholders to find ways to address the issues raised in this review and stop the trade in illegal timber products on the EU market.



HARD WOOD FROM GRAN CHACO FOREST, ARGENTINA © JASON HOUSTON / WWF-US

1. Background

Illegal logging is a pervasive problem with global implications. It leads to forest degradation and it is often a precursor of deforestation, which is one of the drivers of climate change. Addressing illegal logging is therefore essential for the protection of forests and biodiversity, the reduction of emissions from the forest sector, as well as the sustainable management of forests. Forestry crimes, including corporate crimes and illegal logging, are valued at US\$51–152 billion annually².

The adoption of the EU Timber Regulation (EUTR) in 2010 marked a paradigm shift in the European Union. The EU and its Member States committed to fight against illegal logging and related trade, and with it to combat biodiversity loss and contribute to the EU's climate change mitigation efforts³. The aim of the law is to ensure that timber and timber-based products covered under the EUTR are fully legal, making legality an underlying principle for governments and industry.

The EUTR prohibits the placing on the EU market of illegally harvested timber and products derived from such timber, and requires operators⁴ who place timber products on the EU market for the first time to exercise due diligence⁵. Traders⁶ further down the supply chain have a traceability obligation to keep records of their suppliers and customers⁷. With its adoption, EU Member States acknowledged the importance of the legislation and their responsibility to implement and enforce the law properly.

The aim of this review was to assess whether the enforcement of the EUTR lives up to the regulation's core objective, to halt the trade in illegal timber. WWF reviewed the state of implementation of the EUTR across 16 Member States: Austria, Belgium, Bulgaria, Croatia, Denmark, France, Germany, Hungary, Italy, Netherlands, Portugal, Romania, Slovakia, Spain, Sweden and the UK. Based on the common gaps and best practices identified, we provide concrete recommendations and solutions for the effective implementation, mobilization of the enforcement chain and harmonization in order to reconcile the EUTR's implementation and intent.

2 UNEP. 2016. The rise of environmental crime: A growing threat to natural resources peace, development and security. United Nations Environment Programme. http://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

3 According to recitals (3), (8) and (31) of Regulation 995/2010 (EUTR)

4 According to Article 2 of the EUTR "operator" means any natural or legal person that places timber or timber products on the market"

5 According to the guidance document for the EUTR, accessible here, where timber is being harvested in the EU or imported into the EU for the first time in the course of a commercial activity, the following definitions of 'operator' apply:

(a) For timber harvested within the EU, the operator is the entity that distributes or uses the timber once it has been harvested.

(b)(i) For timber harvested outside the EU, the operator is the entity acting as the importer when the timber is cleared by EU customs authorities for free circulation within the EU. In the majority of cases, the importer can be identified as the named or numbered "Consignee" in Box 8 of the customs declaration document (the Single Administrative Document).

(b)(ii) For timber or timber products imported to the EU, the definition of 'operator' is independent of the ownership of the product, or other contractual arrangements.

6 According to Article 2 of the EUTR, "trader" means any natural or legal person who, in the course of a commercial activity, sells or buys on the internal market timber or timber products already placed on the internal market."

7 https://ec.europa.eu/environment/forests/timber_regulation.htm

2. Methodology

This analysis is based on surveys WWF carried out with EUTR competent authorities (CAs) of 16 Member States between October 2018 and March 2019. Hence, the results of the analysis reflect the status in Member States at this specific point in time.

WWF developed a questionnaire with 60 questions, addressing key categories linked to enforcement:

- Effective, proportionate and dissuasive penalties and sanctions
- Checks
- Resources, staff training and transparency of competent authorities
- Substantiated concerns by third parties
- Cooperation within countries and between countries

- Publicly available information/records of checks.

The survey included questions on the legal requirements of the EUTR such as the duty of Member States to provide effective, proportionate and dissuasive penalties as described in Article 19. The survey also included questions related to points mentioned in the EUTR guidance document but which are not a direct legal requirements of the EUTR, alongside questions regarding best practices in CAs' enforcement of the EUTR (e.g. use of scientific methods to determine the illegality of products, registration of operators). This report summarizes the findings of the assessments in the 16 Member States and formulates recommendations for a better and more harmonized enforcement of the EUTR across Member States.



ILLEGAL LOGGING, SUMATRA, INDONESIA © ALAIN COMPOST / WWF

3. Findings and recommendations

Based on the survey results from the 16 CAs, a list of main gaps and good practices was developed, which forms the basis of our recommendations. Main gaps and good practices listed here do not necessarily apply to all the 16 Member States, although many of the gaps and shortcomings seem to be common and widespread. We consider the majority of recommendations relevant to all of the 16 countries

analysed, as well as Member States that were not part of the review.

The following sections analyse different aspects of the EUTR: for each aspect we summarize survey findings, identify the main shortcomings and best practices and present a set of recommendations.

3.1. Effective, proportionate and dissuasive penalties and sanctions

EUTR Article 19.2

Penalties

Article 19.2 of the EUTR states that “penalties provided for must be effective, proportionate and dissuasive (...)”. They can include fines proportionate to the environmental damage, the product value or tax losses, calculated in a way that it effectively prevents economic gains by those committing the violation. Penalties can also include seizure of timber and timber products concerned or suspension of authorization of trade.

Analysis

The maximum fines fixed by national laws vary greatly from one country to another, ranging from €2,500 to €24,000,000, while in some cases there are no fixed fines. In practice, financial penalties applied remained well below maximum fines defined by the national laws. We also find that sanctions were often only applied in cases of repeated

shortcomings and warnings. Given the infrequent and low sanctions, we question the effectiveness of sanctions and penalties in having a serious dissuasive effect on companies placing timber with high risk of illegality onto the EU market. Furthermore, disparities between countries in terms of penalties and sanctions fall short of laying the basis for a level playing field.

Penalties & sanctions

Main gaps

- 8 out of 16 countries do not include criminal sanctions for EUTR infringements in their national legislation.
- A wide disparity in maximum fines fixed by national laws, ranging from €2,500 to €24,000,000 were observed. In some cases there are no fixed fines.
- Certain provisions in national laws allow for issuance of fines only in case of repeated offence.
- Notifications of non-compliance are sent to operators without application of penalties or sanctions.
- “Grace periods” for companies exist, allowing them to implement corrective measures after an infringement has been detected.

Good practice

- Provisions (or possibilities) for adjusting the size of a fine to the quantity or value of timber exist in 7 Member States.

Recommendations

EU Member State level

Key stakeholders, including the CAs and civil society, should define what constitutes an effective, proportionate and dissuasive penalty in open and transparent processes at national level. Adjusting the size of a fine to the quantity and/or value of illegal timber is considered as a good option. Repeated non-compliance with the EUTR by a company should systematically be considered when issuing penalties or sanctions.

The practice/provision of issuing penalties and sanctions only after repeated breaches as well as granting grace periods should be halted. Six years

after the entry into force of the EUTR, penalties and sanctions should be applied immediately.

EU level

The European Commission should carry out an assessment of whether the penalties at national level are effective, proportionate and dissuasive and in accordance with Article 19 of the EUTR.

A European-wide multi-stakeholder platform should be set up to discuss effective, proportionate and dissuasive penalties. The stakeholder platform should have regular exchange with the EU FLEGT expert group, agreeing on common guidance/conclusions.

3.2. Checks

EUTR Article 10.2

Checks on operators

The checks referred to in paragraph 1 shall be conducted in accordance with a periodically reviewed plan following a risk-based approach. In addition, checks may be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning compliance by an operator with this Regulation.

EUTR Article 10.3

Checks on operators

The checks referred to in paragraph 1 may include, inter alia:

- (a) examination of the due diligence system, including risk assessment and risk mitigation procedures;
- (b) examination of documentation and records that demonstrate the proper functioning of the due diligence system and procedures;
- (c) spot checks, including field audits.

EUTR Article 10.5

Checks on operators

Without prejudice to Article 19, where, following the checks referred to in paragraph 1, shortcomings have been detected, the competent authorities may issue a notice of remedial actions to be taken by the operator. Additionally, depending on the nature of the shortcomings detected, Member States may take immediate interim measures, including inter alia:

- (a) seizure of timber and timber products;
- (b) prohibition of marketing of timber and timber products.

