

National EUTR penalties: are they sufficiently effective, proportionate and dissuasive?

1 Introduction

The EU timber regulation¹ (EUTR) is the main legal instrument to control imports of illegally harvested timber into the EU. It has been in force since 2013, and focus was initially on implementation of the regulation. There is now increasing attention to enforcement and particularly the question of whether there is sufficient EUTR enforcement by national authorities.

The EUTR lays down two main requirements for companies and persons placing timber products on the EU market for the first time: an obligation to carry out due diligence on the legality of the timber, and a prohibition to place illegally harvested timber on the market. Article 19 of the EUTR states that Member States must lay down penalties for infringements of the EUTR. Such penalties must be effective, proportionate and dissuasive, according to this provision.

Penalties applying to infringements of the EUTR are set and enforced at national level according to the specificities of each Member State's legal system. By 2016, most Member States had adopted a national penalty regime. The nature of national penalties varies widely across the EU. Certain Member States² have chosen a penalty regime relying mainly on administrative penalties; others³ rely mainly on criminal penalties for key EUTR obligations. Some Member States⁴ have adopted a combination of the two systems. EUTR penalties include notices of remedial actions, seizure of timber, suspensions of authorisations to trade, fines and imprisonment. There are important discrepancies between Member States concerning the level of fines provided for under national law.⁵

¹ Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.

² Such as Austria, Poland, Romania and Bulgaria.

³ Denmark and the Netherlands, for example.

⁴ Such as Belgium, Finland, France, Germany and Italy.

⁵ For more information, please refer to ClientEarth's [info-briefings](#) on EUTR implementation and enforcement and Member States' [biennial reports](#) covering the period from March 2013 to February 2015.

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While Member States can apply and enforce EU law according to their national procedural rules, they must at the same time ensure that penalties based on EU law requirements, such as the EUTR penalties, comply with EU law.⁶ This applies both to the design of national penalty systems and to enforcement policies and practice, on which this briefing primarily focuses. Currently, EUTR penalties rarely seem enforced to the 'effective, proportionate and dissuasive' legal standard, even in Member States where a positive trend in EUTR enforcement is noticeable.

The variation in enforcement efforts between EU countries means that EU companies are not operating on a level playing field, placing companies operating legally in Member States taking stricter enforcement action at a disadvantage compared to companies in Member States applying less strict standards. This may also create an incentive for economic operators unwilling to comply with the EUTR to target a weakly regulated and enforced national market to place risky products on the market, which may subsequently enter other Member State or international markets.⁷

This briefing will first explore the meaning of effective, proportionate and dissuasive penalties from a general EU law point of view (Section 2). We then look into current EUTR enforcement practices by Member States (Section 3). Finally, we argue that enforcement activities and transparency about these need to be stepped up for the EUTR to reach its full potential (Section 4, containing recommendations for action).

2 What are effective, proportionate and dissuasive penalties?

When Member States set and apply penalties for breaches of EU law provisions such as the EUTR, they can choose the measures which seem most appropriate to them in terms of nature and severity. However, they must act in accordance with principles of EU law.

2.1 General principles

According to the principle of sincere cooperation in Article 4(3) of the Treaty on European Union, Member States are under a general obligation to ensure that EU law is applied and enforced effectively.⁸ In this general context, an effective penalty is understood as one that ensures that the same diligence and strictness is applied for breaches of EU law as for breaches of provisions stemming from national law.⁹ A good indicator for the effectiveness of penalties for breaches of EU law is therefore that they should be similar to penalties for infringements of national law, where the offences are comparable in nature and importance.

Following from this, the case law of the Court of Justice of the EU (CJEU) has continuously indicated that infringements of EU law must be penalised by effective, proportionate and dissuasive penalties,¹⁰ as stated in Article 19 EUTR and in numerous other secondary EU law

⁶ For the purposes of this briefing, we will focus particularly on requirements resulting from the Treaty on the European Union, secondary legislation such as the EUTR and the case law of the Court of Justice of the EU.

⁷ See [A Tale of Two Laws, Using existing EU and US laws to strengthen action on illegal timber trade](#), (EIA, 2018).

