



EUTR News – March 2017 to March 2018

This issue of the EUTR News provides an update on the operation of the EU's law to address illegal logging, the EU Timber Regulation (EUTR), from March 2017 to March 2018. As with all of our previous editions, this issue will include information on what both the European Commission and EU Member States are doing to ensure the proper application of the EUTR, and provide updates on similar legislation internationally.

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1. European Commission support to implementation and enforcement of the EUTR

The European Commission launched legal proceedings for the first time against a Member State for not enforcing the EUTR properly. The legal action against Belgium sends a clear signal to all Member States to step up EUTR enforcement efforts. In addition, the Commission hosted Expert Group meetings on the EUTR to share information and resources amongst representatives from Member States (plus Norway and Iceland).

European Commission launches public consultation on product scope of the EUTR

On 29 January 2018, the Commission launched a [public consultation on the EUTR product scope](#). The [aim of the consultation](#) is to gather evidence and views on whether the current product scope of the EUTR should be amended or not, and if yes, to what extent. The consultation will run until 24 April 2018 and feed into the ongoing impact assessment process.

Currently, printed books, newspapers, manuscripts, musical instruments and chairs with wooden frames are among the timber products that are not within the scope of the EUTR. According to [research](#) published by WWF, by value, only 33% of products that may contain wood are currently covered by the EUTR. This leads to a risk that illegally harvested products are placed on the EU market. This situation can also lead to unfair competition between different industry sectors. An example is printed paper (not covered by the EUTR) which can be imported without due diligence, while EU-based printing companies importing blank paper need to carry out due diligence.

European Commission holds FLEGT / EUTR Expert Group meetings

The Commission Expert Group on the EUTR and FLEGT Regulation held five meetings in Brussels (meetings 13 – 17), bringing together representatives from Member States (plus Norway and Iceland) and the Commission.

[At the 16th meeting](#) in November, a discussion was held about timber, particularly teak, from Myanmar, and the importance of a coherent approach across all Member States. The Ministry of Natural Resources and Environmental Conservation (MONREC) in Myanmar released a statement regarding improvements in traceability and transparency. However, it was agreed that this still falls short of what is needed to demonstrate the origin of the timber and so ensure full due diligence from an EU perspective.

A guidance document on [substantiated concerns](#) was adopted. UNEP-WCMC provided an [overview of the results](#) of the analysis of national reports on EUTR implementation submitted in 2017.

Resources from the 17th meeting in February can be accessed [here](#), and include a draft FLEGT Action Plan Work Plan document and a new [guidance document on risk mitigation measures](#).

Discussion notes from the meeting are not yet online. The next meeting will take place on 19 April.

UNEP-WCMC publishes briefing note on EUTR implementation

The United Nations Environment Programme's World Conservation Monitoring Centre (UNEP-WCMC), contracted by the European Commission, has published its latest briefing note on [developments in the implementation and enforcement of the EUTR](#), covering the period from November 2017 to January 2018. Previous editions covering the periods from [October 2016 to March 2017](#), [April to May 2017](#), [June to July 2017](#), [August to October 2017](#) are also available.

European Commission legal action

In [October 2017](#), the Commission launched legal action against Belgium for not enforcing the EUTR properly, arguing that it has not carried out enough EUTR checks on wood placed on the Belgian market. Between 2013 and March 2017, Belgium had carried out only 26 EUTR checks. If Belgium does not take action, the case could go to the European Court of Justice where Belgium could face financial penalties.

In [December 2016](#), the Commission re-opened a Pilot Procedure ([infringement number 2016/4139](#)) with Slovakia for non-compliance with the EUTR, which first began in 2014, by sending a letter of formal notice. On 27 April 2017, the procedure reached the stage of '[reasoned opinion](#)'. The Commission is calling on Slovakia to step up efforts to comply with the EUTR. Slovak authorities still need to provide evidence of appropriate rules on penalties in case of a breach of the EUTR, to ensure effective application of the EUTR.

European Commission holds illegal logging and deforestation conference

The European Commission held a conference '[Tackling illegal logging and deforestation: progress made and opportunities for future action](#)' in Brussels from 21 to 23 June 2017. The first half of the conference focused on the future implementation of the FLEGT Action Plan (2017-20), with discussions focused around a [draft version of the work plan](#) for FLEGT implementation, published by the Commission. The second half was on potential initiatives to address other forms of deforestation and forest degradation, with a focus on commodities associated with deforestation. Participants also discussed initiatives to address deforestation, such as an EU action plan on deforestation (based on the European Commission's [draft feasibility study](#)), and opportunities to increase EU action. More detail on the draft documents are available [here](#).