Analysis

Between March 2015 and February 2017, 14 out of the 16 Member States assessed in this review checked only 0.33% to 3.1% of the operators importing timber. Regarding domestic timber, the proportion of operators controlled varies from 0% to 34.1%, in 14 Member States, with an average of 6%, while the number of domestic operators checked is unknown in two countries. In four countries no checks on domestic timber products were carried out, though the EUTR applies to timber products of all origins. Since March 2015 the number of checks performed overall has been steadily increasing but remains low. In 12 Member States, operators are not obliged to register, so CAs work with estimates. Given the low numbers of checks and inspection planning cycles, operators once checked could in theory not be controlled again for several years.

Controls on traders vary strongly between Member States, ranging from 0 to 229 for the year 2017. Although the obligation for traders only covers the traceability of products, the EUTR clarifies in recital 26 that traders should not undertake actions that undermine the objective of the regulation. The lack

of controls increases the risk of illegal timber being placed on the market undetected and in some cases even willingly by operators as the chances of being caught are low.

In many Member States, checks often focused on controlling due diligence systems; the obligation to not place illegal timber products on the EU market was controlled less frequently. Some CAs led combined checks in only 20% of cases, while others chose this approach every time, though the combination of both provisions makes the EUTR effective.

Of the 16 CAs interviewed by WWF, 10 have always notified operators in advance of controls, which can seriously undermine the effectiveness of the checks undertaken as it creates opportunities to conceal non-compliances.

Another challenge is the lack of communication between CA entities within the same Member State (e.g. regional CAs or separate ministries in charge of checks on domestic and imported timber), which can result in inconsistent controls and different control standards.

Checks

Main gaps

- At least 10 Member States do not systematically carry out checks on the existence and quality of due diligence systems and the legality of the timber⁸.
- A significant percentage of operators are still not aware of the existence of the EUTR, or only poorly familiar with their obligations, which can increase their risk of doing business in violation of the regulation.
- The number of traders checked strongly varies between Member States, ranging from 0 to 229 for the year 2017.
- In 4 Member States between March 2015 and February 2017 no checks were performed on domestic timber.
- 10 of the 16 CAs always notify operators in advance of controls, which can seriously undermine the effectiveness of the checks undertaken as it creates opportunities to conceal non-compliances.
- There is a lack of clear methods to assess documentation showing compliance with applicable legislation, although EUTR guidance states that documents originating from high risk/corrupted countries cannot alone be considered as a sufficient proof of legality.
- Communication between CA entities within one country (e.g. regional CAs or, separate ministries in charge of checks on domestic and imported timber) can be lacking, causing possible inconsistency of checks.
- Wrong declaration of HS codes has been identified as a potential way for companies to avoid being controlled.

⁸ According to article 12 of the EUTR: the placing on the internal market for the first time of illegally harvested timber or timber products derived from such timber should be prohibited as one of the measures of this Regulation.

Good practice

- Data on operators placing imported timber and timber products on the market is provided by customs to the CA on a weekly basis.
- Obtaining and aggregating data to map out the main trends and identify the key business sectors and products types⁹.
- 7 out of the 16 CAs interviewed use lab testing methods to pursue concerns about illegality of timber (e.g. false declarations).
- Having checks performed by two controllers to increase the chance of detecting violations and reduce room for subjective interpretations.
- EUTR inspection grids/checklists are developed and updated regularly to reflect lessons learnt.
- Random checks are being performed in addition to risk-based ones.

Recommendations

EU Member State level

Controls should be carried out according to risk-based inspection plans, which determine the number of checks to be carried out in a specific timeframe and provide clear procedures but also checklists and further guidance to adapt controls to the level of risk (and not leave it to the discretion of the controller). Inspection plans should integrate most recent trade (and customs) data, e.g. about volumes and values of high-risk timber, and should be regularly reviewed and updated. Using recent trade data to map out main trends and identify the key business sectors and product types for the annual inspection plan should be a mandatory first step to identify risk of illegality.

It is important to increase the checks on domestic and imported timber products, taking into account the percentage of timber from high-risk countries or from complex supply chains. Scientific methods to determine illegal timber should become part of the control procedure, as recommended in the EUTR guidance document. Controls should always cover both the due diligence and the prohibition obligation. Sufficient time and resources should be provided to carry out frequent checks, including on operators already controlled. Operators dealing with high-risk timber products or with timber in large

volumes or values should be checked regularly but checks also need to cover operators dealing with low-risk timber or low volumes and values of timber.

Traders should also be subject to regular controls. Their obligations under the EUTR are limited but traceability is one important element of the EUTR.

Checks and controls should include field checks, especially for high-risk products, and should also be carried out without prior notification, especially in case of substantiated third party concerns being raised. Checks based on third party concerns should be carried out in a timely manner as otherwise the potential evidence might not be available any more.

Action in Member States aimed at educating operators to ensure a better understanding of the EUTR and its obligations for operators should be increased.

At EU level

The Commission expert group on the EUTR and FLEGT should prepare a guidance paper for CAs that specifies criteria for checks to analyse and better evaluate the risk level of products. This should also include criteria for (sufficient) documentation of due diligence systems in use and for showing compliance with applicable legislation.

9 https://www.mapa.gob.es/es/desarrollo-rural/temas/politica-forestal/plannacionaldecontroldelegalidaddelamaderacomercializada_tcm30-484989.pdf

3.3. Follow up of control results and prosecution

EUTR Article 10.5

Checks on operators

Without prejudice to Article 19, where, following the checks referred to in paragraph 1, shortcomings have been detected, the competent authorities may issue a notice of remedial actions to be taken by the operator. Additionally, depending on the nature of the shortcomings detected, Member States may take immediate interim measures, including inter alia:

- (a) seizure of timber and timber products;
- (b) prohibition of marketing of timber and timber products.

Analysis

In many cases, action taken following the detection of non-compliance is not linked to clear procedures or decision-making processes. Many CAs still seem to follow “phased” approaches, not issuing sanctions the first time infringements are detected. The lack of clear and comparable criteria is a significant gap, as this is where the crucial decision is made on whether an operator should be warned, fined or otherwise prosecuted. Phased approaches are threatening the credibility of the EUTR, as the enforcement started six years ago. This is compounded by the lack of follow-up checks in cases where infringements have been detected.

Based on the feedback received, it seems that a lot of variation across Member States exists about what constitutes acceptable documentation in terms of due diligence by operators. Feedback received pointed at challenging experiences of trying to prove in court that operators have not taken all possible mitigation actions to reduce the risk of illegality to a negligible level through their due diligence system. Proving a breach of the prohibition to place illegal timber products on the European market also seems difficult, as collecting evidence appears to be challenging. In addition, judges in some cases lack familiarity with the specifics of the EUTR and the timber sector.

Follow up of control results and prosecution

Main gaps

- 14 out of 16 CAs do not have a clear decision-making process/mechanism, including criteria, to determine when to issue a notice of remedial action or report operators to prosecutors/ the police for breaches of the due diligence/prohibition obligations.
- First-time breaches of the due diligence obligation are often perceived as minor breaches and “phased” approaches are still being used. Operators are first sent a notification of non-compliance, and penalties or sanctions only apply when recurrent and severe breaches are detected;
- The proportion of checks resulting in penalties for infringements of the due diligence obligation varies from 0% to 100% depending on the country. This clearly suggests countries do not use comparable criteria for applying sanctions and the interpretation of what is a “breach” strongly varies from one Member State to another.
- 14 out of 16 CAs do not systematically monitor whether remedial actions are properly applied by operators. Follow-up checks were either not performed, or performed non-systematically from three months to one year after the issuance of the notice of remedial action.
- Cases showing non-compliance with the EUTR presented by the CAs were not always taken up by prosecutors.
- Administrative sanctions seem to have been issued more frequently than court rulings as they only require approval from the regional/administrative authorities and not a ruling by a judge.

Good practice

- In all except one country, inspection results are reported back to the operator after the completion of a control.
- Several people are systematically involved in the decision-making process after a control to reduce room for interpretation.
- An agreement is signed and acknowledged by the operator to become compliant within 28 days after the issuance of a notice of remedial action.
- Staff are specialized in evaluating audit reports.
- The CA has an internal matrix defining the different infringements as a supporting document to decide which type of sanctions should be imposed.

Recommendations

EU Member State level

Clear rules must be defined to ensure the appropriate sanctions are being imposed in a consistent manner across the EU. Clear and thorough criteria/protocols should be established at national level to determine whether an operator/trader is compliant and minimize the room for interpretation. They should include procedures which apply in case of non-compliance and what type of action should be taken (e.g. issuing a notice of remedial action or applying penalties to the operator/trader either through the CA or referring the case to court). These protocols should also include guidance for automatic follow-up controls when notices of remedial action are issued or penalties applied. CAs should ensure that outcomes and results of their checks are structured/recorded in a way that allows the results to be used in court. Operators should always be informed about the outcomes of checks, even if there were no infringements detected, to let them know about areas for improvement.

