



WWF: EUTR ENFORCEMENT REVIEW COUNTRY ASSESSMENT SHEET: FRANCE

The following analysis is based on answers provided by the French Competent Authority during interview(s) carried out by WWF between November 2018 and March 2019 and reflects the situation up to this point in time.

The survey was carried out in 16 Member States (Austria, Belgium, Bulgaria, Croatia, Denmark, France, Germany, Hungary, Italy, Netherlands, Portugal, Romania, Slovakia, Spain, Sweden, UK).

Abstract

According to WWF, the French Competent Authority (CA) must keep reinforcing its action to effectively tackle the trade in illegal timber in France.

The CA and all relevant administrative authorities must now step up their efforts to effectively implement the EUTR and meet their obligations.

6 years after the EUTR came into force, only a very small proportion of the French operators was checked, which is worrisome. By increasing the number of checks, the French CA will likely bring more concrete results and cases, and as a consequence strengthen the dissuasive effects on operators.

The fact that the Competent Authority has performed few checks to control the prohibition obligation for imported timber is however an important gap, jeopardizing the proper enforcement of the EUTR.

On top of that, although this is not the sole responsibility of the Competent Authority, the number of actual court cases and penalties remain insignificant to trigger any dissuasive effects on operators, with 2 penalties reported on the period between March 2015 and February 2017 for imported timber, and no court cases.

Finally and most importantly, in light of all the information on the prominent role of the EU in the illegal timber trade, the French CA has still not reported any closed investigation cases for violation of the prohibition obligation, which is deeply worrying for WWF. Although proving illegality of imported timber and timber products can be complex, WWF urges France to find solutions, possibly by cooperating with its own national enforcement agencies, but also European and international ones, to bring concrete results on the short term.

1. Penalties & Sanctions

With a combination of administrative and criminal penalties (up to 2 years of imprisonment, 7 years in the case of organized crime and fines up to €100,000, or €500,000 if illegal timber is placed on the market as a result of actions qualified as organized crime), France's legal framework allows for rather dissuasive sanctions, despite the fact that the maximum financial penalty is not high.

It is positive that the maximum financial penalty is the same for both the violation of the Due Diligence System and prohibition obligations, since fines for DDS infringements are usually lower

than the ones for breaches of the prohibition obligation.

The fact that there are provisions in the national legislation for adjusting the size of a fine to the quantity or value of timber is also seen as an important provision by WWF as severity of penalties/fines should reflect the degree of intentional breach, environmental damages as well as the economic scale of the illegality (value of the timber concerned) and possible associated profits.

2. Checks

2.1 Checks: preparation of inspection plans

By using customs data, the CA seems to have a clear and reliable methodology to identify all operators importing timber and ensure that they can be technically checked at anytime.

The fact that most of the Notices of Remedial Actions were based on the CA's own risk assessment shows the CA is able to detect potential breaches on his own.

As laid down in the regulation, CAs must conduct checks in accordance with periodically reviewed plans following a risk-based approach. First of all, the French CA needs to ensure that the number of announced annual checks can be reached to ensure credibility and deterrent effect towards operators, as between March 2015 and February 2017, targets were not met (171 checks performed out of 320 planned for imported timber).

In addition, WWF thinks that by using customs data from the previous year to develop its yearly control plan, the CA takes the risk to work using outdated information. Having more regular updates from the customs could help the CA to more effectively target high risk shipments, before they are long sold.

Beyond identifying high-risk origin countries and important operators, the CA should invest to gain a better understanding of risks associated to products with complex supply chains and assess trade patterns of timber coming from high risk countries. At present time, the CA may still not be aware of the most significant challenges in terms of controls on imported timber, possibly leading to illegal timber being placed on the French market.

The CA also highlights that operators who have previously been checked will supposedly not be rechecked, at least for a couple of years. It is still important according to WWF not to "exclude" any operators from a renewed inspection plan on the basis only that it has been checked "recently", since for the exact same operator, the risk can change rapidly depending on the type of timber purchased.

2.2 General overview

The number of checks, although it has theoretically increased in 2017, is still insufficient.

Between March 2015 and February 2017, the CA checked 0,6% of the domestic operators and 1,22% of the operators placing imported timber on the market.

Between March 2015 and February 2017, 171 importers were checked (out of 320 planned) and targets were not met in 2017, for which the CA planned to control 160 operators acting as importers. 12,9% of the check on imported timber led to the issuance of Notices of Remedial Actions, showing that controls allowed to detect inconsistencies/breaches by timber importers, which is an encouraging signal, although no violations of the prohibition obligation were detected.

Although checks are regularly targeting the due diligence systems of operators importing timber, until now, the prohibition obligation was rarely assessed. WWF sees this as a weakness as

determining if the timber place on the market is legal or not is one of the cornerstones of the EUTR. WWF believes indeed that as soon as weaknesses or loopholes or absence of a proper DDS are spotted, illegal timber and timber products could have entered the supply chain, either knowingly or not, and controls must be thorough enough to identify such cases. According to WWF, as long as the DDS is not in order, checking the legality of timber should become systematic - and this should not be only the results of substantiated concerns or possible suspicion during the check.