A new draft of the FLEGT Action Plan work plan dated February 2018 can be accessed [here](#). The final [feasibility study](#) was published on 16 March.

2. Member State enforcement of the EUTR

In the past year, a number of Member States have stepped up enforcement efforts against non-compliant operators. A Swedish court handed down an unprecedented penalty to a company that has failed to take measures to comply with the EUTR, following an earlier injunction. In the UK, the first two British companies were fined for breaching the EUTR, and in the Netherlands, two companies were found guilty of placing teak from Myanmar onto the European market without sufficient due diligence. These decisions signal that EUTR enforcement is beginning to be more effective in certain Member States.

Member State enforcement cases during 2017-2018

Swedish companies in court for breaching the EUTR

The Swedish competent authority has [filed a case against](#) an operator that has [failed to take action](#) after receiving an injunction for breaching the EUTR. The competent authority has requested that the administrative courts apply an 800,000 SEK (approx. €79,000) fine to the non-compliant operator. In March 2018, an administrative [court confirmed](#) the fine. In addition, the competent authority issued a [prohibition decision](#) against an operator importing teak from Myanmar.

Access the court decision [here](#).

Two UK companies fined for breaching EU timber regulation

In October 2017, furniture seller Lombok became [the first UK company to be fined for breaking the law that stops illegal timber accessing the UK market](#). The company was fined £5,000 for placing a sideboard on the market which was imported from India without carrying out the required due diligence assessment, breaking UK and EU law.

In March 2018, a second UK company, Hardwood Dimensions (Holdings) Ltd, was [fined £4,000 for failing to ensure that timber it placed on the market from Cameroon was legally harvested](#).

German courts fine company for breaching Unfair Competition Act

In November 2017, Dänisches Bettenlager, a German furniture and home accessories retailer, was fined €10,000 by a German court for breaching the Unfair Competition Act. The legal action was initiated by the Association of Social Competition (Verband Sozialer Wettbewerb) based on the results of WWF Germany's analyses, which found several irregularities in relation to the origin and species of timber in products distributed by Dänisches Bettenlager. The court confirmed a claim of false declaration. This is the fourth time that the company was found to be in breach of the Unfair Competition Act since 2014.

Update on the German CA's seizure of wengé logs from the DRC

In October 2013, the German competent authority (CA) was [alerted to informalities](#) in the certificates of origin for two shipments of wengé logs from the Democratic Republic of Congo.

The CA seized the shipments and identified forged documents, which they considered made the timber illegal under the German Wood Trade Security Act for the implementation of the EUTR. The Administrative Court in Cologne confirmed the forged documents in June 2017, after the operator launched an action, which entitled the German CA to carry out a seizure under the regulations of the Wood Trade Security Act. The logs, with an estimated value of about €1000/m³, will be put up for auction, with the proceeds going to the Federal Republic of Germany.

Dutch court orders competent authority to check importers of Brazilian timber

In July 2017, the Dutch competent authority (the NVWA) was ordered to restart investigations and checks on a number of Dutch importers of Brazilian timber. This followed [a finding by the court](#) that the NVWA's policy on enforcement of the EUTR was not 'effective, proportionate and dissuasive'. The court ordered the NVWA to take a new fully substantiated and evidenced decision within six weeks. This court case is, to our knowledge, the first instance where the quality of enforcement actions undertaken by a EUTR competent authority has been scrutinised by a Member State court.

For more information on this case, please also see ClientEarth briefing *National EUTR penalties: are they sufficiently effective, proportionate and dissuasive?* under Section 4 below.

Dutch court issues fine against company importing timber from Cameroon

A Dutch court confirmed in May 2017 the penalties imposed by the competent authority on a Dutch importer of Cameroonian timber. The company had been issued an injunction and a non-compliance penalty of €1,800 per cubic metre of timber placed on the market, because it had not complied with the EUTR due diligence obligation. The importer was not in a position to provide evidence to the competent authority that it had gathered information tracing back the entire supply chain of the imported products. The court clarified that it is essential for competent authorities to be able to verify how the mandatory EUTR risk assessment has been carried out.