At EU level

The CAs, together with the EU, should develop EU-wide guidance/criteria for when an operator should be given a notice of remedial action, a penalty or otherwise. A first step to harmonize the approach would be an EU-wide analysis that assesses the circumstances in which a notice of remedial action was issued or a penalty was applied (context, type of timber/timber products, countries of origin, type of business, suppliers if known, etc.). Training for judges and prosecutors should be carried out across the EU.

WWF strongly encourages the European Commission, Member States, the police, representatives from the judicial system and NGOs to further discuss acceptable evidence proving the illegality of timber or demonstrating deliberate evasion of adequate due diligence, possibly by using case studies.

3.4. Resources and staff training

Analysis

The resources for implementation of the EUTR vary greatly. On average, there is one full-time equivalent (FTE) staff member for several thousand operators (ranging from 1 FTE for 1,200 operators to 1 FTE for 5,000 operators). CAs are often significantly understaffed if they are to ensure regular and timely checks on operators. Based on information gathered in interviews with CAs, there are no agreed plans in any of the Member States to increase the budget and/or number of staff working on the EUTR.

In addition, besides a few exceptions, there are no focal points in Member States in other parts of the enforcement chain apart from CAs, e.g. from police or prosecutors' offices.

There are discrepancies between Member States in terms of number, type and frequency of training. In three Member States, focal points haven't received any training on the EUTR, while in two countries, five trainings were delivered throughout the year 2017 and 2018.

There is an important difference between "internal" and "external" training. Internal training is delivered by the CA itself or other state authorities,

for example with internal experts training EUTR enforcement staff in documentation, traceability and execution of controls. Meanwhile in some Member States, trainings for CAs were also delivered by

external organizations, including NGOs (WWF, Greenpeace, ForestTrends, Chatham House) as well as FSC, PEFC, NEPCON and Interpol, which we consider as good practice.

Resources and staff training

Main gaps

- Human and financial resources dedicated to checks on operators vary between 2.5 FTEs to 22 people, with 1 FTE usually overseeing several thousand operators (ranging from 1 FTE for 1,200 operators to 1 FTE for 5,000 operators)¹⁰. In at least seven Member States there is no budget dedicated to the EUTR.
- In three Member States, focal points haven't received any trainings on the EUTR, while in two countries, five trainings were delivered throughout the year 2017 and 2018.

Good practice

- Controllers are forestry experts and/or have good knowledge of supply chains.
- Trainings for CAs included external organizations, such as NGOs (WWF, Greenpeace, ForestTrends, Chatham House) as well as FSC, PEFC, and customs, NEPCON or Interpol.

Recommendations

EU Member State level

WWF recommends that capacities at national level are increased to ensure good coverage of operators and allow frequent checks to be carried out. Focal points should be identified along the national enforcement chain, including for the police and prosecutors' offices, and more communication enabled between services. Regular trainings should be organized, fostering interdisciplinary exchange to strengthen capacity building and ensure that controllers increase their skills in regards to EUTR enforcement, on both theoretical and timber (products) and species knowledge. These trainings should also include information from external experts and from NGOs. Regular seminars and

trainings by external experts and NGOs are also available (such as Timber Regulation Enforcement Exchange (TREE) meetings by Forest Trends, Chatham House meetings, World Resources Institute (WRI) timber legality meetings etc.). Dedicated budgets for laboratory tests of wood samples and annual studies on timber flows will aid the detection of illegal timber.

At EU level

The European Commission should offer trainings for national CAs and/or develop a training manual for CA staff and other bodies involved in the implementation of the EUTR, focusing on how to carry out effective checks, how to undertake investigations etc. with input from external experts.

3.5. Substantiated concerns by third parties

EUTR Article 10.2

Checks on operators

(...) In addition, checks may be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning compliance by an operator with this Regulation.

¹⁰ For this thematic area a number of Member States did not provide any information

Analysis

From 2016 to 2018, CAs received 182 substantiated concerns. In 101 cases, third party substantiated concerns triggered a check on both domestic and imported timber, and 49 of these checks resulted in either notices of remedial action, penalties or court cases.

CAs are taking substantiated concerns of third parties into account, but they interpret and assess them in different ways. Also the acceptance of

evidence provided (such as from timber sampling tests) varies across the EU. However, it is to mention that more than half of the substantiated concerns that were raised led to checks. Third parties are bearing costs and risks of gathering information, so they need to see their concerns acted upon. More transparency is needed over process, timeframes and what results can be expected. It is important that investigations launched by CAs focus on the content of the concern and not just on the existence of a due diligence system.

Substantiated concerns by third parties

Main gaps

- CAs take different views on whether something constitutes a substantiated concern.
- Certain evidence was not accepted with third party concerns, e.g. timber product samples (results from lab tests).

Good practice

- More than half of the third party substantiated concerns have led to checks.

Recommendations

Member State level

Responses to complaints should be provided in a timely manner, including the reasoning for the acceptance or refusal of a complaint. Complainants should have the possibility to respond to the CA's decision.

Stakeholders should be encouraged to share publicly available information with the CA, e.g. on companies' prior convictions, and this information should be used for checks and controls. This could be done in the form of a publicly available database. CAs should encourage operators who decide to exclude a supplier to pass on the information in strict confidence to others.

EU level

The European Commission should develop the existing EU guidance on third party concerns¹¹ further, developing EU-wide criteria to assess whether a concern is "substantial" and reliable enough to be accepted. This includes guidance on acceptance of e.g. results from wood testing. The process of developing this guidance should include all relevant stakeholders, to share lessons learned and discuss best practice. A stakeholder dialogue should be established at EU level to allow for concrete exchange between NGOs and CAs/the EU FLEGT expert group, sharing information and experience.

11 <https://ec.europa.eu/environment/forests/pdf/Guidance%20->

3.6. Cooperation within countries and between countries

EUTR Article 12

Cooperation

1. Competent authorities shall cooperate with each other, with the administrative authorities of third countries and with the Commission in order to ensure compliance with this Regulation.
2. The competent authorities shall exchange information on serious shortcomings detected through the checks referred to in Articles 8(4) and 10(1) and on the types of penalties imposed in accordance with Article 19 with the competent authorities of other Member States and with the Commission.

Analysis

Though collaboration amongst or between CAs is happening, it is not formalized. Often we observed a lack of (timely) communication and information exchange both between CAs/agencies within a Member State and also between countries. An

effective fight against forest criminality requires the whole national enforcement chain to collaborate, share information and work in a coordinated way in a timely manner. Customs, prosecutors and police investigators must be connected with each other and collaboration formalized.

Cooperation within countries and between countries

Main gaps

- A lack of structured and formalized cooperation along the enforcement chain within Member States, and also between Member States could be observed.
- There is a lack of communication and routine information exchanges between central and regional CAs, or between CAs responsible for domestic and international timber products (in countries where these responsibilities are separated).

Good practice

- (Regular) exchanges with neighbouring Member States are taking place to harmonize control practices, partly in regional groups.
- Joint inspections are taking place in some countries.
- CAs collaborate with customs and police.
- Publication of information in English which allows other Member States to use information for their controls.

Recommendations

Member State level

Though exchange between CAs is happening, WWF recommends more pro-active cooperation with other CAs and enforcement agencies, including customs, prosecutors and police investigators. CAs should work closely with customs to identify high-risk shipments and intercept them for checks right at the port. This requires reinforced and formalized cooperation amongst the national enforcement

entities and, where possible, with counterparts in other Member States and internationally.

EU level

The Commission's EUTR and FLEGT expert group should facilitate more regular exchange between agencies involved in the implementation of the EUTR (e.g. customs, police or others) from different EU Member States to enhance cross-border cooperation.

3.7. Transparency of competent authorities

Link to EUTR Article

Article 11

Records of checks

1. The competent authorities shall keep records of the checks referred to in Article 10(1), indicating in particular their nature and results, as well as of any notice of remedial actions issued under Article 10(5). Records of all checks shall be kept for at least five years.
2. The information referred to in paragraph 1 shall be made available in accordance with Directive 2003/4/EC (e.g.: on public access to environmental information).

Analysis

There is a serious lack of transparency from CAs when it comes to publicly reporting on the actual state of implementation/enforcement of the EUTR¹². Only 3 CAs out of the 16 interviewed are pro-actively disseminating information on EUTR enforcement via their website and/or other

communication channels. This lack of transparency is a crucial gap that must be addressed without delay. CAs must be transparent about enforcement actions (and criteria used for checks and the nature of problems found) as this helps operators to improve and sends a clear signal that the EUTR needs to be taken seriously.

