

DISCLAIMER

This guidance document has been developed in the context of the Commission Expert Group on the EU Timber Regulation and the Forest Law Enforcement, Governance and Trade (FLEGT) Regulation. It has not yet been officially adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Member States' Competent Authorities and the European Commission Service responsible for these pieces of legislation, and may not be, in any circumstances, regarded as stating an official position of the European Commission.

Guidance document - Substantiated Concerns

Relevant Legislation: EUTR- Article 8.4 and Article 10.2

Substantiated concerns provided by third parties:

According to articles 8 (4) and 10 (2) of Regulation 995/2010 (EUTR) an EUTR Competent Authority (CA) may carry out (additional) checks on Operators and Monitoring Organizations when it is in possession of relevant information, including on the basis of **substantiated concerns** provided by third parties.

A substantiated concern could be described as any relevant information regarding non-compliance with the EUTR– and supported by proof or evidence - that is brought to the attention of an EUTR Competent Authority. The substantiated concerns may refer to specific shipments, suppliers, Operators or Monitoring Organisations. They may also refer to situations in specific countries of harvest that generate risks of illegal timber being placed on the market and that may require the intervention of Competent Authorities. They may also refer to specific third-party-verification schemes or organisations that are used by suppliers or operators to indicate legality.

Guidance:

A substantiated concern can be presented to the Competent Authority in writing or orally, in line with national administrative procedural rules. It could also be presented at the alleged offenders but also to other operators with a view to raise awareness and – if applicable - to take the relevant information into consideration when exercising due diligence, for example through associations or the press.

When delivering a substantiated concern, the informing party should include as many as possible of the following elements:

1. Information (full name, address, contact) on the subject of substantiated concerns (operator/trader/monitoring organization), when known
2. Information on the individual or organisation submitting the substantiated concern if applicable (full name, address, phone number).
3. Identification of the alleged breach of the EUTR (illegal timber on the market/lack of DDS/not maintaining DDS).
4. The type of evidence e.g. photo, reports, witness, information from reliable sources such as Interpol, Custom Authorities, Producer Country Authorities, Third Country Authorities, etc.
5. Identification of the 'applicable legislation' in the country of harvest that the Operator has not been complied with or any other relevant information that proves non negligible risk of illegally harvested timber.
6. Where the alleged breach of the EUTR takes place/did take place.
7. The object of the alleged breach of the EUTR– identification of species, weight etc.

8. Any other information that might be useful for the investigation of the alleged non compliance with the EUTR.

The Competent Authorities, in view of facilitating third parties' cooperation in the effective enforcement of the EUTR are encouraged, in line with national administrative procedural rules:

- to acknowledge the receipt of substantiated concerns, and
- to respond to the informing party that they have noted the information therein, that the information will be thoroughly assessed and that it may be used in future investigations if deemed appropriate.

In cases where the Competent Authority considers that additional information is required, it is encouraged to invite the informing party to submit such additional information, if available.

Where the substantiated concerns have been assessed as substantial, the Competent Authority should carry out checks and where an EUTR breach has been confirmed, it should take all appropriate enforcement measures in line with national legislation regarding the implementation of the EUTR.

The Competent Authorities are encouraged to inform the informing party on the results of the checks and/or other action(s) taken, in line with national administrative procedural rules.

If a Competent Authority considers that other Competent Authorities might also be concerned, it should transmit the substantiated concerns to them as well as to the European Commission, in accordance with Art. 12 of the EUTR, as for instance, in case the alleged breach might also have taken place in other Member States.

Competent Authorities may further disseminate information on checks carried out in response to a substantiated concern and their outcome in line with Article 11(2) EUTR and EU and national data protection rules and any confidentiality agreements.