

EUTR News

March 2015 – March 2016



The [EU Timber Regulation \(EUTR\)](#) has been in full effect since 3 March 2013. On its third anniversary, this issue of the EUTR News provides an update on the operation of the EU's law to address illegal logging, from March 2015 to March 2016. As with all of our previous editions, this issue will include information on what both EU Member States and the European Commission are doing to ensure the proper application of the EUTR. For more background information on the EUTR, [please click here](#).

Past issues are available on the [ClientEarth website](#), and future issues will be published there regularly. If you would like to be sent EUTR News via email, please contact Madeline: mhallwright@clientearth.org



SUPPORT TO IMPLEMENTATION AND ENFORCEMENT OF THE EUTR BY THE EUROPEAN COMMISSION

In 2015, the Commission became increasingly active in the operation of the EUTR, initiating legal procedures against four non-compliant Member States (Hungary, Greece, Spain and Romania), and engaged in bilateral dialogue with eight Member States to rapidly bring the majority of them to compliance.

As of March 2016, 27 Member States now have national penalty regimes in place for violations of the EUTR compared to 20 in March 2015 (see [Implementation and Enforcement of the EUTR by Member States](#) below for more information).

Infringement Procedures

Hungary is the only Member State yet to adopt a national implementing legislation with penalties for violations of the EUTR. Their failure to do so is a breach of the EU legal requirement on all Member States to introduce national legislation to enable the EUTR to operate. The Commission issued a reasoned opinion in October 2015, which Hungary had two months to respond to. As Hungary has not responded within this timeframe, the Commission can decide to bring the matter before the European Court of Justice. If the European Court rules against them and Hungary does not act, they could face fines.

European Commission releases updated Guidance Document

On 12 February 2016, the Commission adopted an updated version of the [Guidance Document](#) for the EUTR. The document offers guidance on particular elements of the legislative text and can be used by national Competent Authorities and enforcement bodies to guide their implementation and enforcement practices. The Guidance Document now includes three new sections on: the treatment of CITES unlisted timber products made of CITES listed timber species; the treatment of agents; and the treatment of Monitoring Organisations.

European Commission appoints new Monitoring Organisations

The Commission has recognised three new Monitoring Organisations, meaning there are now 12:

19 October 2015: AENOR (Asociación Española de Normalización y Certificación)

1 June 2015: BM TRADA Latvija

1 June 2015: DIN CERTCO Gesellschaft für Konformitätsbewertung mbH

These organisations can assist operators to meet their obligations by providing EUTR-compliant due diligence systems.

For a full list of approved Monitoring Organisations, please click [here](#).



IMPLEMENTATION AND ENFORCEMENT OF THE EUTR BY MEMBER STATES

At the national level, Member States have become increasingly engaged in the operation of the EUTR. From the information we have access to, over the past year there has been a significant rise in the number of checks carried out by Competent Authorities. According to the Commission's review of the EUTR (see below), checks have resulted in remedial actions or penalties for infringements of the EUTR in 19 Member States. Some of these checks were informed by substantiated concerns from third parties. Questions remain as to whether the penalty regimes in place across the EU are, in fact, 'effective, proportionate and dissuasive'. To date, only a limited number of penalties have been applied, meaning there is relatively little practical experience to draw on.

Member State implementing legislation updates

Greece is the latest EU Member State to adopt a national implementing legislation for the EUTR. On 29 December 2015, in response to the Commission issuing a reasoned opinion for non-compliance with the EUTR, Greece published [provisions](#) on measures and procedures for implementing and enforcing the EUTR, including detailed ruled on penalties.

Spain had been subject to an infringement procedure initiated by the Commission following its failure to adopt a national implementing legislation for the EUTR. It has now amended its Forestry Act to introduce provisions on the EUTR. These [amendments](#) came into force on 21 October 2015 to provide for administrative penalties for breaches of the EUTR and set up a mandatory declaration system for operators. On 11 December, [secondary legislation](#) supporting the implementing law was adopted to establish more detailed provisions.

Latvia amended its [administrative legislation](#) to establish rules on penalties for breaches of the EUTR on 1 July 2015. This action followed a request for clarification by the Commission as to Latvia's compliance with the EUTR.

Poland amended its [Forest Act](#) to reflect the requirements of the EUTR. These amendments have

been in force since 29 May 2015 and were made after the Commission sought clarification on how Poland had fulfilled its obligation to establish a national penalty regime.

Romania added [rules on the methodology of EUTR checks](#) to their implementing legislation on 14 May 2015. It also recently [amended its Forestry Code](#) in an effort to reduce illegal harvesting of Romanian forests and to create more efficient regulations for the management of forest exploitation.

