

EC: EUTR implementation has made progress – but still a long way to go

The European Commission released the results of the first review of the EU Timber Regulation (EUTR) on 19 February. The review covers the period from March 2013 to March 2015 and is based on Member States' reports on the application of the EUTR, an open public consultation, targeted stakeholder surveys and an evaluation report produced by an external consultant. It analyses the EUTR for relevance, effectiveness, efficiency, coherence and EU-added value.

The overall conclusion of the analysis was that the EUTR “has the potential to achieve its objectives”. However, various shortcomings were identified as well, especially the slow pace of implementation in many Member States and the unequal levels of enforcement and penalties.

EUTR has contributed to raising awareness of illegal logging

One of the primary achievements of the EUTR, according to the review, was its raising awareness of the problem of illegal logging and also creating an incentive for producer countries to develop systems to demonstrate compliance with EUTR requirements. Six producer countries have started implementing a bilateral agreement (Voluntary Partnership Agreement) with the EU in this context and nine other countries are negotiating similar agreements.

Moreover, the EUTR is encouraging other consumer countries – such as Australia, Japan and Korea - to adopt or consider similar regulatory measures. And other non-EU European countries, such as Norway, Iceland, and Lichtenstein, are currently implementing the EUTR as well.

Within the EU, there is evidence that the EUTR “has encouraged more responsible sourcing policies and, therefore, demonstrated its potential to change operators' market behaviour”. Communication campaigns carried out by both the Commission and Member States would have played an important role in this context.

EC has started legal action against four Member States

Delays in national implementation of the EUTR, both in designating Competent Authorities and drawing up national legislation and penalties as well as in checks on operators have been identified as major shortcomings during the reporting period. All of these factors have hampered the creation of a “level playing field” for all operators. Several Member States started implementing the EUTR “only late in the reporting period”, according to the report, that is almost two years after the Regulation entered into application. Against this background, the Commission started bilateral dialogue with eight Member States, as a result of which several countries “were brought to compliance”. However, the Commission says it has started legal action due to non-compliance against Hungary, Greece, Romania and Spain. Spain had not appointed a competent authority during the period under report. Moreover, all four affected countries are still in the process of working out sanctions for EUTR breaches.

Understaffed and underfunded

The Commission also noted that the amount of financial and human resources dedicated to EUTR implementation by the Member States varies considerably. The numbers of staff assigned to the EUTR in the individual Member States varies from 1 to 200, for example. In many cases, resources appear “disproportionately low compared to the number of operators in those countries, leaving the deterrent effect of the enforcement activities rather limited”.

The Commission also found that only a fraction of operators had been subject to checks by CAs; and several Member States had not yet started carrying out checks at all. Where financial resources are concerned, the Commission noted that some Member States have not allocated any additional financial resources at all for the implementation and enforcement of the EUTR.

Unequal penalties, variations in speed of appointing Competent Authorities, and lack of staff and money for EUTR enforcement have prevented the creation of a level playing field throughout the EU.

Cooperation and communications more favourably assessed

Both the Commission and Member States carried out awareness raising campaigns before the EUTR entered into application. On the part of the Commission, a Guidance Document was developed to help “align the interpretation of key provisions of the regulation”.

Moreover, the Commission and Member States cooperated in the form of expert meetings on implementation and enforcement. The Commission also set up an electronic communication platform for information exchange between Member States.

At the same time, the Commission conceded that guidance for small and medium-sized enterprises (SMEs) – both by the Commission and Member States – was rather limited.

SMEs are finding EUTR compliance more difficult

On private sector compliance during the first two years of application, the EC found that SMEs were struggling more than larger companies to fulfil EUTR obligations. According to the review, SMEs consider EUTR compliance “a challenge, due to difficulties in understanding the technical requirements of the due diligence system (DDS), lack of staff with adequate knowledge and experiences necessary for exercising the DDS and/or limited financial resources”.

In order to carry out more cost-effective due diligence, the Commission recommends that operators make more use of voluntary third-party verified schemes in the risk-assessment and risk-mitigation process. It also conceded that the “role of third-party verified schemes in the implementation of the legislation could be further clarified in the Guidance Document” and found that “the main timber certification schemes have

adapted their standards to reflect the scope of the legality definition embedded in the Regulation and have emerged as a practical option that can be used by EU operators”.