Transparency of competent authorities

Main gaps

- Only 3 CAs out of the 16 interviewed are regularly publishing information on checks and/or breaches detected during controls.

Good practice

- Every six months publication of names and details of the timber/timber products where a notice of remedial action has been issued (including the name of the operator, product(s) checked, type of breach(es) and additional details)¹³.

Recommendations

Member State level¹³

CAs must establish greater transparency towards the public and stakeholders. They should communicate much more regularly and transparently about enforcement actions, the register of checks and main infringements detected, e.g. via public websites, newsletters and press conferences. This should

include yearly communication of control targets, reporting back on progress and results. Regular exchange with all stakeholders (e.g. twice per year) should be established to exchange information on best practice, new trends and issues of concern. CAs should plan information sessions for sectors with low awareness of the EUTR and reinforce communication to ensure all operators are aware of their obligations.

¹² According to article 11 of the EUTR: 1. The competent authorities shall keep records of the checks referred to in Article 10(1), indicating in particular their nature and results, as well as of any notice of remedial actions issued under Article 10(5) (...)
² The information referred to in paragraph 1 shall be made available in accordance with Directive 2003/4/EC.

¹³ [2016-2017 data](#) - [2017-2018 data](#) - [May 2018](#) - [September 2018 data](#)

4. Conclusions

Six years after the EUTR came into force, its effectiveness in fighting illegal timber is still being undermined by disparate and deficient implementation. The spirit of the law – to stop the trade in illegal timber products on the EU market – is good but its implementation/application does not live up to this. Though the enforcement of the EUTR has improved in a number of EU Member States, our review detected severe shortcomings in the implementation/application of the legislation, allowing illegal timber to be placed on the EU market.

So why is the national implementation not working? It appears the fight against environmental crime is not considered a priority by national governments. This would explain the lack of resources available and the lack of coordination along the enforcement chain in a large number of countries assessed, combined with low fines, “free rides” and challenges concerning prosecution of infringements.

What is needed to make the EU Timber Regulation work?

The implementation of the EUTR requires action that reflects its spirit – to fight the trade in illegal timber. Action needs to be taken within all Member States but also at EU level. CAs and relevant agencies along the enforcement chain must now (re)affirm their commitment to properly control the implementation of the EUTR and to take action in case of infringements through administrative or criminal proceedings and sanctions. The EU, as the guardian of the EUTR, needs to step up its efforts to harmonize the implementation across Member States. It must hold Member States accountable towards their commitment to eliminate products made from illegal timber from the EU market – a commitment made the day the EUTR was adopted.

Properly implementing the EUTR can start today. Not supporting the EUTR and its aim and spirit means not being prepared to address illegal logging – and with that, not being prepared to fulfil the commitments to address deforestation and forest degradation or to tackle climate change made under the SDGs and the Paris Climate Agreement.

The next review of the EUTR is foreseen for 2021. Considering that the European Commission has so far failed to deliver improvements on the product scope¹⁴, a problem which was already raised in the EUTR review from 2016¹⁵, WWF urges more than ever all key stakeholders to find ways to address the issues raised in this review and stop the trade in illegal timber products on the EU market. In a context where the effects of climate change are reality and where the EU has published a communication to step up action to protect and restore the world’s forests¹⁶, the EUTR and its proper enforcement is more important than ever.

14 https://ec.europa.eu/info/consultations/public-consultation-product-scope-eu-timber-regulation_en

15 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016DC0074>

16 https://ec.europa.eu/info/publications/eu-communication-2019-stepping-eu-action-protect-and-restore-worlds-forests_en

5. ANNEX 1- Results of surveys: gaps, good practice and recommendations

After analysing the answers from the 16 CAs that took part in the EUTR enforcement review, WWF made a list of the main gaps and good practices. On this basis, we also formulated concrete recommendations on how to best tackle the issues identified and help CAs to identify ways of improving their performance to make the enforcement of the EUTR more effective. While the main text includes a summary, all main gaps, good practice and recommendations identified through the analysis can be found in the annex below.

5.1. Effective, proportionate and dissuasive penalties and sanctions

MAIN GAPS

- 8 out of 16 countries do not foresee criminal sanctions for EUTR infringements in their national legislation.
- Penalties fixed by national laws are too low to have any dissuasive effects.
- There is a wide disparity in maximum fines fixed by national laws, ranging from €2,500 to €24,000,000.
- Some provisions in national law allow for issuance of fines only in case of repeated offence.
- Notifications of non-compliance are sent to operators but no penalties or sanctions apply.
- Existence of “grace periods” for companies to implement corrective measures after an infringement has been detected.
- Fines imposed on operators are usually low compared to the maximum fines defined in national laws

GOOD PRACTICE

- Provisions (or possibilities) for adjusting the size of a fine to the quantity or value of timber exist in seven Member States.

RECOMMENDATIONS

At Member State level:

- Key stakeholders, including the CAs and civil society, should define together what constitutes an effective, proportionate and dissuasive penalty in open and transparent processes at national level. Adjusting the size of a fine to the quantity and/or value of illegal timber is considered a good option. Repeated non-compliance with the EUTR by a company should systematically be considered when issuing penalties or sanctions.
- The practice/provision of issuing penalties and sanctions only after repeated breaches of provisions of the EUTR as well as granting grace periods should be halted. Six years after the entry into force of the EUTR, penalties and sanctions should be applied immediately.

At EU level

- The European Commission should carry out an assessment of whether the penalties at national level are effective, proportionate and dissuasive and in accordance with Article 19 of the EUTR.
- A Europe-wide multi-stakeholder platform should be set up to discuss effective, proportionate and dissuasive penalties across the EU. The stakeholder platform should have regular exchange with the EU expert group on FLEGT and the EUTR, agreeing on common guidance/conclusions.

5.2. Checks

5.2.1 Preparation of inspection plans

MAIN GAPS

- Six years after the EUTR’s entry into force, CAs still struggle to identify all operators by not using customs data or legally requiring operators to register.

- Import patterns and data are not being analysed specifically, which could mean CAs are not aware of the most significant challenges in terms of controls on imported timber.
- If the HS code is wrongly declared, some operators may import timber/wood products covered by the EUTR without the knowledge of the CA. This has been identified as a potential way for companies to avoid being controlled.
- Some inspection plans are designed in a way that operators, once checked, will not be controlled again for several years. Operators may become aware that the likelihood of being controlled after a check is very low, and take advantage of such a shortcoming to place high-risk timber and timber products on the market.
- In most cases, it is unclear whether inspection plans include targets regarding the number of checks and deadlines to perform these checks.
- Customs data only provides the exporting country and not the harvesting country.
- CAs do not know the names of suppliers from exporting countries. As a consequence, they cannot use them in conjunction with other information, such as NGO reports, to prioritize checks.
- Inspection plans based on customs data can be up to a year old. By using outdated data, the CA takes the risk that suspicious or high-risk timber has been long sold when the control takes place, making it more complex to determine if there were violations of the EUTR (no possibility for sample testing etc.).
- In parallel, a significant percentage of operators are still not aware of the existence of the EUTR, or only poorly familiar with their obligations, which can increase the danger of doing business in violation of the regulation.

GOOD PRACTICE

- Data on operators placing imported timber and timber products on the market is provided by customs to the CA on a weekly basis, increasing the chance to detect and target high-risk shipments on a real-time basis.
- Determine the value and volume of timber placed on the market by operators to know the most important players.
- Identify whether operators import via neighbouring countries and liaise with relevant

authorities to carry out joint inspections if deemed necessary.

- Randomly choose operators to be controlled.
- Carry out further research by looking at operators' websites to determine what products are sold and assess risk level of these products.
- Focus checks on certain operators for a certain timeframe (e.g. based on product types or country of origin) as a way to go into more details, really gain experience and possibly "raise the bar" for an entire sector or sub-sector placing high-risk products on the market.
- Obtain and aggregate data to map out the main trends and identify the key business sectors and product types¹⁷.
- Analysis of satellite imagery to detect possible illegal logging.

