

DRAFT – 27/09/2016

Guidance document - Substantiated Concerns

Legislative background:

Regulation No 995/2010

(21) Competent authorities should carry out checks at regular intervals on monitoring organisations to verify that they effectively fulfil the obligations laid down in this Regulation. Moreover, competent authorities should endeavour to carry out checks when in possession of relevant information, including substantiated concerns from third parties.

Article 8

4. The competent authorities shall carry out checks at regular intervals to verify that the monitoring organisations operating within the competent authorities' jurisdiction continue to fulfil the functions laid down in paragraph 1 and comply with the requirements laid down in paragraph 2. Checks may also be carried out when the competent authority of the Member State is in possession of relevant information, including substantiated concerns from third parties or when it has detected shortcomings in the implementation by operators of the due diligence system established by a monitoring organisation. A report of the checks shall be made available in accordance with Directive 2003/4/EC.

Article 10

2. The checks referred to in paragraph 1 shall be conducted in accordance with a periodically reviewed plan following a risk- based approach. In addition, checks may be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning compliance by an operator with this Regulation.

A substantiated concern is relevant information brought to the attention of an EUTR Competent Authority indicating alleged non-compliance, by an operator or a monitoring organisation, with their obligations as laid out in Regulation 995/2010 or Regulation 607/2012.

The guidance document recommends a minimum level of key elements needed and basic aspects of procedure for the submission and eventual investigation of the concern:

- The substantiated concern may be in a written form if applicable (electronic and/or paper-based) – form can be voluntary in some MSs

- The substantiated concern may include as much information as possible that proves non-compliance. As a minimum, the concern may include the following information:
 - Who is the complainant if applicable (full name, address, contact) – can be anonymous information in some MSs
 - The operator/trader subject of complaint, when known (full name, address, contact)
 - Identification of the eventual illegal activity (illegal timber on the market/not maintaining DDS...)
 - How the complainant is aware of eventual illegal activity
 - Where the eventual illegal activity takes place
 - Object of the eventual illegal activity – identification of species, weight...
- The CA may inform the complainant that they have accepted it and this information may be used in future investigations. In cases where the information submitted is not sufficient, complainant will be requested to submit additional information
- The complainant may accept to forward the complaint to other MSCA if CA considers this to be necessary