

WWF: EUTR ENFORCEMENT REVIEW
COUNTRY ASSESSMENT SHEET: ROMANIA

The following analysis is based on the answers provided by the Romanian 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).

Abstract

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

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, a significant proportion of the operators in Romania was checked, which is a positive signal according to WWF.

Also, although this is not only of the responsibility of the Competent Authority, there haven't been any court cases, and the number of penalties still remain insignificant to trigger any dissuasive effects on operators, at least for imported timber.

Finally, in light of all the information on the prominent role of the EU in the illegal timber trade as well as the prevalence of illegal logging at domestic level, the Romanian 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 Romania 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.

Penalties & Sanctions

From a general perspective, the legal framework is partly incomplete, as it does not include criminal sanctions for breaches of the EUTR although the Forest Code clearly stipulates that felling without legal rights and tree theft, are punished with imprisonment from 6 months up to 7 years.

In addition, the range of financial penalties is too low to have any dissuasive effect on operators (from approximately €3.150 to €4.200 for violation of the prohibition obligation and from €1650 to €3.150 for not using or implementing the Due Diligence System as required by the regulation).

In addition, the existence of a 45 days grace period (for DDS infringements detected during a first control, operators have 45 days to implement corrective measures).

There are no provisions in the national legislation for adjusting the size of a fine to the quantity or value of timber, which is a weakness according to 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.

Nevertheless, it is possible for the Romanian Competent Authority (CA) to impose direct fines on

operators at the end of a control, which can make the enforcement procedure more effective to some extent.

Checks: preparation of inspection plans

By using customs data, the CA seems to have a clear and reliable methodology to identify all operators and ensure that they can be technically checked at anytime. For domestic timber the situation is similar, as the Competent Authority has an up to date register of all national operators.

As of February 2017, the CA estimated that there were 4,372 operators for domestic timber and 162 for imported timber.

As laid down in the regulation, CAs must conduct checks in accordance with periodically reviewed plans following a risk-based approach. The Romanian CA says it has a formal action plan but it is unclear if it contains any clear time-bound targets, which can cause both delays in achieving the CA's objectives while weakening the enforcement of the Timber Regulation. Further efforts should be undertaken to prepare a more detailed action plan, with clear deadlines for checks.

On the other hand, the last version of the inspection plan was created for 2 years, as the CA aims at controlling all operators at least once for domestic timber.

The fact that over the period between March 2015 and February 2017 most of the Notices of Remedial Actions and penalties were based on the CA's own risk assessment shows the CA is able to detect potential breaches on his own.

The CA has not formally assessed trade patterns of timber coming from high risk countries, as well as on high risk products with complex supply chains. According to WWF, this 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.

At domestic level, the Competent Authority has a good perception on the risks related to forest management, and it has developed maps with stakeholders to identify illegal logging risks. These risks are reduced thanks to the implementation of the SUMAL, which is an online wood traceability system. The Romanian CA has also 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.

General overview

The number of checks on both imported and domestic timber have been quite important, as roughly half of the operators dealing with imported timber (79 operators controlled out of 126 initially planned) were checked between March 2015 and February 2017 (25% per year).

30 notices of remedial actions were issued linked to the DDS obligation and 7 for traceability breaches, although no penalties were issued on operators importing timber and no court cases were reported for this period.

In 2018, the number of checks on operators importing timber has increased to 118.

For domestic timber, still between March 2015 and February 2017, 1492 operators were checked, out of the 3759 initially planned, representing 34% of the domestic operators.

Over the same period, one Notice of Remedial Actions was issued for the prohibition obligation, 460 for DDS obligation, including 104 that led to a penalty.

Although targets for checks were not met, this frequency of controls shows that the Romanian CA showed efforts to quickly implement the EUTR, a positive trend that should kept being encouraged. The CA explains that checks are systematically targeting the due diligence systems as well as the prohibition obligation to determine if the timber place on the market is legal or not, which is a good signal.

Indeed, WWF believes that as soon as weaknesses or loopholes or absence of a proper DDS are spotted (which is the case in the Romania as all Notices of Remedial Actions 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.

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

Experience with checks on the ground

WWF believes that usually not notifying controls on site ahead, such as done by the Romanian CA, is a good approach.

Indeed, 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.

Although the Romanian CA uses one inspection grid as a way to follow a clearly established protocol/methodology to check operators, WWF believes that it should be updated to reflect lessons learnt during previous checks, (which has not been done since 2015), as WWF thinks to be important to ensure the approach to check is refined and improved continuously.

The Romanian CA outlines explain that they don't have a protocol/methodology in place to decide when to rely or not on legality documents for imported timber. 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.

At domestic level, the use of the online traceability system (SUMAL), significantly reduces the risk to falsify legality documents.

The use of SUMAL is mandatory for forest administrators and for all operators and traders who harvest, store, process, market or carry out import-export operations with wood or wood materials. It covers every part of the process, from wood as a forest to wood as products.

Every legal document is registered in this database (volume estimation doc on standing stock, harvesting authorization, delivery documents for timber), although the IWoodTracking system is not systematically and consistently used by controllers.

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 on domestic timber, the Romanian CA has a clear decision-making process to determine if an operator should be given a notice of remedial action or if this should be reported to the prosecutor as the national legislation clearly separates contraventions from criminal offenses, by clearly established thresholds.

On the other hand, there does not seem to be a formal decision-making process to decide about next steps when there are breaches linked to imported timber; which can therefore raise issues in regards to the proper implementation of the EUTR.

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.

In addition, the CA states that there is a 90 days deadline for a follow-up check after the issuance of a notice of RA (45 days in the case of infringement of the DDS obligation). WWF believes that this delay is too long, and that a closer deadline should be systematically fixed and met for follow-up checks, in light of their importance, considering that unaddressed notices of remedial action are supposedly leading to penalties.

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 Romania 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 (the CA explains that they took part in 4 training sessions organized by external organizations in 2017) but could still be increased. It is indeed important for the CA and the enforcement staff to be are 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 Romanian CA is sufficiently staffed, with 700 persons working on the EUTR, although this does not represent Full Time Equivalent, and the CA should ensure that the enforcement staff is strategically organized in light of the risks identified.

There is no dedicated budget for EUTR activities in Romania. WWF believes that having a specific budget 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 and ensure that resources available at the CA

warrant regular inspections for effective EUTR implementation.

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 Romania, 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. WWF welcome the proactiveness of the Romanian CA to exchange with other CAs and encourage it to continue these exchanges. 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 CA does not systematically publicly report on the actual state of implementation/enforcement of the EUTR in Romania.

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 Romania 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.