RECOMMENDATIONS

At EU Member State level:

- Assess the percentage of timber coming from high-risk countries, as well as the percentage of high-risk products with complex supply chains, to make sure CAs are aware of the most significant challenges in terms of controls on imported timber.
- Ensure inspection plans integrate the most recent trade (and customs) data, e.g. about volumes and values of high-risk timber, and are regularly reviewed and updated.
- Prepare detailed action plans, with clear and fixed deadlines for checks (when the first control will take place), so that all planned controls can be systematically performed.
- Establish a list/register for domestic operators and find concrete and rapid solutions to ensure that all operators importing timber are registered and initiate procedures against operators ignoring the registration obligation.
- Allow sufficient time for enforcement staff to carry out follow-up checks on operators when defining inspection plans to not compromise planning for regular checks.
- Provide guidance/protocols/checklists to adapt controls to the level of risk (and not leave it to the discretion of the controller).
- Review inspection plans on a frequent basis to ensure CAs keep track of all developments in addition to having a "real-time" monitoring of

17 www.mapa.gob.es/es/desarrollo-rural/temas/politica-forestal/plannacionaldecontroldelegalidaddelamaderacomercializada_tcm30-484989.pdf

the risk associated with domestic and imported timber, while having more regular updates from customs.

- Carry out tests on products with complex supply chains (e.g. panels, furniture) to get a better grasp of risk patterns.
- Distinguish between domestic and imported timber to ensure that the risk assessment carried out by the CA is relevant, and that the inspection plan is properly and effectively drafted to make sure controls target operators trading high-risk products.
- Maintain and increase action to educate operators to ensure a better understanding of the EUTR and their obligations.

5.2.2 General overview

MAIN GAPS

- Between March 2015 and February 2017, 14 out of the 16 Member States checked only 0.33% to 3.1% of the operators importing timber.
- At least 10 Member States do not systematically carry out combined checks on the existence and quality of due diligence systems and the legality of the timber
- The number of traders checked strongly varies between Member States, ranging from 0 to 229 for the year 2017.
- It is unclear whether CAs rely on clear guidelines and/or internal protocols to ensure a clear and comparable interpretation by the controllers of the level of risk of a product.
- Absence of checks performed on domestic timber in four Member States between March 2015 and February 2017.
- In one country no documentation available that would differentiate whether checks were performed on domestic or imported timber.
- Uneven regional enforcement in one Member State, with regional CAs carrying out checks at a different level of intensity, while other regional CAs are still not enforcing the regulation at all, which creates loopholes.
- Traders are rarely targeted by checks.
- Lack of communication between CA entities within one country (e.g. regional CAs, or separate ministries in charge of checks on domestic and imported timber), causing possible inconsistency of checks.

GOOD PRACTICE

- CAs that automatically check both the due diligence and prohibition obligations, even more in case of potential or alleged breaches of the due diligence obligation.
- 7 out of the 16 CAs interviewed use lab testing methods to substantiate concerns about illegality of timber (e.g. false declarations).
- Random checks are being performed in addition to risk-based ones.

RECOMMENDATIONS

At EU Member State level:

- Significantly increase the number of checks on operators both for imported and domestic timber.
- Gradually increase and strengthen the number and efficiency of checks every year.
- Check a wide range of products and diversify the producing countries targeted to make checks less predictable and strengthen their dissuasive effects.
- Ensure that there are internal guidelines and/or protocols so that controls are tailored to the level of risk identified.
- Rely more on combined checks (for both due diligence and prohibition obligation), as a way to increase the level of thoroughness of checks and chances to detect breaches of the prohibition obligation.
- Use lab tests more frequently to detect mismatches between operators' declarations and actual species used in products.
- Make systematic controls on the prohibition obligation to detect possible cases of illegal timber being placed on the market, even more so when the operator fails one of the initial steps during a control on the due diligence system.
- Go on-site for controls at minimum for first time assessment.
- Select the approach to check on operators using the level of risk identified during the risk assessment, not the size of the operator, which could mean "small" operators placing high-risk products on the market would never be subject to an on-site control.
- Find solutions to ensure CAs keep track of controls made on domestic operators.

- Immediately start to perform checks for the regional CAs that haven't yet done so.
- Increase the overall number of checks for regional CAs, and ensure that there are no significant gaps in terms of resources, time and efforts between CAs to allow for an ambitious and harmonized enforcement throughout the country.
- Reflect and use lessons learnt to better orientate and support the enforcement staff in choosing which type of check, depending on each case, is the most appropriate to properly address the risk and detect potential infringements.

At EU level:

- The European Commission should clarify the status and responsibility of traders with regard to the provision of only placing legal timber products on the EU market.

5.2.3 Experience with checks on the ground

MAIN GAPS

- 10 of the 16 CAs always notify operators in advance of controls, which can undermine the effectiveness of the checks undertaken as it creates opportunities to conceal non-compliances.
- CAs have performed very few checks to control the prohibition obligation for imported and domestic timber, jeopardizing the proper enforcement of the EUTR.
- No procedures/guidelines or protocols in place at CA level to challenge the reliability and authenticity of legality documents.
- Operators determine their own thresholds on the level of corruption they accept or tolerate in the frame of their due diligence system.
- There is a grey area around what comprises acceptable documentation in terms of due diligence.
- Lack of communication between different entities of the CA (e.g. regional CAs, separate ministries in charge of controlling domestic and imported timber), which can cause problems related to the consistency of checks.
- Finding suitable mitigation measures for timber from high-risk countries is extremely complex and poses a major challenge to operators.

- It is unclear if the inspection grids used by CAs to perform controls are also designed to assess how the prohibition obligation is being implemented by operators.
- Controls only occasionally cover inspection of physical products as many of the documents may relate to products no longer in storage.

GOOD PRACTICE

- The CA carries out announced checks in case of suspicion of violation of the prohibition obligation, or when it has received third party substantiated concerns.
- Outcomes and results from checks are structured/recorded in a way that they can be used in court.
- The CA selects specific high-risk samples ahead of the check (without notifying the operator) for product inspection on site.
- The CA prepares checks and inspections by researching operators in detail, e.g. analysing risk level of timber products placed on the market by the operator.
- Having checks performed by two controllers should increase the chance of detecting potential violations and reduce the room for interpretation, as the team of controllers can further discuss their checks afterwards to confirm their views.
- Inspection grids/checklists used by CAs for checks are developed specifically for the EUTR and are updated regularly to reflect lessons learnt.
- Random checks are being performed in addition to the risk-based ones.

RECOMMENDATIONS

At EU Member State level:

- Ensure checks and controls include field checks, especially for high-risk products, and are carried out without prior notification, especially in case of substantiated third party concerns being raised. Checks based on third party concerns should be carried out in a timely manner as otherwise the potential evidence might not be available any more.
- Develop a protocol for inquiring about legality documents/information going beyond regular

official documents and have a list of criteria to assess the authenticity of legality documents.

- Use innovative methods for controls, for example through random sampling or port controls, to increase the chances of detecting breaches by operators.
- Ensure that the CA uses an inspection grid to carry out controls and that this checklist is regularly updated to reflect lessons learnt and fit the situation of an operator.
- Share the inspection grid with external experts with experience in (illegal) timber trade, to ensure the content of the procedure is strong enough and the way it is used/implemented by the CA is relevant.
- As soon as timber is being imported from high-risk countries, perform a combined check and check the authenticity of documents.
- Develop straightforward means/tools for establishing the validity of documentation provided by companies. Define clearer guidance on what comprises acceptable documentation in terms of due diligence, possibly by defining an evidential threshold.
- Encourage more exchanges to help CAs perform checks (such as on the use of lab tests and how to spot fake documents).
- Keep improving and standardizing the methods to carry out checks.

At EU level:

- The Commission's EUTR and FLEGT expert group should prepare a guidance paper that specifies criteria for inspection plans concerning risk analysis of products, documentation of due diligence and documentation showing compliance with applicable legislation. It should also define what constitutes an acceptable burden of proof.

5.3. Follow up of control results and prosecution

MAIN GAPS

- 14 out of 16 CAs do not have a clear decision-making process/mechanism, including criteria, to determine the issuance of a notice of remedial action or reporting to prosecutors/police for breaches of the due diligence/prohibition obligations.
- The proportion of checks resulting in penalties for infringements of the obligation to put in place a due diligence system varies from 0% to 100% depending on countries.
- First-time breaches of the due diligence obligation are perceived as minor breaches.
- "Phased" approaches are still being used, first sending notifications about non-compliance to operators, with penalties or sanctions not being applied, or applied only when there is a recurrent and severe breach detected.
- Some CAs don't have systems in place to determine which breaches require a warning letter and which require a notice of remedial action (or other follow-up).
- 14 out of 16 CAs do not systematically monitor whether remedial actions are properly applied by operators (e.g. follow-up checks were either not performed, or performed non-systematically from three months to one year after the issuance of the notice of remedial action).
- No insurance that the issuance of a notice of remedial action automatically triggers a new check, and long delays between the issuance of an initial check and follow-up check.
- Difficulties to prove in court that operators haven't done everything within their reach to mitigate all risks through their due diligence system.
- Cases showing non-compliance with the EUTR presented by the CAs were not always taken up by prosecutors.
- Administrative sanctions seem to have been issued more frequently than court rulings as they only require approval from the regional/administrative authorities and not a ruling by a judge.
- CAs reported that violation of the prohibition obligation is difficult to prove, partly because collecting evidence is challenging.