Access the judgment and a short analysis [here](#).

Updates on the legality of teak from Myanmar

[Competent authorities in Denmark, Germany, Sweden and the UK have taken action](#) to stop imports of illegally harvested timber from Myanmar. In Denmark and Germany, the competent authorities issued injunctions to operators who had not fully complied with the EUTR due diligence requirement. In Sweden, the administrative court ruled that a company (Almträ Nordic) was in breach of the EUTR.

In October 2016, the Dutch competent authority (NVWA) found Dutch timber company, Boogaerdt Hout, to be in [breach of the EUTR](#), following evidence submitted by the Environmental Investigation Agency (EIA) that the company was placing teak from Myanmar onto the European market without carrying out sufficient due diligence. In November 2017, along with another unidentified company, Boogaerdt Hout was found guilty and NVWA imposed a preventive fine of €20,000 per cubic metre. The case is still ongoing.

During a meeting of the FLEGT/EUTR Expert Group in November 2017, the steps taken by Member States regarding operators placing timber from Myanmar on the market were discussed and the importance of a coherent approach across all Member States in addressing this matter highlighted.

Further to the first wave of EUTR enforcement cases linked to imports from Myanmar, the Ministry of Natural Resources and Environmental Conservation (MONREC) in Myanmar released a statement in March 2017, committing to streamlining their systems. MONREC has been working on developing a comprehensive Timber Legality Assurance System (MTLAS) that will meet international best practice standards.

Enforcement officials gather for Timber Regulation Enforcement Exchange meeting

The Timber Regulation Enforcement Exchange (TREE) meetings bring together enforcement officials from EU Member States, Australia and the US to support coordinated efforts to address the trade in illegal timber.

The latest TREE meeting was held in October 2017. Topics discussed included: legality risks and due diligence standards in supply chains; legality risks in complex supply chains; new certification standards to help Micro, Small and Medium Enterprises (MSMEs) demonstrate legality; and recent enforcement action related to Peru. Resources from the meeting, including summaries of presentations and discussions, are available.

3. Other EU and international updates

In the EU and internationally, several organisations and institutions have been working to address the problem of illegal logging. In Japan, a new law against illegal logging came into effect and Australia ended its 'soft start' compliance period.

EU

European Commission notice on Brexit

The European Commission has published a [notice to stakeholders](#) on the EUTR website of DG Environment related to Brexit and its consequences on the policy area of illegal logging and related trade. It aims to draw the attention of stakeholders to the legal impact of the UK's withdrawal from the EU on private parties. Stakeholders are reminded that once the UK leaves the EU it will become a 'third country'. Depending on the exact terms of a future withdrawal agreement and subject to any transitional arrangements, the Commission points out that EUTR due diligence will apply to UK timber exports to the EU-27, irrespective of the country of harvest, that Monitoring Organisations established in the UK will no longer be able to operate in the EU-27 and that FLEGT VPAs will no longer apply to the UK.

Update on Białowieża Forest

In February 2018, [the Advocate General of the Court of Justice of the EU issued a legal opinion](#) confirming that increased logging in Poland's Białowieża Forest [breached EU nature laws](#). The final ruling is likely to be issued in the coming weeks. If the Court finds that the decision to increase timber harvesting in Białowieża Forest breaks EU law, the Polish government will have to reverse or suspend it. This opinion follows the decision of the Court of Justice of the EU to [uphold an emergency ban on logging in Poland's Białowieża Forest](#) in November 2017.

Also in November 2017, ClientEarth submitted an EUTR complaint to the Polish competent authority asking it to check whether any timber illegally harvested in Białowieża Forest has been placed on the Polish market in violation of the EUTR. The case is still ongoing.

International

Australia's Illegal Logging Law update

[The Australian government announced in October 2017](#) a reform of the Illegal Logging Prohibition Regulation, the Australian illegal logging law. One of the key points of the reform was the introduction of a new 'deemed to comply' arrangement for FSC and PEFC certified products, which would have exempted these products from the due diligence obligations under the Regulation. The Australian Senate blocked this exemption in February 2018 and upheld the due diligence requirements under Australia's illegal logging law. Earlier this year, the 'soft start' period of the law, which was limiting enforcement action to serious or deliberate breaches of the law, came to an end so that it can now be fully enforced.