On 1 May 2015, [Norway implemented the EUTR](#), meaning that the EUTR now applies in 29 countries. As a member of the European Free Trade Agreement (EFTA) and party to the European Economic Area (EEA) Agreement, Norway will now have to apply the EUTR in the same way as EU Member States.

Checks on operators

Across the EU, more information on the number and frequency of checks being made by Competent Authorities on operators is becoming publically available. For various reasons, for the most part, the records on checks are still not in the public domain. That said, from the information we have access to, 2015 saw a significant rise in the number of checks being carried out by Competent Authorities, including those set out below:

Germany: Between summer 2013 and January 2016, the [German Federal Ministry for Agriculture and Food](#) checked approximately 370 timber operators. Around 50 timber operators were found to be in breach, requiring follow-up audits. In 39 cases, warnings were issued. In two cases, the German Competent Authority confiscated timber deliveries due to the strong suspicion that certificates of origin were forged.

The Netherlands: As of July 2015, the Dutch competent authority had undertaken 101 checks on operators, and ten follow-up checks. 29 written warnings have been issued to operators.

Sweden: Checks on operators began in August 2014. From August 2014 to December 2015 the Swedish Forest Agency undertook checks on 65 timber operators (58 importers and seven domestic timber purchasing companies). It has given 26 injunctions, eight of which have been linked to penalties. In addition, 33 notifications have been sent to prosecutor.

Romania: Following an investigation of Schweighofer (an Austrian-registered timber company), the Romanian Competent Authority issued a penalty of €45,000 and seized more than 9,000 m³ of timber. 22 sanctions were applied to timber providers in Romania and the procedure is ongoing.



PUBLICATIONS RELATING TO THE EUTR

The Commission's Review of the EUTR and the European Court of Auditors report on FLEGT were released.

European Commission Review of the EUTR

The Review was released on 18 February 2016 and evaluates the EUTR during its first two years of operation, from March 2013 to March 2015. It concludes that the EUTR is making progress to combat illegal logging but challenges remain.

The Commission found that the EUTR has increased industry and government awareness of risks of illegality, and inspired other consumer countries to develop similar legislation. The Review also notes that the EUTR has complemented broader EU work to address deforestation and forest degradation internationally, in particular through Voluntary Partnership Agreements. It also recognises that further attention is required to ensure coherence in implementation and enforcement of the law across the EU.

The results of a Commission-led stakeholder consultation (April to July 2015) helped to inform the Review.

To access the report, please click [here](#).

European Court of Auditors Report

The European Court of Auditors published a report on 24 November 2015, which examines the effectiveness of the main aspects of the EU Action Plan on FLEGT.

In the report, the Auditor's recommendations include that the Commission should:

- ensure that the EUTR is fully implemented in all Member States;
- allocate its resources in those timber producing countries where they will have the greatest impact;
- introduce robust assessment and reporting procedures to keep track of the initiative; and
- make use of reputable private certification bodies.

To access the report, please click [here](#).

EUTR Implementing Legislation Map

ClientEarth has developed a map that provides links to each Member State's implementing legislation for the EUTR. This is the first publicly available source to bring these laws together. To access the map, please click [here](#).

GTF survey on due diligence finds SMEs to be performing well

The Global Timber Forum commissioned an analysis of a sample of EU and producer-country small and medium-sized companies (SMEs) involved in the trade of timber products. The survey found that the size of a company has little to no effect on its ability to manage risk within the supply chain. It also found that the most effective due diligence systems in SMEs have been developed by the companies themselves, using all of the tools available (trade association materials, Competent Authorities, the Regulation itself, NGO materials, and information on lessons learnt from peers in the industry).

The initial findings are available on the GTF [website](#).



INTERNATIONAL UPDATES

The past year has seen increased engagement and activity on illegal logging laws internationally, working toward supporting regulatory coherence. In addition to the update below, Japan is currently in the beginning stages of drafting their own illegal logging law.

United States: Lacey Act updates

In October 2015, the US hardwood flooring retailer Lumber Liquidators was the first business to be found guilty of a criminal act for smuggling wood under the Lacey Act. On 7 October, the company stated that it 'agreed to plead guilty to violations of a Customs law and the Lacey Act, and pay a combined total of \$10 million in fines, community service payments and forfeited proceeds'. The infringements include four cases of failure to exercise proper due care and one charge for entry of goods by means of false statement.

Following this, the US Department of Justice (DOJ) published an article (written by the trial attorney who prosecuted the Lumber Liquidators case) on the Lacey Act. The article advocated the utility and need for prosecutors and enforcement officials to work more with NGOs on Lacey Act cases due to the information and expertise they can provide.

For more information on the Lumber Liquidators case, please click [here](#). To access the DOJ's article on working with NGOs, please click [here](#). More recently, the New York Times published an opinion piece on the case, which can be viewed [here](#).



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