- CAs pointed out that proving an infringement can be complex and challenging.
- Judicial processes in regards to enforcement cases related to EUTR are slow.
- CAs have a general feeling that there is a lack of understanding of the EUTR by judges/courts.

GOOD PRACTICE

- Except for one country, inspection results are reported back to the operator after the completion of a control.
- Several people are systematically involved in the decision-making process after a control to reduce room for interpretation.
- An agreement is signed and acknowledged by the operator to become compliant within 28 days after the issuance of a notice of remedial action.
- Staff specialized in evaluating audit reports.
- The CA has an internal matrix defining the different infringements as a supporting document to decide which type of sanctions should be imposed.
- Samples submitted to court in the frame of third party substantiated concerns were accepted and led to the issuance of a penalty.

RECOMMENDATIONS

At EU Member State level:

- Define clear rules to ensure the appropriate sanctions are being imposed in a consistent manner across the EU.
- Establish clear and thorough criteria/protocols at national level to determine whether an operator/trader is compliant or not and minimize the room for interpretation. The protocols should also include procedures which apply in case of non-compliance (e.g issuance of a notice of remedial action or application of penalties to the operator/trader either through the CA or referring the case to court). These protocols should also include guidance for automatic follow-up controls in case of issuance of notice of remedial action or application of a penalty.
- CAs must formulate a decision-making process to decide about next steps when there are suspicions that some illegal timber products could have been placed on the market. They should use clearly established guidelines to

ensure consistency between the inspection reports' results and the final decision on whether to issue a sanction to minimize room for interpretation.

- CAs must ensure that there is a clear and thorough protocol to handle notices of remedial action, including automatic follow-up controls as soon as possible after issue. Member States should take appropriate actions with the help of the European Commission to ensure that CAs automatically follow a strict and robust framework.
- The European Commission, Member States, the police, representatives from the judicial system and NGOs should further discuss what constitutes acceptable evidence to prove the illegality of timber or demonstrate deliberate evasion of adequate due diligence, possibly by using case studies.
- Always inform operators about the outcomes of checks, even if there were no infringements detected, to let them know about areas for improvement.
- Ensure that the outcomes and results from checks by authorities are structured/ recorded in a way that could be used in court.

At EU level:

- Further exchange should take place between CAs and the European Commission to develop consistent and shared EU-wide criteria/ guidelines to help CAs decide if an operator should be given a notice of remedial action, a penalty or otherwise. Carry out an assessment/ analysis to understand why no notices of remedial action were issued in some Member States to help inform this work.
- A first step to harmonize the approach would be an EU-wide analysis that assesses the circumstances when a notice of remedial action was issued or a penalty was applied (context, type of timber/timber products, countries of origin, type of business, suppliers if known etc.)
- Training for judges and prosecutors should be carried out across the EU.
- The European Commission, Member States, the police, representatives from the judicial system and NGOs should further discuss acceptable evidence proving the illegality of timber or demonstrating deliberate evasion of adequate due diligence, possibly by using case studies.

5.4. Resources and staff training

MAIN GAPS

- No clearly identified focal points for EUTR across the national enforcement chain.
- Human and financial resources dedicated to checks on operators vary between 2.5 FTEs to 22 people. On average 1 FTE for several thousand operators, ranging from 1 FTE for 1,200 operators to 1 FTE for 5,000 operators.¹⁸
- In at least seven Member States there is no budget dedicated to the EUTR.
- No planned increase of resources dedicated to EUTR enforcement.
- In three Member States, focal points haven't received any training on the EUTR, while in two countries, five trainings were delivered throughout the year 2017 and 2018.

GOOD PRACTICE

- Controllers are forestry experts and/or have good knowledge of supply chains.
- Trainings were delivered by external organizations, such as NGOs (WWF, Greenpeace, ForestTrends, Chatham House) as well as FSC, PEFC, and customs, NEPCON and Interpol.

RECOMMENDATIONS

EU Member State level:

- Increase capacities at national level to ensure good coverage of operators and allow them to carry out frequent checks.
- Identify focal points along the national enforcement chain, including for the police and judiciary, and foster more communication between services.
- Organize regular trainings, fostering interdisciplinary exchange to strengthen capacity building and ensure that controllers increase their skills in regards to EUTR enforcement, on both theoretical but also timber (products) and species knowledge.

- Dedicate a budget to laboratory tests and to produce annual assessments on high-risk timber entering the respective country which will aid the detection of illegal timber flows.

At EU level:

- The European Commission should offer trainings to national CAs/develop a training manual for CA staff and other bodies involved in the implementation of the EUTR.

5.5. Third party substantiated concerns

MAIN GAPS

- Competent authorities take different views on whether something is a substantiated concern or not.
- Timber product samples (results from lab tests) were not accepted by the CA in the frame of third party substantiated concerns.
- Lack of formal follow-up procedure after the issuance of a substantiated concern.

GOOD PRACTICE

- Most of the third party substantiated concerns have led to checks, although this does not mean that checks were effective or properly enforced by CAs.

RECOMMENDATIONS

At Member State level:

- Engage with key stakeholders, including NGOs and the EC, to analyse third party substantiated concerns and potential lessons learnt. Further discuss why some concerns that NGOs think should automatically lead to a penalty and/or court cases only lead to the issuance of notices of remedial action (or nothing), after CAs' checks.
- CAs should accept lab test results by NGOs for further investigation. There is a need to develop guidelines on which information is needed for CAs to accept lab tests from third parties.

¹⁸ For this thematic area a number of MS did not provide any information

- CAs should encourage stakeholders to provide publicly available information, such as overseas suppliers with convictions for illegal logging, and use this information to detect and target operators possibly trading high-risk/illegal timber.
- CAs should encourage operators who decide to exclude a supplier to pass on the information in strict confidence.

At EU level:

- The European Commission should further develop the existing EU guidance on third party concerns, developing EU-wide criteria to assess whether a concern is substantial and reliable enough to be accepted. This includes guidance on acceptance of e.g. results from wood testing. The process to develop this guidance should include all relevant stakeholders, to share lessons learnt and discuss best practice. A stakeholder dialogue should be established at EU level to allow for concrete exchange between NGOs and CAs/ the EU FLEGT expert group, sharing information and experience.

5.6. Cooperation

MAIN GAPS

- No real, structured and formalized cooperation along the enforcement chain within Member States, and also between Member States.
- Lack of communication and routine information exchanges between central and regional CAs in a country or between CAs responsible for domestic and international timber products (in countries where these responsibilities are separated).

GOOD PRACTICE

- (Regular) exchanges with neighbouring Member States to harmonize some of the control practices in all countries, partly in regional groups.
- Joint inspections are taking place in some countries.
- CAs collaborate with customs and with police.

- Publication of information in English to allow other Member States to use information for their controls.

RECOMMENDATIONS

At Member State level:

- Cooperate more pro-actively with others CAs and enforcement agencies, including customs, prosecutors and police investigators, through knowledge sharing.
- Organize between CA and district authorities to harmonize approaches.
- CAs should work closely with customs to identify high-risk shipments and intercept them for checks right at the port. This requires reinforced and formalized cooperation amongst the national enforcement entities and, where possible, with counterparts in other Member States and internationally.
- Encourage regional cooperation for better harmonization through regional exchanges amongst CAs to align approaches and to share experiences.

At EU level:

- The EUTR/FLEGT expert group should facilitate more regular exchange between different agencies involved in the implementation of the EUTR (e.g. customs, police or others) from different EU Member States to enhance cross-border cooperation.

5.7. Publicly available information

MAIN GAPS

- Only 3 out of 16 CAs are regularly publishing information on checks and/or breaches detected during controls.

GOOD PRACTICE

- Every six months publication of names and details of the timber/timber products where a notice of remedial action has been issued

(including the name of the operator, product(s) checked, type of breach(es) and additional details¹⁹).