Private sector compliance “uneven and insufficient”

The analysis of private sector compliance also revealed that “operators have not consistently implemented due diligence requirements” during the reporting period. However, the situation is gradually improving.

One of the main points of criticism identified by Competent Authorities during checks was that there was often a lack of understanding of all elements needed for the due diligence system, so “while many operators had some type of DDS, they did not always meet the EUTR requirements”.

Enlisting the help of a Monitoring Organisation (MO), which provide compliant DDS may be helpful in many of these cases. However, the review found that operators’ interest in MO services has so far been very low. This was partly attributed to the fact that MOs are obliged to alert the Competent Authorities in cases of major EUTR infringements.

Enlarging the product scope under consideration

The product scope covered by the EUTR – or existing “loopholes” – has been a subject of frequent criticism by media and NGOs. As a result, it was part of the recent stakeholder consultation. The outcome of the consultation was mixed, according to the Commission; while many stakeholders do not consider the current product scope optimal and wanted to include products like wooden seats, print media, musical instruments and wooden coffins, others believed the scope should not be expanded before the EUTR was fully implemented. Especially in the case of print media, the Commission concluded that the “variety and complexity of printed good would need to be taken into account when considering enlarging the current product scope”.

Commission calls upon Member States to step up efforts

As a result of the findings of the review, the Commission primarily requests that Member States should put more effort into implementing and enforcing the EUTR. Human and financial resources, in particular, should be increased to raise the number and quality of checks on operators.

Moreover, there should be additional efforts to inform operators, especially SMEs, about their obligations and cost-effective possibilities of carrying out due diligence.

The Commission itself says it will continue to provide guidance and facilitate communication between Member States, with the ultimate aim to achieve uniform implementation and enforcement of the Regulation. The Commission says it may also consider expanding the product scope. On the other hand, it sees no occasion for changing the substantive provisions of the EUTR, as “the evaluation did not identify a clear need for changes in the core elements of the legislation”.

Industry echoes call for EUTR enforcement

In line with the Commission's findings, representatives of the EU timber industry and NGOs joined forces and called for the EUTR to be more stringently enforced during a meeting with the EU Environment Commission in November, according to the European Timber Trade Federation (ETTF)'s Winter 2015-16 Newsletter. The meeting followed a statement organised by WWF last September, which was signed by more than 65 companies and seven industry associations.

In particular, the statement urged the Commission to expand the scope of the Regulation, claiming that less than 50% of the EU's wood product imports are currently covered. It also called for uniform implementation and enforcement of the EUTR in all Member States.

Norway prepares for EUTR enforcement

Outside the EU, Norway is making progress in implementing the EUTR, according to a report in the ETTF Newsletter. A Norwegian importer is quoted saying that Norwegian companies were informed in December they had one year to get their DDS in place. Norway's approach to implementing and enforcing the EUTR will be very similar to Sweden's, according to the article. Norway will apply the EUTR to both join in efforts against illegal timber trade and also to facilitate trade with EU countries, by operating to similar standards.

ETTF opens timber trade Gateway

The ETTF has launched its new online information platform www.timbertradeportal.com in January. It provides information on producer countries and producer country legislation and can be used as a tool for risk assessment and mitigation under the EUTR.

ETTF members felt that this would be particularly helpful for tropical supplier countries, as legality from those sources would be under most scrutiny, according to the ETTF Winter Newsletter. ETTF Secretary General André de Boer said, "To meet their requirements importers must obtain documentary evidence that suppliers are operating in accordance with national laws and regulations.....so it's essential they can readily access current information on those laws; how they're translated at practical level and procedures they require. With the Gateway they can".

The Gateway is supported by ITTO and the Sustainable Tropical Timber Coalition (STTC); it's based on ITTO, FAO, ITC/Tradecom and other databases. The website already has profiles on Ghana, Ivory Coast, Indonesia, and Guyana, with another 19 profiles expected to be added this year.