⁸ See, for example, Judgments of 8 September 2005, *Yonemoto*, C-40/04, EU:C:2005:519, par. 59 and of 8 June 1994, *Commission / United Kingdom*, C-382/92, EU:C:1994:233, par. 55.

⁹ For that purpose, Member States must ensure that infringements of EU law are penalised under conditions analogous to those applicable to infringements of national law of similar nature and importance. See Judgment of 7 October 2010, *Stils Met*, C-382/09, EU:C:2010:596, par. 44.

¹⁰ See Judgment of 26 September 2013, *Texdata Software*, C-418/11, EU:C:2013:588, par. 50 and the case law cited.

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instruments. The three concepts of effectiveness, dissuasiveness and proportionality are closely inter-related as they all deal with the relationship between the seriousness of the offence and the type and severity of the penalty. Therefore they are often dealt with together in the CJEU's case law. Below is an indication of what the different terms mean in this context.

- An effective penalty ensures that the goal set by the legislator is reached, despite the infringement, and intends to prevent future harm from happening.
- A dissuasive penalty is one that, because of its severity and the risk it represents for offenders, has a genuinely deterrent effect.¹¹ It appears that a penalty is therefore only genuinely dissuasive when the threat of repressive action creates sufficient pressure on regulated parties to ensure that the situation envisaged under EU law is realised in practice and when non-compliance becomes economically unattractive.¹²
- A penalty is proportionate when it is appropriate to attain the objectives set by the legislation in question and does not go beyond what is necessary in order to attain these objectives.¹³ The first condition means that there is a certain minimum standard (i.e. relating to the appropriateness of the penalty) that a penalty set up for a breach of EU law needs to comply with. Traditionally however the emphasis in the CJEU case law dealing with proportionality of penalties has been on the second condition and ensuring that the individual is protected against excessive regulatory intervention. The appropriateness of penalties is mainly addressed by the criteria of effectiveness and dissuasiveness.

The question of whether a penalty is effective, proportionate and dissuasive in a specific situation can be answered definitely only by taking into account the specific circumstances of the facts and the national normative environment. That is why the CJEU leaves it to national courts to make the final assessment of whether a national penalty is sufficiently effective, proportionate and dissuasive. However, the CJEU's case law provides helpful guidance, of which three examples are shown in Box 1 below.

¹¹ The CJEU has repeatedly stated that the severity of penalties must be commensurate with the seriousness of the infringements for which they are imposed, in particular by ensuring a genuinely dissuasive effect. See Judgment of 25 April 2013, *Asociația Accept*, C-81/12, EU:C:2013:275, par. 63. The Court also specified that the national enforcement policy must create a serious risk that, in the event of an infringement of EU law provisions, sufficiently severe penalties will be applied. See Judgment of 12 July 2005, *Commission / France*, C-304/02, EU:C:2005:444, par. 37.

¹² See Opinion of Advocate General Geelhoed of 29 April 2004 in *Commission / France*, Note 11 above, par. 39.

¹³ See case Judgment of 13 July 2017, *Türkevei Tejtermelő Kft.*, C-129/16, EU:C:2017:547, par. 66 and the case law cited.

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Box 1: Effective, proportionate and dissuasive penalties in CJEU case law

In case LCL Le Crédit Lyonnais SA,¹⁴ the Court stated that to assess if a penalty is dissuasive it is necessary to compare: (a) the situation of a person behaving in compliance with the law, with (b) the same person's situation after acting against the law and then receiving a penalty. If, under this comparison, the offender is at an advantage when not complying with legal obligations and when penalties are applied, the penalty system is not dissuasive enough.

In another case,¹⁵ the CJEU examined whether the rule under Romanian law and administrative practice by which an act of discrimination at work on grounds of sexual orientation could be penalised only by a simple warning was compatible with EU law. The Court found that if, under national law and administrative practice, warnings generally applied to only very minor offences, this could indicate that such a sanction is likely not effective, proportionate and dissuasive.