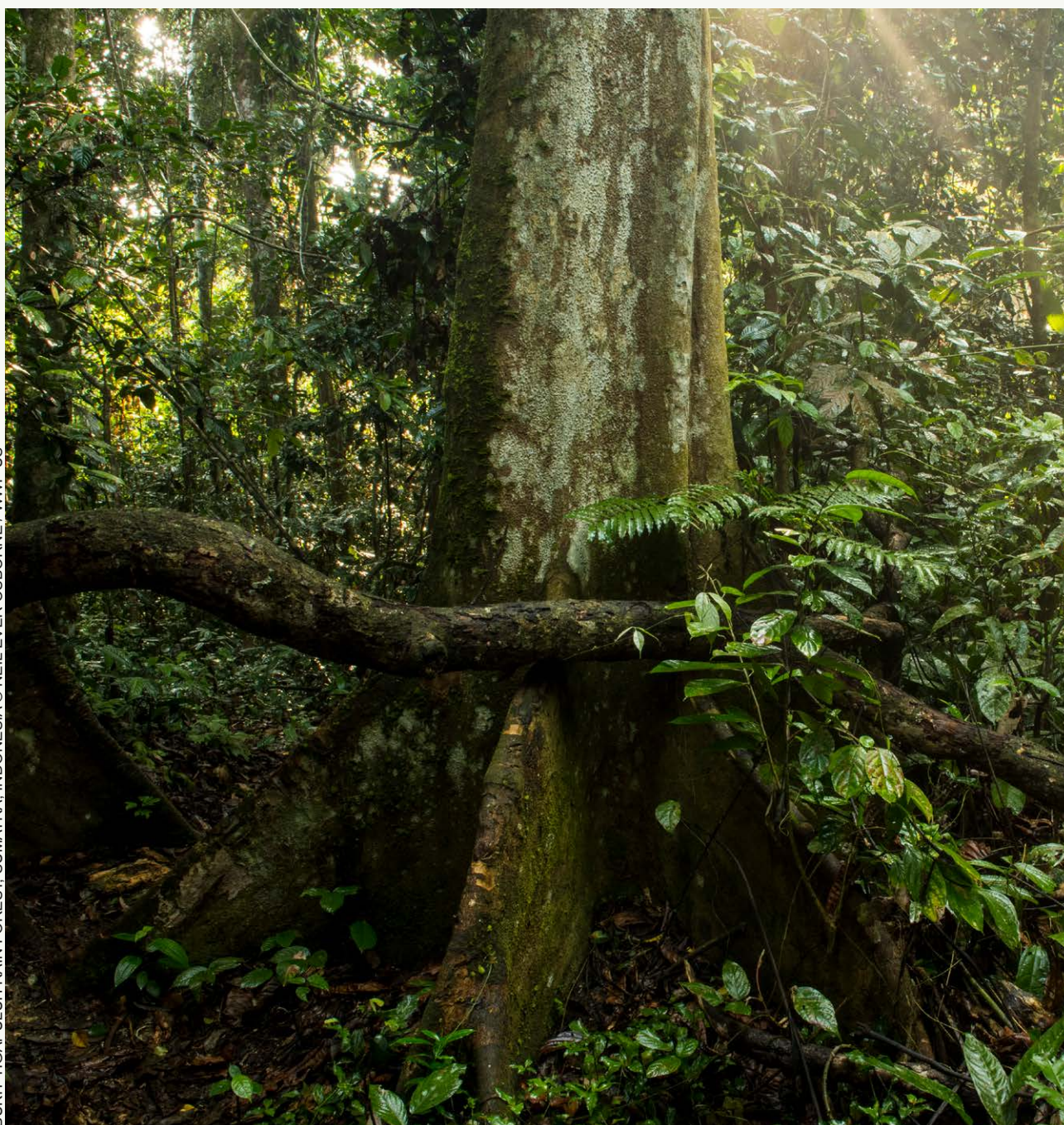
RECOMMENDATIONS

At Member State level:

- CAs must become more transparent about enforcement actions and sanctions, as well as criteria used for checks and the nature of problems found. Along with routine

publication of non-compliance, this is important for deterrence and improvement of operators.

- Communicate yearly control targets and report back publicly on progress and results.
- Install regular exchange with all stakeholders (e.g. twice per year) to exchange information on best practice, new trends, issues of concern.
- Plan information sessions for sectors with low awareness of the EUTR and reinforce communication about the EUTR to ensure all operators are aware of their obligations.



BUKIT TIGAPULUH RAIN FOREST, SUMATRA, INDONESIA © NEIL EVER OSBORNE / WWF-US

19 2016-2017 data - 2017-2018 data - May 2018 - September 2018 data

6. ANNEX 2 - Methodology and list of questions

6.1. Methodology

6.1.1 Context and objectives

The adoption of the EUTR in 2010, marked a paradigm shift in the European Union. By making legality of timber and timber-related products a legislative norm for industry and EU Member States, it aims to fight against illegal logging and related trade, combat biodiversity loss, and contribute to the EU's climate change mitigation efforts.

The EUTR prohibits the placing on the EU market for the first time of illegally harvested timber and products derived from such timber. It requires EU companies (operators) who place timber products on the EU market for the first time to exercise due diligence through setting up a control system.

Economic operators further down the supply chain (referred to as traders in the regulation) have an obligation to keep records of their suppliers and customers²⁰.

Six years after its entry into force, WWF decided to carry out an analysis to assess the implementation and enforcement of the EUTR in 16 EU Member States: Austria, Belgium, Bulgaria, Croatia, Denmark, France, Germany, Hungary, Italy, Netherlands, Portugal, Romania, Slovakia, Spain, Sweden and the United Kingdom.

This evaluation aims at complementing existing information available on EUTR enforcement, by assessing in detail for example how Member States prepare, carry out and analyse the results of their controls, as well as by starting to understand why the number of court cases has remained low. It aims to go beyond the existing quantitative data to understand the quality of EUTR implementation, examples of strong implementation and challenges that limit the EUTR's effectiveness, as recent evaluations show that the EUTR implementation and enforcement lacks harmonization, which jeopardizes the effectiveness of the regulation.

With this review on the enforcement of the EUTR, WWF's main objective was to highlight good practice as well as current challenges to help inform improvements in the way EUTR is being enforced, by analysing CAs' answers and formulating tailored and innovative recommendations.

WWF believes the results of this analysis will benefit a broad range of stakeholders, with concrete solutions to make the EUTR enforcement a smoother and more effective process for each link of the enforcement chain.

6.1.2 Survey

WWF developed a questionnaire composed of 60 questions, addressing different parts of the enforcement chain, namely:

1. Penalties and sanctions
2. Checks
 - 2.1 Preparation of inspection plans
 - 2.2 General overview
 - 2.3 Experience with checks on the ground
 - 2.4 Follow-up
 - 2.5 Judiciary
3. Resources and staff training
4. Substantiated concerns
5. Cooperation
6. Publicly available information

The survey contains two types of questions:

1. Questions used for assessment: these questions are used to evaluate Member States in regards to how they enforce the EUTR.
 - 1a. Some questions used for assessment enquire about legal requirements that must be met by CAs, as defined in the Regulation EU 995/2010; for example the duty for CAs to provide effective, proportionate and dissuasive penalties as described in Article 19.
 - 1b. Some questions were developed to reflect key aspects linked the practical enforcement

20 https://ec.europa.eu/environment/forests/timber_regulation.htm

of the EUTR by CAs. Although they are not linked to a legal requirement defined by law (for example the need to have a clear methodology in place to analyse the results of checks), WWF believes the issues raised through these questions must be taken into account by CAs and seen as suggestions to improve the effectiveness of the enforcement of the EUTR.

2. Transparency questions: these are open-ended questions that will help us to capture qualitative data and get a better understanding of how EUTR enforcement could be improved. These questions are not used for assessment, only to gain additional insights and inform our recommendations.

The questionnaire was developed to provide a better understanding of the actual strengths and shortcomings in EUTR enforcement, by gathering qualitative data.

The questionnaire gives CAs guidelines and helps them better understand WWF's expectations on the EUTR. It asks for information that is not in the public domain and helps to improve CAs' transparency standards; it also seeks clarification/additional information from Member States on some key issues that may be partially addressed on CAs' websites/biannual reports. It is also a way to get access to qualitative information that will bring new insights, as well as reflecting the full range of actions undertaken by CAs.

WWF also included "bonus questions" and asked CAs to share some key documents (that would remain confidential); for example: their former action plan for checks, the register of checks, an inspection report or a copy of a notice of remedial action.

WWF clearly stated that the names of operators, addresses etc. could be deleted for data protection reasons.