There is also a need to pick up misreporting of species, something which requires to go beyond reviewing documents only. Lab testing methods have already been used successfully by some CAs, and are described in the guidance document of the EUTR as being a reliable and helpful risk assessment tool. By not using such methods, the French Competent Authority reduces the probability to detect infringements of the EUTR.

2.3 Experience with checks on the ground

WWF thinks that automatically notifying controls on site ahead, such as done by the French CA, can cause problems related to the efficiency and transparency of the checks undertaken and increase the risk of concealment of a non-compliance, although the CA explains that the main reason justifying such an approach is that the operator is asked to prepare documents ahead of check, so it's better to notify to ensure that the right people will be available.

WWF thinks that if the level of risk identified ahead of the control is high, or in the case of 3rd party substantiated concerns for example, unnotified controls should be introduced for higher chances of detecting illegal timber and timber products.

The French CA outlines that they decide to rely or not on legality documents only on a case by case approach, relies periodically on a list of points of vigilance to assess the risk legality documents may be forged and requires a third party legality verification proof when the risk is non negligible.

The guidance document of the EUTR clearly states that legality documents originating from high risk/corrupted countries cannot be considered as a sufficient proof of legality. WWF believes it is important to have a written protocol and checklist about what and when to ask for documents/information that goes beyond regular official documents, more specifically to enquire about the prohibition obligation. Liaising with stakeholders and authorities in the country of origin can also be a necessary step as soon as the CA has suspicions or that the risk is high.

The CA should challenge the reliability of legality documents coming from high risk countries and rely on a list checkpoints/points of vigilance to assess the risk legality documents may not be genuine and has mitigation measures in place to address this issue, although third party verification schemes and additional audits can help in mitigating the risk of receiving fake documents.

2.4 Follow up

The CA automatically reports back to operators, which is important as regards to transparency and to make sure operators can improve their performance and take appropriate corrective measures if deemed necessary.

After the completion of a control, depending on the severity of the infringement and repeated failure to improve, the CA can make further recommendations to the regional prefect to impose penalties if the operators still appears to be in breach of the EUTR after the issuance of a Notice of Remedial Action, and it is also possible for the CA to issue a *Procès-Verbal* and initiate a penal procedure.

Nevertheless, the French CA does not seem to have a clear decision-making process/mechanism to determine if an operator should be given a notice of remedial action or if this should be reported to the prosecutor for breaches of the DDS obligation.

This is an important step as decisions made after a control are crucial to assess the proper functioning of the EUTR, as this is when the CA decides if an operator should be warned, fined, prosecuted or else. By using clearly established guidelines and possibly thresholds, it helps to ensure consistency between the inspection reports' results and the final decision to issue a sanction or not and to minimize room for interpretation. Using an objective procedure based on transparent and defined criteria should help to achieve such an objective and to distinguish between the different levels of severity of an infringement.

Meanwhile, the issuance of a notice of RA will not automatically trigger a revisit or follow up check by the CA at a later date, which is an important weakness, considering that unaddressed notices of remedial action are supposedly leading to penalties. WWF believes that clear and short deadlines should be systematically fixed and met by the French CA for follow-up checks.

3. Resources & staff training

WWF considers that there should be identified focal points for timber legality/EUTR across all actors along the national enforcement chain. For now, the situation in France does not seem to reflect that, as there are no focal points for the enforcement of the EUTR, neither from the police, nor from the justice. It is yet crucial that each node of the enforcement chain is familiar and have a good understanding of the Timber Regulation to ensure it is enforced effectively.

The frequency of trainings looks satisfactory for WWF. It is indeed important for the CA and the enforcement staff to be part of a continuous improvement process, through regular knowledge and experience sharing as well as through interactions with key stakeholders and timber legality specialists.

From a resource perspective, WWF thinks that the French CA is not sufficiently staffed (as of September, there were 6,3 Full Time Equivalent working on EUTR enforcement, including 4,8 for controls). Besides, having a specific budget dedicated to the EUTR activities would help the CA to perform better, through the hiring of additional persons, in addition to providing more visibility and stability on the short term.

4. Cooperation between authorities

Effective fight against forest criminality requires the whole national enforcement chain to collaborate, share information and work in a coordinated way. In order to counter forest criminality in France, customs, prosecutors and police investigators should be connected with each other and with the CA, as for now there are no formalised collaboration amongst EUTR enforcement entities in-country.

Where possible, international networks should be reinforced for better and early detection of illegality risks in timber supply chains, information sharing on modus operandi, trading routes, etc.

5. Publicly available information

The CA does not systematically publicly report on the actual state of implementation/enforcement of the EUTR in France.

WWF estimates that CAs should communicate much more regularly and transparently about enforcement actions, the register of checks and main infringements detected, e.g. via a public website, newsletters and press conferences. The French CA should introduce regularity in its communication and be install greater transparency towards the public and stakeholders, as an important factor for deterrence and improvement of operators.

For further information:

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