Finally, in a case in the field of EU fisheries law, the Court found that fines of less than €750 applied by a Member State against persons found to infringe EU conservation requirements are not deterrent enough. In this case, France was applying a general amnesty law to numerous fisheries infringements, effectively capping penalties at this amount.¹⁶

2.2 Effective, proportionate and dissuasive penalties in the EUTR context

The EUTR requires persons first placing timber or timber products on the EU market to conduct 'supply-chain due diligence' to assess and mitigate the risk of placing illegally logged timber on the market. It also prohibits placing illegal timber on the market.

An effective, proportionate and dissuasive penalty for an EUTR breach is one that ensures compliance with the law. If the penalty represents enough of a threat to a company's operation, the company will exercise due diligence and refrain from placing timber at risk of being illegal on the EU market.

Applying the principles mentioned above (Section 2.1) to determine whether a penalty for breaching the EUTR complies with the EU law standard, the first question is whether the penalty is coherent with other penalty regimes for similar offences under national law. For example, if national EUTR fines are less than fines for illegal logging in domestic forests or violation of internal timber transport rules, this could be a first indication that they are not effective enough.

The next question to consider is whether the penalty is appropriate to meet the objectives of the EUTR – that is, to prevent illegally harvested timber from being placed on the EU market. A penalty

¹⁴ See Judgment of 27 March 2014, LCL Le Crédit Lyonnais, C-565/12, EU:C:2014:190, pars. 50 and 51.

¹⁵ See Asociația Accept, Note 11 above, pars. 69 and 70.

¹⁶ See Commission / France, Note 11 above, par. 72.

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regime that combines financial penalties with suspending a company's ability to trade or prohibitions against placing certain products on the market would seem likely to be effective. Depending on national circumstances, this seems an approach that could both compensate for the harm done by placing illegal or risky timber on the market and also prevent future harm.

It is possible to compare the situation of a company placing timber on the market after carrying out prior due diligence with the company's situation if they were to pay the penalty imposed by the competent authority. The global cost of setting up and maintaining a due-diligence system, the value of the timber products placed on the market, and the nature and amount of the penalty can be estimated. These values, and the main procedural rules applying to the enforcement of such penalties, are all elements that can be taken into account in this comparison. If the company is better off not carrying out due diligence and paying the penalty, the penalty is not dissuasive enough.

These are only very general and initial elements in assessing effectiveness, proportionality and dissuasiveness of penalties. However, they can be helpful for an initial verification of whether the level and nature of a national penalty regime is compliant with EU law standards.

3 Current EUTR enforcement practices

In this section, we examine whether penalties for EUTR infringements are currently set and enforced at a level compliant with the principles explained in Section 2.

3.1 Limited information indicates few and relatively low EUTR penalties

The question of whether penalties adopted by Member States for EUTR breaches are sufficiently effective, proportionate and dissuasive has not, to our knowledge, yet been analysed in detail. This may be because there is relatively little publicly available information about the number of penalties that have been applied since the EUTR has been in force.¹⁷

There is also relatively little public information on the type of penalties applied to EUTR offences. There are no public and easily accessible registers collecting this information, and authorities imposing such penalties rarely communicate the information to the public. The lack of detailed communication may be justified, in certain cases, by data protection rules or the confidentiality of ongoing investigations, for example. Nevertheless, as discussed in more detail below (Section 4.2), wider dissemination of information about EUTR-related enforcement activities would be very beneficial for EUTR operation.

The analysis in this section is therefore based on the public information available at the time of publication of this briefing and on several conversations between ClientEarth and officials from competent authorities or the European Commission. According to this limited information, it appears that competent authorities and Member State courts have been more actively enforcing

¹⁷ This point was made by the European Commission in the report to the European Parliament and the Council (the '[EUTR implementation report](#)'), of 18 February 2016, COM(2016) 74 final.

