



Contents lists available at ScienceDirect

## Forest Policy and Economics

journal homepage: [www.elsevier.com/locate/forpol](http://www.elsevier.com/locate/forpol)

# How to move companies to source responsibly? German implementation of the European Timber Regulation between persuasion and coercion

Sina Leipold

Institute of Social Environmental Sciences and Geography, Forest and Environmental Policy Group, University of Freiburg, Germany

## ARTICLE INFO

## Article history:

Received 23 April 2016

Received in revised form 18 November 2016

Accepted 21 November 2016

Available online xxxx

## Keywords:

Holzhandels-Sicherungs-Gesetz

Implementation deficit

Performance

Illegal logging

Legality verification

## ABSTRACT

Mitigating international trade in illegally harvested wood (products) is an international priority. To support this priority, the European Timber Regulation prohibits placing illegally harvested or traded timber on the EU market, requiring companies to undertake due diligence in sourcing wood (products). To take effect, this regulation needs to be implemented in all European member states.

Although Germany is one of the first member states to transpose and enact the regulation's provisions, its implementation has recently been portrayed as “weak” and ineffective. This article aims to answer why this perception emerged. It scrutinizes implementation performance of the EUTR in Germany.

Based on rich empirical data from stakeholder interviews, documents, and participant observation, this study argues that EUTR performance in Germany is not generally perceived as ineffective. Instead, stakeholder perceptions vary. As stakeholders face major uncertainties connected to market structure and company behaviour, they tend to base their assumptions about the implementation process on two major heuristics. Both focus on the question how to change company behaviour. One stresses the need to *persuade* companies to comply, the other stresses the need to *coerce* them. These heuristics are based on the two larger objectives pursued by different stakeholder groups during policy making of the EUTR: (1) global sustainable forest management and (2) image improvement of the EU wood importing industry.

Based on these different policy objectives, the EUTR does not provide clear guidance on which policy instruments should be given priority. As a consequence, national implementation is turned into a policy-making process. The outcome of this struggle will likely affect the future trajectory of EUTR implementation in other EU member states and in countries exporting wood into the EU.

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## 1. Introduction

Global deforestation and forest degradation has been a major environmental policy issue for the past decades. Illegal logging is seen as one of the key drivers of deforestation and forest degradation. To tackle this problem, the European Union passed the 2010 Timber Regulation. The policy prohibits placing timber (and its products) harvested in contravention to the laws of the country of origin on the EU market. As illegal logging is often associated with weak law enforcement and corruption in “developing” countries, the law aims to regulate global trade flows so as to eradicate demand for illegal wood (products) from “developed” countries.

In order to take effect, this policy needs to be implemented in all European member states. In Germany, the EUTR recently attracted a lot of media attention because it has been portrayed as not being implemented in a manner that meets the regulation's original objectives

(Wirtschaftsblatt, 2015; Süddeutsche Zeitung, 2016). In particular, public observers criticize inadequate penalties and “weak” enforcement. Hence, implementation is seen as insufficient to address the underlying policy problem of illegal logging and trade.

In the field of public administration, such situations are described as implementation “deficit”, “gap”, “failure” or divergence” from policy objectives (e.g. Barrett, 2004; Oosterwaal and Torenlvied, 2011; May and Winter, 2009; Hill and Hupe, 2006; Meyers and Vorsanger, 2003; Jordan, 1999). Some scholars argue that particularly European environmental policies suffer from such implementation deficits (Jordan, 1999; Leventon and Antypas, 2012). In a search to overcome such perceived deficits, implementation studies aim to find explanations of and solution strategies for such “failures” (cf. Oosterwaal and Torenlvied, 2011). In order to evaluate the extent of the failure, policy “performance” is often measured by conformance of policy outcomes with pre-set policy objectives (cf. Leventon and Antypas, 2012; Haverland and Romeij, 2007; Lampinen and Uusikylä, 1998).

This procedure has been suggested also for the assessment of policies tackling illegal logging, including the EUTR. Overdeest and Zeitlin

E-mail address: [sina.leipold@ifp.uni-freiburg.de](mailto:sina.leipold@ifp.uni-freiburg.de).

(2014) argue that “[t]he keys to evaluating the effectiveness” of illegal logging policies like the EUTR “lie in whether progress is made towards achieving the desired performance goals” (p. 44). Yet, in contrast to the official mission statements, Leipold et al. (2016) demonstrate that there is not one coherent policy goal. Instead, the EUTR emerged from the confluence of the environmental objective to promote sustainability of forest management worldwide and the economic objective to protect the image of EU companies importing wood. This led to a persistent disagreement among policy makers about what the policy objectives of the EUTR are. In addition to these diverging objectives, the policy problem tackled by the EUTR – illegal logging – is a phenomenon without official documentation. Hence, any measure of success in reducing illegal logging inadvertently relies on estimates and perceptions (cf. Prestemon, 2015; Gan et al., 2013; Leipold and Winkel, 2016).