Japan introduces new system to reduce illegal timber trade

On 20 May 2017, the Japanese 'Clean Wood Act' entered into force. The new law introduces a [voluntary system](#), where only businesses who voluntarily register have an obligation to check the legality of the timber they import or trade, or risk losing their registration. With this law, Japan is joining the efforts of the EU, US and Australia in developing laws to stop illegally harvested timber from entering their markets.

While these laws try to do the same thing, there are some important differences between them. You can find more information in a table developed by ClientEarth to [compare the Japanese, EU, US and Australian laws](#). It is also available in [French](#), [Japanese](#) and [Chinese](#).

New regulation to stop illegal deforestation passed in Ghana

In November 2017, [Ghana passed a new regulation](#) that aims to stop illegal deforestation and reduce the sale of illegal timber. The [legislative instrument](#) is part of broader reforms to ensure that all of Ghana's timber is legal and to promote better management of the country's forests. The legislative instrument brings together and reviews a number of existing regulations to solve unclear rules and procedures. The legislative instrument is an important step in Ghana's on-going process to verify and guarantee the legality of its timber under the VPA with the EU. It is anticipated that the passing of the legislative instrument will lead to a joint assessment of the Legality Assurance System (LAS) by the EU and the government of Ghana. A positive outcome of this assessment would allow for an announcement of Ghana's readiness to begin issuing FLEGT licenses.

One-year of Indonesia FLEGT

In the first year of FLEGT licenses, Indonesia has exported more than [€1 billion](#) worth of FLEGT licenced timber and timber products to the EU. Indonesia and the EU are now working together to address some practical implementation issues that have been identified, and to further strengthen the licensing system.

28th Illegal Logging Update and Stakeholder Consultation Meeting

This year, Chatham House is planning to hold the [28th Illegal Logging Update and Stakeholder Consultation Meeting](#) in the autumn. Provisional dates for the event are 8-9 November 2018. The annual event will bring together 250 people from across the forest sector, and provide an opportunity to share information, network and discuss options for addressing key issues. You can view the presentations and meeting summary from last year's update meeting [here](#).

4. Publications and resources

Over the last year, many publications and resources have been released. Below is a selection of resources and publications that aim to inform stakeholders across the EU and internationally, on progress and key elements related to the EUTR.

EU

FLEGT Independent Market Monitoring project moves forward

The [International Tropical Timber Organisation](#) (ITTO) re-launched their [EU FLEGT Independent Market Monitoring \(IMM\) project](#) on 1 April 2017. The project aims to monitor the timber trade and market impact of the FLEGT Regulation in Voluntary Partnership Agreement (VPA) countries and the EU. To begin with, the ITTO developed an IMM [baseline report](#), which analyses VPA countries' timber production and VPA partner trade flows to the EU and elsewhere from 2004-2014. The IMM project has launched its [website](#) and published the [first edition of its quarterly newsletter](#).

NEPCon series of national EUTR workshops

During October and November, NEPCon held [free training courses](#) on new tools and risk assessments that make due diligence simpler, aimed at small to medium-sized enterprises across 12 Member States. The trainings included sessions on compliance with the EUTR's due diligence requirement, practical issues related to legality verification, NEPCon's due diligence tools and online [Sourcing Hub tool](#), and the relationship between different timber certification schemes and EUTR requirements.

In March 2018, NEPCon also held the final event of their 'Supporting Legal Timber Trade' project, the [Sourcing Legal Timber 2.0](#) conference.

NEPCon EUTR guide for retailers

NEPCon has [published new guidance](#) for EU companies explaining on what products due diligence needs to be carried out, and how to do the due diligence.

EIA publishes new report on the connection between EUTR and Lacey Act

This [report](#) explores new legal analysis by the Environmental Investigation Agency (EIA) that details the existing but previously unidentified relationship between the EUTR and the USA's Lacey Act. It argues that EUTR offences constitute predicate offences under the Lacey Act and products containing non-EUTR-compliant timber exported to the US are contraband under US law, creating risks and liabilities to different actors across the US and EU.

ClientEarth briefing on national EUTR penalties

In a new [briefing](#), ClientEarth takes a closer look at EUTR penalties imposed by national authorities and courts on companies breaching the EUTR since it came into force five years ago. The briefing focuses on the meaning of “effective, proportionate and dissuasive” penalties and looks at whether national EUTR authorities apply this standard in practice.