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the EUTR since 2016 compared to the years 2013 to 2015 when almost no penalties had been imposed¹⁸, as the examples below show:

- The Dutch, Swedish and UK competent authorities applied for, or directly imposed, fines in 2016, 2017 and early 2018 on companies not correctly exercising their due-diligence obligation.
 - In the Dutch case, the authorities issued an injunction and a non-compliance penalty of €1,800 per cubic metre of timber placed on the market, which were upheld in court.¹⁹
 - In the Swedish case, the competent authority issued an injunction and applied for a fine of SEK 17,000 (approximately €1,700) to be imposed on a Swedish importer of Burmese teak, which was upheld in court.²⁰ In addition, the competent authority requested that the administrative court apply a fine of SEK 800,000 (approximately €79,500) to an operator that had not taken measures stipulated in an earlier injunction.²¹ This fine has also been recently validated in court.²²
 - Two cases have been brought in the UK by the competent authority. In the first case, the court imposed a fine of £5,000 plus costs on a company that had imported a timber product from India without carrying out due diligence.²³ In 2018, another fine of £4,000 plus costs was imposed on a company importing timber from Cameroon.²⁴
- In another case in the Netherlands, a preventive measure was ordered against two Dutch importers of Burmese teak, imposing a fine of €20,000 per cubic metre for each teak shipment placed on the market in breach of the EUTR.²⁵
- Again in Sweden, in 2017, the competent authority imposed prohibition decisions on importers of timber products containing Burmese teak, ordering the companies not to place the specific product on the market.²⁶
- In Germany, an administrative court confirmed in 2017 a decision by the competent authority taken in 2013 to confiscate timber imported from the DR Congo with falsified documentation.²⁷ The timber will be auctioned and the money from the auction allocated to the federal budget.

3.2 'Hard' versus 'soft' enforcement approaches

With 28 Member States having to enforce the EUTR, the degree of enforcement across the EU is currently not sufficient to ensure that the EUTR is effective and applied evenly across the EU. 'Soft' approaches seem to be the preferred enforcement option in many cases.²⁸ Soft approaches are understood for this briefing as having a mainly educative purpose, or as having no direct punitive element or consequence in case of non-compliance with the EUTR. Such measures include advice letters and warnings, as well as injunctions and notices of remedial action where

¹⁸ See, ClientEarth Member States info-briefings, Note 5 above.

¹⁹ For more information, see [here](#).

²⁰ For more information, see http://www.forest-trends.org/documents/files/doc_5414.pdf. The case is under appeal.

²¹ See https://www.unep-wcmc.org/system/dataset_file_fields/files/000/000/482/original/Briefing_note_August_17-October_17.pdf?1511452051.

²² <http://www.skogsstyrelsen.se/nyhetslista/dalig-koll-pa-traslag-i-produkter-gav-vite-pa-800-000/>

²³ <http://ettf.info/node/256>.

²⁴ <https://www.gov.uk/government/news/national-product-safety-office-carries-out-first-enforcement-action>.

²⁵ <https://english.nvwa.nl/news/news/2017/10/26/preventive-measure-issued-against-two-dutch-companies-for-breaching-the-rules-regarding-illegal-logging>.

²⁶ <http://www.skogsaktuellt.se/artikel/53420/biltemas-logistikforetag-forbjuds-att-salja-teak-fran-burma.html> and https://www.unep-wcmc.org/system/dataset_file_fields/files/000/000/468/original/Briefing_note_June17-July17.pdf?1503484932.

²⁷ See https://www.ble.de/SharedDocs/Meldungen/DE/2017/171116_Wenge-Holz.html?nn=8904380.

²⁸ This information has been confirmed to ClientEarth in several informal discussions with EUTR competent authorities' representatives.

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these do not include non-compliance penalties. 'Hard' enforcement actions, by contrast, seem to take place mainly in just a few Member States, and only sporadically.

Box 2: Dutch court criticises soft enforcement approach of Dutch competent authority

A 'soft' approach was the object of recent scrutiny by a Dutch court.²⁹ In 2014, the Dutch competent authority (NVWA) received information about Dutch companies sourcing timber from exporters associated with illegal logging in the Brazilian Amazon. The authority carried out checks on these companies, issued warnings against three companies that were not complying with the EUTR due diligence requirement, but did not initiate further action.

The court examined the decision by the NVWA not to initiate further enforcement action. It criticised three aspects of the NVWA's enforcement policy, which was in force at the time of the judgment: 1) the NVWA's enforcement policy counts all first-time infringements of the due-diligence obligation by operators as 'minor infringements'; 2) these are penalised by written warnings and re-inspections after six months, without distinction by the extent or severity of the infringement; 3) the policy does not specify the type of follow-up measures the authority should take after re-inspection and in case of repeated infringements.