This raises the question if and how “performance” of the emerging policies against illegal logging can be assessed. First scholarly accounts assessing potential “performance” of the EUTR and its related policies in the US and Australia strongly focus their attention on the objective of promoting sustainability of forest management worldwide. Some scholars expect the policies to promote private certification schemes and, thus, environmental stewardship in the global forest sector (Overdevest and Zeitlin, 2014; Cashore and Stone, 2014). Others expect them to promote state-driven mechanisms and through these environmental stewardship (Bartley, 2014). A third group expects the promotion of both private certification and state-driven legality verification but argues that both may not promote sustainable forest management worldwide. Instead, their strong focus on organised, “powerful” actors, large scale timber production, and standardization of product and supply chains may reduce sustainability by excluding small scale producers (McDermott et al., 2014). Finally, Leipold et al. (2016) argue that the illegal logging policies in the EU, US, and Australia pursue diverging objectives, not exclusively environmental stewardship. This divergence in objectives combined with the difficulty to measure conformance with the objective to reduce illegal logging raises the question what “performance” actually means for a policy tackling illegal wood (products) trade.

Yet, the actual implementation process and the perceptions of performance in a country implementing one of the laws against illegal logging and trade in the EU, US, or Australia has hardly been analysed up to now, the only exceptions being Leipold and Winkel (2016) on the emerging implementation in the US, Leipold et al. (2016) on preliminary perceptions of implementation in the US, the EU and Australia, Gavrilut et al. (2016), focusing on the EUTR and FSC in Romania, and finally the first formal evaluation of the first two years of EUTR implementation by the European Commission (2016). Other studies partly addressing implementation rely on the policies’ design principles (Overdevest and Zeitlin, 2014; Cashore and Stone, 2014) or their perception in “developed countries” (Bartley, 2014; McDermott et al., 2014).

To fill this research gap, this paper analyses key stakeholders’ understanding of performance in the implementation of the EUTR in Germany. It investigates the transposition of the European legislation into national law, the Holzhandels-Sicherungs-Gesetz (HolzSiG) of 2013, as well as the enactment and enforcement of legal provisions as well as compliance.

Following from the difficulty to pin down specific desired performance goals, the analysis will be based on an “interactive and negotiative model of implementation” (Barrett, 2004, p. 256). These models “tend to see performance as the achievement of what is possible within a particular policy implementation environment (that is, the array of actors and interests, their relative bargaining power, degree of change or value conflict involved, and so on).” (Barrett, 2004, p. 256). With this perspective, this study situates itself between a top-down and the bottom-up perspective on the implementation process, recognizing that the policy-making processes exerts considerable influence on implementation agencies and vice versa.

## 2. Analytical approach and methods

Following from the study’s perspective that combines top-down and bottom-up approaches, the analysis is based on empirical data from stakeholders from all groups involved in implementation – government officials, administration, street-level bureaucrats, NGOs, companies. Data includes:

- 22 semi-structured interviews with key stakeholders in Germany,
- >100 policy documents,
- and participant observation of stakeholder meetings on discussing implementation progress.

Interviewees were selected based on a two-step procedure. First, a comprehensive document analysis was conducted, identifying the core agents involved in EUTR implementation in Germany. This document-guided pre-selection was complemented by a snowball approach, reacting to perceptions of interviewees about who is most relevant in implementation. Interviews were semi-structured (Berg and Lune, 2014). The questions focused on two major topics. First, interviewees were asked about the process of the transposition of the EUTR provisions into the HolzSiG and their assessment of this process. Second, questions focused on the implementation process of the HolzSiG, including the assessment of implementation progress, effectiveness and efficiency, and the role of the diverse stakeholders in this process. Finally, an open question was asked that left room for interviewees to bring up aspects they considered crucial regarding implementation or transposition.

The answers to these questions were analysed according to an interactive and negotiative model to implementation. This model views performance as the “achievement, of what is possible in a particular policy implementation environment (that is, the array of actors and interests, their relative bargaining power; degree of change or value conflict involved, and so on)” (Barrett, 2004, pp. 22–23). This perspective treats performance as a matter of pluralistic and bottom-up evaluation. Hence, the major analytical focus is on assessing implementation in terms of who perceives to have gained or lost what and how these perceptions are negotiated and influence the implementation process. To get a full grasp of these perceptions and understand how they interact, the paper takes on an interpretive approach (Fischer and Forester, 1993). It maps and synthesises the perceptions of involved stakeholders on policy transposition and policy outcomes in Germany. This facilitates a deeper understanding of the emerging implementation dynamics between different involved stakeholder groups and their effects on enforcement and enactment. Stakeholders are organisations or individuals involved in implementation processes (e.g. industry associations, government agencies, NGOs) who influence and are influenced by decisions taken during the implementation process (e.g. about prosecutions or information provision). They are regulated as well as regulating subjects (cf. Stewart, 1996).

The data was gathered between May and August 2014 and was analysed using deductive and inductive coding applying MAXQDA®. As several interviewees insisted that no link be made between their statements and names, direct quotes from interviewees are referenced with aggregated stakeholder categories (“I” = industry

**Table 1**  
Stakeholders interviewed for this research.

Stakeholder group	Number of interviewees	Code
Industry association/company	6	I~
Environmental NGOs	6	E~
Governmental institution	8	G~
Certification organisations	2	C~
Total	22	

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