ClientEarth EUTR implementation and enforcement updates

ClientEarth continued to look at [implementation and enforcement practices](#) of the EUTR in countries across Europe. ClientEarth has now produced short briefings about 12 Member States, including two new briefings on Poland and Bulgaria.

These briefings provide key information on the national implementing legislation for the EUTR, as well as top-line information on the enforcement approaches in different Member States. They point out strengths and weaknesses in penalty regimes and enforcement practices, and highlight opportunities for EU (and non-EU) civil society to support EUTR enforcement.

Fourth annual FLARE meeting held in Copenhagen

In partnership with the University of Copenhagen and the University of East Anglia, the 4th Annual FLARE meeting will be held at the University of Copenhagen, 17-20 October 2018. A special event on [Timber Legality, the Timber Legality Research Symposium](#), will be held on 17 October.

Asia

Forest Trends compares Asian approaches to regulating timber imports

A [Forest Trends report](#) published in August 2017 presents legislative developments in six Asian countries in the area of wood product imports. Japan, the Republic of Korea, China, Vietnam, Indonesia and Malaysia have all taken steps to develop regulations designed to exclude illegally logged timber from their markets and the report analyses the latest available information on these developments.

Feasibility analysis on options to regulate timber imports in China

The EU FLEGT Facility and CAF have published a [feasibility analysis](#) on the incorporation of timber legality requirements into Chinese law to promote trade in legal forests products. This report was prepared in the context of the EU – China Bilateral Coordination Mechanism. It aims to identify the regulatory options that China could follow in developing legislation on the legality of timber and timber products' imports and assess the feasibility of these options.

EU FLEGT Facility published briefing on timber trade in South Asia

The EU FLEGT facility has published a briefing '[Cross-border Timber Trade in the South Asian Association for Regional Cooperation \(SAARC\) Area](#).' It documents the leading timber trade partners of the SAARC region and predicts future timber trade patterns. It also provides recommendations to promote legal timber trade, the EUTR and sustainable forest management within the region.

South America

Brazil launches comprehensive timber-tracking database

Brazil's federal environmental agency has [launched a centralised database](#) to comprehensively track timber from source to sale. The system, called Sinaflor, allows individual trees to be electronically tagged and monitored via mobile phones. The system was proposed in the 2012 Forest Code, which enabled the federal government power to create and manage a national system to regulate the supply chain of timber.

Worldwide

SPOTT toolkit updated to include timber, pulp and paper

International conservation charity ZSL (Zoological Society of London) has announced the expansion of its sustainable commodities monitoring platform, SPOTT (Sustainability Policy Transparency Toolkit), to cover the [timber, pulp and paper industry](#), following three years of success encouraging greater transparency in the palm oil sector.

ETTF launches new Timber Trade Portal

A new [Timber Trade Portal](#) has been launched as websites hosted by the European Timber Trade Federation and the Association Technique Internationale des Bois Tropicaux were merged. The portal enables users to consult precise information on the legal trade of timber in 23 producer countries. It contains country fact sheets that detail each country's legal framework and governance situation, data on the timber market, and explanations on the current institutional methods to combat illegal timber.

World Resources Institute launches Open Timber Portal

The World Resources Institute (WRI) has launched a new online portal to improve access to country-specific information about forest management and harvesting. The [Open Timber Portal](#) (currently in beta testing) compiles information from official concession boundaries and the list of registered forest operators from governments; documents uploaded by forest operators to demonstrate compliance; and observations by third party monitors.

Earthsite launches Timberleaks

Earthsite has developed a new online resource, [Timberleaks](#), with information on suspect timber in international supply chains.

BVRio publishes practical guide to conducting due diligence of tropical timber products

BVRio has developed a '[Practical guide to conducting due diligence of tropical timber products](#)' for companies importing timber into the US and EU. The guide focuses on timber coming from Brazil and Ghana, summarises the regulatory regime in each jurisdiction and provides a list of essential documents that need to be collected, a guide to how to analyse the documents, and a

summary of the main risks associated with timber legality that importers need to consider for due diligence.

BVRio launches due diligence tool

BVRio has launched a '[Due Diligence and Risk Assessment system](#)' to help companies evaluate the supply chain of timber imports from Brazil and Ghana in order to facilitate compliance with the EUTR and the US Lacey Act. The tool cross checks official documentation, external data sources, and satellite imagery to assist companies conducting due diligence.



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