6.1.3 Collection of answers

Answers were collected through interviews between WWF National Offices and representative(s) from their respective CAs, between November 2018 and March 2019.

6.2. List of questions in survey

In black are questions used to assess the performance of CAs.

In green are open-ended/transparency questions. With these questions, WWF collected qualitative information to better analyse the overall situation in regards to EUTR enforcement, by bringing new insights and direct feedback from CAs on their own experience.

6.2.1 Penalties and sanctions

1. Does your national legislation include criminal sanctions for breaches of the EUTR, such as imprisonment? Please describe.
2. Please describe the range of penalties (min and max) provided for infringements of the EUTR which have been established in your country (prohibition, due diligence obligation, traceability).
3. Does your national legislation contain provisions for adjusting the size of a fine to the quantity or value of timber?
4. As a competent authority, can you directly impose sanctions on operators (N.B. for breaches concerning the placing on the market of imported timber)?

6.2.2 Checks

6.2.2.1 Preparation of inspection plans

1. Can you confirm/do you have clarity that all organizations/entities actually qualifying as operators are registered in your country? Please explain the methodology to identify and get all operators to register and give the total number of operators for your country.
2. Do you use a risk-based approach? For example: do you follow import patterns to adjust your yearly inspection plans?

3. Do you have a formal action plan on checks with clear targets and objectives (number of operators to be checked, a defined frequency of checks etc.) and how did you perform against these targets? Please explain.
4. Please list all risk factors applied to the preparation and review of the check plan (type of products, type of business (operator), type of suppliers, country of harvest, species of timber, information provided by others CAs, concerns provided by third parties, volume, value etc.)
5. Have you assessed/do you have clarity on the percentage of timber coming from high-risk countries, as well as on high-risk products with complex supply chains and/or do you have knowledge of risks related to forest management at domestic level?
6. What type of CN codes (chapters) did you identify as carrying the highest risk?
7. How is an inspection planned?
5. Do checks systematically cover both due diligence systems and the legality of timber placed on the market (i.e. prohibition)? Have you conducted checks further up the supply chain to assess the good implementation of DDS? Please explain.
6. Do you use lab testing to determine species/origin and potentially prove false declarations or illegality of the timber being placed on the market by operators?
7. Did you carry out any checks on traders and if yes, how many? If not, do you have plans to do so in the near future?
8. Which CN codes (the chapter number is sufficient) have been covered through your checks?
9. Out of the total number of checks performed to assess DDS between January 2017 and December 2017, how many were first-time assessments?
10. What are some key changes you have made to your controls and systems since 2013?
11. What are some key learnings? With regards to how you run controls and related to faults you've found.
12. How do you deal with simple versus complex supply chains?

6.2.2.2. General overview

1. Please indicate the number of checks on imported timber which took place between January 2017 and December 2017 (if the number of checks is also known for the first semester of 2018, please indicate it as well). Of these checks, which were based on an inspection plan / research done by the CA / information from national law enforcement / information from other CAs / 3rd party substantiated concerns?
2. Please indicate the number of checks on imported timber which took place for each year between April 2013 and April 2018.
3. Please indicate whether the checks you performed on imported timber were: desktop review (Desk), document review on site (Doc), product inspection on site (Prod) or combined check including both document review on site and product inspection on site (Comb), by giving figures for each type of checks performed.
4. Do you have a strategy to decide when to use which approach (such as desk-based/on-site visit etc.)?

6.2.2.3 Experience with checks on the ground

1. Do you notify operators in advance? In case you have already checked on an operator without notice, please explain why.
2. Do you systematically follow a clearly established protocol/methodology/do you use a reference framework to check operators on site (both for DDS and the prohibition obligation)? In that matter do you use one single template/audit grid? Is that reference framework updated regularly and how was it developed?
3. To what extent do you rely on legality documents provided by operators to assess the reliability of a DDS/the legality of timber and when do you ask for due diligence that goes beyond regular official documents (for example forest management

permit, timber harvesting permit, harvesting plan, proof of payment of taxes and fees etc.) and is there a threshold? How do you mitigate the risk that legality documents may not be genuine?

4. Which products and countries have been most challenging to assess?
5. Do you know about the proportion of operators who use a certification system as a tool for their DDS?
6. Do you think that more operators switch to certification on a voluntary basis as a way to help them fulfil their obligations or is the EUTR pushing operators in the other direction towards a “legality is enough” approach?
7. In your opinion, what types of sectors/types of businesses would you need more training or guidance on? Please explain.
8. Do you think that your performance when checking operators could be improved and if yes, how?

6.2.3 Follow-up

1. Do you automatically report back to the company after an inspection (by providing the inspection report)?
2. After the completion of a control, what is the decision-making process/mechanism to determine if an operator should be fined, prosecuted or else? Are several people consulted before the final decision is made?
3. Please describe your process to monitor if remedial actions are managed properly by the operator (e.g.: do you systematically carry out a follow-up check)? Also, how much time is given to operators to complete remedial actions?
4. Do you allow companies to hand in further documents after the inspection without it being written down as a remedial action?

6.2.4 Prosecution

1. How would you explain that out of the total number of notices of remedial action/injunctions over the past 2 years, the number of financial penalties has remained low in comparison?
2. In light of all the information on the prominent role of the EU in the illegal timber trade, have you reported any closed investigation cases for violation of the prohibition obligation? If not, please explain
3. For both imported and domestic timber, please list each penalty/sanction issued as well as the type of operator sanctioned/fined in the frame of the EUTR (nature of business (sector) and annual turnover.) You do not need to name any companies.
4. Would you say that there is a good understanding of the EUTR by judges/courts and have you heard of, or participated in, training for prosecutors? Please explain.
5. Would you say that it appears to be more difficult for judges to handle court cases linked to the prohibition obligation than the ones on breaches of the DDS?
6. According to you, are there issues when it comes to prosecuting operators in violation of the EUTR? If yes, how do you think the system could work better?
7. Please indicate the number of checks on imported timber undertaken between January 2016 - December 2017 having resulted in notices of remedial actions (RA), remedial actions that led to a penalty (RALP) and/or total penalties (P) and/or other action (OA.) If the number of checks is also known for the first semester of 2018, please indicate it as well.

6.2.5 Resources and staff training

1. Are there clearly identified focal points for timber legality/EUTR across all actors along the national enforcement chain? Please explain.

2. Have focal points received specific trainings on the EUTR and how many training events for inspectors have been held by the CA in the past 12 months?
3. How many FTE are working on EUTR enforcement at the CA as of September 2018? Is there an annual budget for the CA that is dedicated to EUTR activities and if yes, how much is it?
4. Who conducted the training sessions for inspectors and what was the specific subject matter?
5. Are there any formal/already agreed plans to increase the budget and/or number of staff working on the EUTR?
6. What is the background of the enforcement staff? (e.g. forest specialists?) Does the staff enforce other types of legislations/regulations which implicate a good understanding of global supply chains?

6.2.6. Substantiated concerns

1. Has there been a change in the number of substantiated claims since 2013?
2. Are there national rules/laws on how the Competent Authority should handle substantiated concerns from third parties?
3. Out of the total number of operators about whom concerns were received from third parties, please indicate the number of cases that resulted in checks on operators and number of cases resulted in penalties between January 2016 - December 2017 (if figures are also known for the first semester of 2018, please indicate it as well).
4. Have you already deny/refused to work on a SC? If yes, why? please explain
5. What are the reasons why some SCs, which have led to an inspection and the detection of an infraction did not lead to a penalty for the operator?

6. How do you explain that some substantiated concerns that have led to sanctions in other Member States have not resulted in sanctions in your country?

6.2.7 Cooperation between authorities

1. Is there any formalized collaboration/arrangements, regular exchange in-country and with international networks/enforcement agencies?
2. Do you proactively cooperate with others CAs through knowledge sharing/other means, to detect high-risk timber before it has entered EU territory or when it enters EU territory? Please explain.

6.2.8 Publicly available information

1. Do you publicly report progress on achieving commitments defined in your national action plan by providing information on the performance and actual state of implementation/enforcement of the EUTR in your country (website, reports, other)?
2. Do you publish/make available the register of checks as described in the regulation ?

6.2.9 Other

1. Do you see any new risks or challenges emerging that could challenge the effectiveness of EUTR implementation?

WWF IN EUROPE

100%
RECYCLED



27 countries

WWF is present in 27 countries

80%

Up to 80% of national environmental legislation is decided by the EU



2013

The EU Timber Regulation entered into force in 2013

3.2+ Million

WWF has over 3.2 million supporters



Why we are here

To stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature.

www.wwf.eu