

How Information May Be Used to Influence the Enforcement of the EU Timber Regulation

1 Background

The Timber Regulation creates two key requirements. It prohibits illegally logged timber from being placed on the EU market and demands that ‘operators’ take active steps to assess the risk that timber and timber products have been harvested illegally.¹ In both cases, whether or not timber has been harvested illegally must be determined in accordance with the laws in the country of harvest. For operators to meet these requirements, access to and use of information about the timber and the risks that it has been logged illegally, are central.

When enforcing the Timber Regulation, EU Member States will examine whether:

- operators have considered the necessary minimum information;²
- when assessing the risk of illegality, the assessment made was reasonable; and
- operators are paying attention to relevant sources of information when assessing the risk of illegal harvest.

As a new piece of law, the Timber Regulation will take time and the engagement of relevant parties within and beyond the EU to work effectively. Raising awareness of relevant information from timber producing countries is an important and necessary step to improve its impact. In many cases information that is already collected and used at regional/national levels in timber producing countries will be relevant, in which case the Timber Regulation creates the possibility of new audiences for this information. Awareness of information can be made in partnership with EU stakeholders.

For more background information, please look at the ClientEarth document ‘Factsheet on the European Union Timber Regulation’ [add hyperlink]

2 The Importance of Information

Information that relates to whether timber has been harvested legally is fundamental to the operation of the Timber Regulation. This creates an opportunity for information about specific timber practices to be brought to the attention of relevant organisations.

¹ Operators are those that first place timber or timber products on the EU market.

² Including: the species (or all species if a product with more than one); country of harvest and in some cases, sub-national region and concession (even where the timber/product has arrived in the EU via one or more processing countries); and documents or other information indicating compliance of that timber with applicable legislation.

Operators must have access to reliable information to assess the risk that timber has been logged illegally. The more industry actors selling timber and timber products in the EU know about restrictions on logging and of risks of illegal timber logging practices, the greater their obligation to consider and if necessary, alter their purchasing decisions.

The more Member States know about logging practices and are able to recognise and identify key indicators of legality and illegality ('red flags'), the better they will be able to oversee and enforce the Timber Regulation.

3 What is Relevant Information under the Timber Regulation?

The Timber Regulation is concerned with whether the relevant laws in the country of origin have been complied with. Laws are relevant if they fall within one of five following categories of law:

- Rights to harvest timber
- Payments for harvest rights
- Timber harvesting – includes environmental and forest legislation
- Third parties' legal rights
- Trade and customs re forest sector

Information indicating compliance, or the risk of non-compliance, with these laws, is relevant in the context of the Timber Regulation.

4 How Can Information be Used?

The examples given below illustrate how information may be used in the context of the Timber Regulation to raise awareness of legal or illegal logging practices with EU stakeholders. This information may equally be relevant for national authorities.

General Information

For example:

- Information demonstrating that the harvest or export of a particular species is not allowed, according to the laws of the country of harvest.
- Information demonstrating that there is a systematic failure of compliance with a particular forest law in the country of harvest.

Information may be presented to Member State competent authorities to ensure that they are aware of this and take it into account when assessing compliance of timber from that country placed on the Member State's market.

Information may also be presented to specific companies/trade associations that are likely to be using the species in question/timber from that country. Doing so informs these

companies/associations of the risks of illegality and means that Member State competent authorities can work on the basis that they should have been aware of it.

Information specific to a logging company

For example:

- Information demonstrating that a particular logging company has not paid national taxes and/or honored community or benefit sharing agreements, as it should have.
- Information demonstrating that a particular logging company has not respected the terms of timber harvesting permits or has logged without a permit.

If it is possible to identify companies likely to be buying this timber and selling it in the EU - information demonstrating these practices may be presented to them and relevant industry associations. Doing so provides industry with specific information on illegality risks, so that they may re-consider whether they have assessed the risk of illegality in their supply chain correctly.

This information may also be presented to Member State competent authorities, so that they are aware of and better understand relevant risk factors.

Information identifying Illegal Timber in the EU

For example:

- Evidence of illegal logging and chain of custody information that identifies company selling the timber/timber product in the EU.

This may be presented to the company selling the timber in the EU, in order to seek to persuade them to alter their purchasing decisions or enter into a constructive dialogue with their suppliers.³

If this is done and the company takes no action, it could also be presented to Member State competent authorities to seek to compel enforcement actions.

5 Information – Records and Credibility

For information to have the greatest impact, it must be accurately maintained and efforts must be made to increase the credibility of information in the eyes of those to whom it is being directed (EU Member State public authorities and timber/timber product industry). Doing so will increase its potential impact.

The credibility of information may be improved in a number of ways, including by having copies of official documentation, by providing more than one source of information to prove the same fact, or evidencing how the information has been tested.

Examples of how information may be evidence credibly:

³ NB – if information instead points to that timber being sold in the USA, this is relevant under the Lacey Act and NGOs working in the USA should be able to provide support.

- Prohibition on the logging/export of particular species
Copies of relevant legislation/regulatory measures/case law. If the interpretation of the law is disputed, the opinion of legal experts/judges.
- Non-payment of national taxes
Copies from government records, showing that a particular company has not paid taxes, or showing no record of payment of taxes, where such records should exist. Copy of national law to evidence the need to pay these taxes
- Logging without a permit
GPS/photo/video data to show that logging did occur, when and if possible, by whom. Copies of the relevant national law to evidence that a permit is needed.

6 Targeting Information

Information must be tailored to respond to the specific requirements of the Timber Regulation. Specifically, this means explaining what the information being presented shows and why this indicates non-compliance with a law that is within the scope of the Timber Regulation. It will also be useful to present it with extracts from the relevant national law, to clearly make the link between the national law and the information presented.

7 What can Civil Society Organisations do with Information?

This will depend on the type of and audience for this information.

The Timber Regulation has created an opportunity for ‘substantiated concerns’ by third parties (includes NGOs) about non-compliance to be presented to EU Member State competent authorities.⁴ This information may lead to an investigation by the competent authority. Information may be presented to one or more competent authorities.⁵

In some circumstances it may be more useful to present information to particular companies/industry associations, in order to prompt a reaction in their buying practices. This may be done directly or in association with EU based NGOs.

It may also be useful to make information publically available. There are different web-platforms that may be useful for this - in the country of harvest or in the EU. If this is done, making sure information is targeted, clear, accessible and credible will be vital.

For more information, please contact:

Emily Unwin

Lawyer

t: +32 2 808 43 19

e: eunwin@clientearth.org

www.clientearth.org

Elisa Grabbe

Lawyer/Juriste

t: +32 2 808 43 21

e: egrabbe@clientearth.org

⁴ Articles 8(4) & 10(2), Timber Regulation

⁵ Contact details are available at: http://ec.europa.eu/environment/forests/pdf/list_competent_authorities.pdf