Substantiated Concerns

Elements for a common understanding

Substantiated Concerns and Cooperation
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The legal background

Operators & monitoring organisations

• “...competent authorities should endeavour to carry out checks when in possession of relevant information, including *substantiated concerns* from third parties.” (EUTR Preamble 21 & 22)
The legal background

Operators

• “Competent authorities shall carry out checks…”
  • “in accordance with a […] 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 ... concerning compliance by an operator with this Regulation”

(EUTR Article 10)
The legal background

Monitoring organisations

• “Competent authorities shall carry out checks at regular intervals to verify that monitoring organisations [meet their role] ...”

• “Checks may also be carried out when the competent authority [has] relevant information, including substantiated concerns from third parties ...”

(EUTR Article 8)
Elements of substantiated concerns

Substantiated concerns:

• information, presented by a third party which suggests an operator or a monitoring organisation is not complying with their obligations under the EUTR.

A substantiated concern:

• should lead to appropriate follow up action by the competent authority
• does not need to provide conclusive evidence of non-compliance
• does need to raise relevant concerns about compliance
Challenges to date

• ‘Non-official’ information presented that contradicts ‘official’ documentation

• When contradictory information about the legality of timber exists:
  • What is an acceptable/reasonable response by an operator/monitoring organisation?

• Substantiated concerns founded on ‘illegally’ acquired information

• Lack of communication about how substantiated concerns are followed up on
Principles for use

• How credible is the information presented?
• Implicit recognition by EUTR: official documentation may not be sufficient/credible
• Where a substantiated concern challenges the credibility of official documentation:
  • Is more information required?
  • Does it establish a breach of the prohibition?
  • Is there any way to avoid a risk of illegality?
Principles for use

• Did the operator/monitoring organisation know about the information?
• Should the operator/monitoring organisation have known about the information
• Can the operator/monitoring organisation show an appropriate reaction
• How does the competent authority communicate its reasoning and decision to the third party?
The opportunity

- Third parties present information that:
  - reduces the regulatory burden on competent authorities
  - improves the functioning of the EUTR
- Create an upward trend in enforcement:
  - More information about risk/illegality is made public
  - The way the law is enforced demands that the trade responds to that information
Thank you

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