

Info-brief: EUTR enforcement in Germany

The EU Timber Regulation (EUTR) is implemented in each Member State via national legislation and enforced by national authorities. This means that differences exist in penalty regimes and enforcement practices. It also means that the opportunities for EU (and non-EU) civil society to support enforcement differ. Here we provide key information on the German implementing legislation for the EUTR, as well as top-line information on the enforcement approach in Germany as of August 2016. This document is designed as a first point of reference – not a comprehensive source of information. It will be updated as new information becomes available.

Implementation status

- Implementation through an amendment of existing legislation, the *Holzhandels-Sicherungs-Gesetz* (HolzSiG), which entered into force on 9 May 2013.
- An administrative regulation of 25 November 2013 (*Allgemeine Verwaltungsvorschrift zum HolzSiG*) lays down rules for controls of operators placing domestic timber on the market.
- The Competent Authority (CA) for imported timber is the *Bundesanstalt für Landwirtschaft und Ernährung* (BLE). For domestic timber, there is a different CA for each of the 16 regions (*Bundesländer*).

Resources

- Approx. 16 staff members work at the CA on EUTR related issues (out of which 10 inspectors are also dealing with other subjects). Costs (including the inspection service) are covered under the current budget.

Penalty regime

- Criminal penalties apply to operators placing illegal timber on the market if the offence committed is intentional, if it is intended to gain an important economic benefit for the perpetrator or others, or is a repeat offence. Penalties under the HolzSiG include detention (up to one year imprisonment) or fines (amount determined by judge). Criminal sanctions under the criminal code, for fraud or forgery for example, may also apply (detention up to five years or an undefined maximum penalty).
- Administrative fines (up to € 50,000) may be applied by the CA for a breach of the prohibition and due diligence requirements (incl. for not correctly documenting information gathered under the due diligence obligation) and for not complying with certain types of injunctions. Administrative fines (up to € 20,000) also apply to non-compliant operators for different types of smaller offences, for example for not cooperating during checks.
- An administrative fine (up to € 20,000) may also apply to traders for a breach of the traceability obligation.
- If the CA suspects a violation of the prohibition or due diligence requirements, it can seize the timber concerned. If the operator cannot prove legality, timber can be ordered to be sent back, sold, with proceeds going to the public purse (if timber is illegal or documents are forged or contain false statements) or destroyed (CITES species for example).

Checks by the Competent Authority

- Checks have been carried out since 2013. A quarterly plan for checks has been established since 2014. Currently, 5-10% of timber importers are subject to controls. Checks consist of document reviews relating to approx. 10 shipments per operator and, in general, two wood samples should be taken. Follow-up checks are organised when serious problems have been detected during a first check.
- Between mid-2013 and January 2016, the BLE checked approx. 370 timber operators. Around 50 timber operators were found to be in breach, requiring follow-up audits. In 39 cases, warnings were issued. In two cases, the CA confiscated timber deliveries due to the strong suspicion that certificates of origin were forged.

Substantiated concerns (SCs)

- No specific format or rules for submitting/dealing with SCs.
- Challenges of CA inaction before administrative courts are difficult as legal standing in principle requires proof of violation of the plaintiff's individual rights.

Possibilities to challenge operators in legal proceedings

- Criminal complaints could be brought by third parties against non compliant operators and lodged with the police, the public prosecutor or the district courts. There are no particular standing rules for NGOs (they have the same entitlement to start proceedings as any other person).

Other key elements

- The CA has access to the customs authority import database.
- Under the HolzSiG, operators importing timber from outside the EU have an obligation to register with the CA.

Key implementation/enforcement strengths

- Appropriate overall implementation on paper.
- CA carries out checks on operators regularly and procedures to sanction non-compliant operators have been initiated.
- CA cooperates with the Thünen Center to determine species and origin of timber.

Key implementation/enforcement weaknesses

- Application of criminal penalties is subject to certain conditions (see above).

Resource information

Law:

- Holzhandels-Sicherungs-Gesetz
- Administrative Regulation of 25 November 2013

Competent Authority contact information:

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