

# Info-brief: EUTR enforcement in the Netherlands

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 Dutch implementing legislation for the EUTR, as well as top-line information on the enforcement approach in the Netherlands as of March 2017. 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 by Decision 671 (2012) of 7 December 2012 (*Besluit uitvoering Europese houtverordening*) which entered into force on 3 March 2013, based on the Law on Flora and Fauna. The Law on Flora and Fauna was replaced on 1 January 2017 by a new law on the protection of nature (*Wet natuurbescherming*).
- The penalty regime is regulated by the Act on Economic Offences.
- The *Nederlandse Voedsel- en Warenautoriteit* (Netherlands Food and Consumer Product Safety Authority) has been designated as the Competent Authority (CA).

## Resources

- Currently, three full-time staff members are working on issues related to illegal timber at the CA.
- Annual financial resources for the implementation and enforcement of the EUTR are € 370,000.

## Penalty regime

- For offences committed intentionally 1) by operators in relation to the prohibition or due diligence obligations or to measures ordered by the CA in a notice of remedial action; or 2) by traders in relation to the traceability obligation: criminal sanctions may be applied by criminal court - including imprisonment (maximum two years) or pecuniary penalties (up to € 20,250).
- If the judge finds no intention, a maximum of six months imprisonment or pecuniary penalties of up to € 20,250 can be applied.
- If the value of illegally imported timber is higher than € 4,875, higher pecuniary penalties (up to € 81,000) may be applied.
- Timber may be seized and/or trade may be suspended by the CA, as an administrative sanction targeting a particular shipment or consignment. These sanctions may also be applied by a criminal court.

## Checks by the Competent Authority

- As at March 2016 (most recent data available), the Dutch CA had checked approx. 150 operators for compliance with the EUTR. It found a quarter of them to be non-compliant, and gave them six months to improve their due diligence. In March 2016, the CA issued a conditional penalty of EUR 1800 per m<sup>3</sup> of timber placed on the market to a company importing timber from Cameroon, should the company continue breaching the EUTR due diligence requirement. The CA also filed a report with the public prosecutor.

### Substantiated concerns (SCs)

- No prescribed format exists for SCs, but it would be advisable to submit them as an 'enforcement request'.
- May be submitted by an NGO registered in the Netherlands whose statutes and actual activities include the fight against illegal logging.
- CA must, in principle, make a formal decision, including reasons for its actions, within a reasonable time, and within eight weeks at the latest.
  - Objections to a decision by the CA may be submitted within six weeks of the decision.
  - If an objection is rejected or the response is not satisfactory, an administrative appeal may be lodged.
  - In the case of inaction by the CA, a notice of default can be addressed to the CA which may 1) request the payment of a fine by the CA and 2) indicate that after a time limit of two weeks an administrative appeal may be lodged. These notices can be combined or addressed successively to the CA.

### Possibilities to challenge operators in legal proceedings

- Civil action against operators may be filed in the district court, on the basis of a violation of the EUTR. This may result in a declaratory judgment, an injunction or the threat of a non-compliance penalty.
- Criminal proceedings may be initiated by submitting a formal complaint to the public prosecutor or to the police.
- NGOs, in principle, have access to courts. The rules on standing are the same as for submitting SCs.

### Other key elements

- If the CA does not respond in a timely manner to a SC, it may have to pay a fine.

### Key implementation/enforcement strengths

- The CA has a legal obligation to respond to SCs.
- Clear appeals procedures exist to challenge inaction or a decision of the CA on a SC.

### Key implementation/enforcement weaknesses

### Resource information

#### Law:

- Besluit van 7 December 2012, houdende voorschriften ter uitvoering van verordening (EU) nr. 995/2010 (Besluit uitvoering Europese houtverordening), Staatsblad 2012, No. 671
- Wet van 22 juni 1950, houdende vaststelling van regelen voor de opsporing, de vervolging en de berechting van economische delicten (contains rules on penalties)

#### Competent Authority contact information:

Nederlandse Voedsel- en Warenautoriteit (NVWA) | Find more information on substantiated concerns [here](#) | T: +31 (0)9 00 03 88 | E: [info@nvwa.nl](mailto:info@nvwa.nl)

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