

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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