

WWF: EUTR ENFORCEMENT REVIEW
COUNTRY ASSESSMENT SHEET: BULGARIA

The following analysis is based on the answers provided by the Bulgarian Competent Authority to the questions asked by WWF. The survey was carried out in 16 Members States (Austria, Belgium, Bulgaria, Croatia, Denmark, France, Germany, Hungary, Italy, Netherlands, Portugal, Romania, Slovakia, Spain, Sweden, UK). The EU synthesis, together with the methodology including the full list of questions, can be found [here](#).

According to WWF, the overall performance of the Bulgarian Competent Authority (CA) is still insufficient to effectively tackle the trade in illegal timber in Bulgaria.

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

Penalties & Sanctions

The national legislation in Bulgaria does not include criminal sanctions (such as imprisonment), but only administrative sanctions which means the legal framework is partly incomplete.

In addition, the range of financial penalties is too low to have any deterrent effect on operators (comprised between €50 to €2500 for legal entities).

However, the fact that there are some provisions in the national legislation to adjust the severity of sanctions to the degree of intentional breach, environmental damages and economic scale of the illegality (value of the timber concerned) or possible associated profits, remains an added-value to make penalties more effective and proportionate.

Checks: prior analysis

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, although customs data only provides the importing country and not the harvesting country.

Nevertheless, although the import of timber does not represent a significant volume, import trends are not being followed specifically, which could still mean that the CA does not have a good overview of the high risk timber trade (imports) as a way to make sure they are aware of the most significant challenges in terms of controls on imported timber, possibly leading to some illegal timber being placed on the market.

On the contrary, the CA has a good overview and knowledge about possible risks related to forest management at domestic level.

The fact that notices of Remedial Action were issued on the basis of the CA's own risk based assessment shows that the CA can detect some infringements on his own, based on its risk analysis.

The Bulgarian CA has only covered a relatively narrow scope for imported timber product (CN chapters 4401 and 4403). By controlling a wider variety of timber products, the CA would also send a stronger message to operators to show that operators can be checked anytime, regardless of the (high risk) products they sell. Targeting only a specific set of products make checks much more predictable and

therefore does not fully act as a deterrent to fraud.

Compliance checks

There is a clear increase in terms of checks number as 700 checks were performed from March 2013 to February 2015, and 1156 from March 2015 to February 2017, which is a positive trend, that should be encouraged. Between March 2015 – February 2017, the CA checked 18% of the domestic operators, which represents 9% per year on average.

Between March 2015 and February 2017, 56 notice of Remedial Actions were issued for the DDS obligation for domestic timber (approximately 13% of the operators controlled), and 20 for the DDS obligation on imported timber (approximately 50% of the operators controlled).

There were two court cases following controls on domestic timber, but no penalties or court cases for imported timber. Until now, there have not been any checks on the prohibition obligation for imported timber, which is clearly worrying as this is one of the main cornerstones of the EUTR.

Indeed, WWF believes that as soon as weaknesses or loopholes or absence of a proper DDS are spotted (which is the case in Bulgaria as almost all notice of RA were issued following a breach in the DDS), 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.

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 Competent Authority reduces the probability to detect breaches of the EUTR by operators.

Formal investigation

WWF believes that by not notifying controls on site ahead when substantiated concern are received, the Bulgarian CA chooses a relevant approach. Indeed, if the level of risk identified ahead of the control is high, unnotified controls should bring higher chances to detect illegal timber and timber products.

On the other hand, the CA explains that for planned checks, operators are automatically informed in advance, which can cause problems related to the efficiency and transparency of the checks undertaken. WWF believes that the CA should also decide to carry out unnotified controls for checks which are part of the yearly inspection plan, and encourage innovative methods for controls, such as random sampling or controls at the harbour - to increase the chances to detect breaches by operators. The Bulgarian CA outlines that they decide to rely or not on legality documents only on a country by country and case by case approach. 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.

Follow up

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

Nevertheless, after the completion of a control, the Bulgarian CA does not 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 or prohibition obligations. 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.

The CA explains that after the issuance of the notice, a follow up check is performed, and the deadline after the first check will depend on the type of infringements, but this usually happens within a few weeks after the initial control. WWF believes that this delay is reasonable, considering that unaddressed notices of remedial action are supposedly leading to penalties, and that it is important to ensure corrective actions are implemented by operators.

Resources and staff training

The frequency of trainings looks satisfactory for WWF but could still be increased (In 2017, 3 training sessions were conducted for experts in charge of EUTR enforcement and one training was carried out on a national level in September 2018, besides annual trainings). 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 Bulgarian CA is understaffed and that there is a need to increase the number of persons in charge of enforcing the EUTR. Besides, WWF believes that having a specific budget dedicated to the EUTR activities would help the CA to perform better, for example by carrying out lab tests, in addition to providing more visibility and stability on the short term. In addition, although 20 persons are working on the EUTR enforcement, none of them work full-time on the topic. WWF believes that having appointed focal points who are specialists of the EUTR could bring an added value and help to enforce the EUTR more effectively.

Cooperation

WWF welcomes the exchanges between the Bulgarian CA and CAs from neighbouring countries, but considers these exchanges are not sufficient. WWF believes that in order for the enforcement of the EUTR to be more effective, 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.

Publicly available information

The Bulgarian CA mentions that a brief summary of the inspections that were carried out and other information related to the implementation of the EUTR are being published in the annual activity report of the CA, which is positive.

However, WWF does not consider this to be sufficient, and WWF strongly pushes the CA to become more transparent about publicly reporting progresses on achieving commitments defined in their national action plan.

Indeed, along with sanctions, more transparency about enforcement actions (and criteria used for checks) is important for deterrence and improvement of operators. Pro-actively publishing the register of checks, which is not done by the Bulgarian CA, as well as communicate about the type of checks and the nature of the problems found, could both be more dissuasive and educate operators and stakeholders on how to improve.

In conclusion, 6 years after the EUTR came into force, only a very small proportion of the Bulgarian operators was checked, which is insufficient.

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 zero penalties reported on the period between March 2015 and February 2017 for imported timber.

In light of all the information on the prominent role of the EU in the illegal timber trade, the Bulgarian CA has still not carried out any checks on the legality of imported timber, and as a consequence has not reported any closed investigation cases for violation of the prohibition obligation on imported timber, which is deeply worrying for WWF. Although proving illegality of imported timber and timber products can be complex, WWF urges Bulgaria 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.

The national context in Bulgaria has led the CA to focus much more on domestic timber than imported timber, but only 2 court cases for domestic wood took place between March 2015 and February 2017. The amount of illegally harvested wood at national level has remained the same level and continues to be between 1/4 and 1/3 of the amount of the officially harvested wood and generates approximately 76 millions of euros for those implementing the illegal harvest¹. The state forestry administration has taken significant steps during the past five years to create legal, organizational, staff and technical prerequisites to reduce illegal logging in the frame of the EUTR. Although this goes into the right direction, this is still not sufficient to address effectively the pervasive problem of illegal logging in Bulgaria. A stringent and global enforcement of the EUTR is more than ever needed in Bulgaria in order to avoid an increase in the proportion of illegal logging.

For more information:

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¹ http://d2ouvy59p0dg6k.cloudfront.net/downloads/analysis_of_illegal_logging_in_bulgaria_2013_2017.pdf