The court considered therefore that this policy does not ensure that EUTR infringements are sanctioned by effective, proportionate and dissuasive penalties in line with the EUTR.

The case outlined in Box 2 is, to our knowledge, the first one where a national EUTR enforcement policy has been found not to meet the EU law standard. It is interesting because it highlights two issues: the disputed enforcement policy automatically prescribes the application of warnings to due diligence breaches; and the phased enforcement approach resulting from this policy adds to the ineffectiveness of the approach. For six months after the first warning, the company trading in timber products is not effectively prevented from placing timber at risk of being illegal on the market. This is certainly not an isolated example, as the first UK case mentioned above shows. In that instance, before a fine was imposed in October 2017 by the UK competent authority, a first infringement of the EUTR due diligence obligation by the same company had been already detected in 2015 and followed up with soft enforcement actions.³⁰

Another type of problematic practice concerns the fines imposed or proposed by administrative authorities. Publicly available information shows that these are often relatively low compared to the fine maxima available under national law. Of the fines that have been made publicly known since 2013, most were of a few thousand Euros maximum, with potentially a few exceptions such as in particular the recent fine in Sweden mentioned above (Section 3.1). This may be because other internal rules, for example determining the conditions for imposing fines on companies as opposed to individuals, restrict the size of the fines that can be applied. However, such internal

²⁹ Judgment of the district court of Amsterdam of 4 July 2017, Greenpeace v State Secretary of Economic Affairs, accessible at <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2017:4926>. To our knowledge, this case has not been appealed.

³⁰ To our knowledge, the procedure was the same in the second UK case in March 2018.

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rules need to be compatible with EU law as well, in particular to guarantee that penalties derived from EU law are effective, proportionate and dissuasive.

From the available information on EUTR enforcement practice in 2016, 2017 and early 2018, it does therefore appear that there is an important discrepancy between penalty regimes foreseen on paper in national legislation and actual implementation of EUTR infringement penalties.

4 Recommendations for action towards more effective, proportionate and dissuasive EUTR penalties

Further action by all stakeholders, in particular by Member States and the European Commission, is needed to step up enforcement efforts across the whole EU. This is necessary because widely varying penalties³¹ and uneven enforcement efforts mean that EU companies are not operating on a level playing field. This may undercut efforts by EUTR-compliant companies and attract less scrupulous companies to place their products on the market in more lenient Member States, thereby undermining the objective of the EUTR. The variation also undermines efforts of Member States that have taken a stricter stance on the EUTR concerning their domestic operators, but which cannot take effective action on risky products that have first been placed on the market in a less-strict Member State.

Action to strengthen EUTR enforcement is therefore crucial. Three main areas of improvement stand out.

4.1 Adoption of clear and credible enforcement policies

It is an essential precondition for stronger enforcement that Member States have adopted penalty regimes that are able to ensure that EUTR infringements are effectively sanctioned. National laws and regulations implementing EUTR penalties should be scrutinised for compliance with EUTR Article 19. Administrative procedural provisions which may limit the scope of national enforcement approaches should also be designed to ensure the effectiveness of EU law. Stakeholders involved in EUTR operation, such as national authorities, NGOs and the Commission should focus on verifying that this is the case in all Member States. Where these adequate national legal frameworks do not exist, or are weak, they must be strengthened.

National rules on EUTR penalties should be strong not only on paper but also as translated into strong enforcement policies. The lack of human and financial resources in national administrations enforcing the EUTR is still a major obstacle to effective EUTR enforcement.³² As the launch of an infringement procedure against Belgium shows,³³ Member States can comply with the EUTR only if they have sufficient resources in place to ensure that controls on operators can be carried out reasonably often and regularly.

³¹ The issue was acknowledged by the European Commission in its EUTR implementation report.

³² The EUTR implementation report points out that "in many cases, human and financial resources dedicated to checks on operators appear disproportionately low compared to the number of operators in those countries, leaving the deterrent effect of the enforcement activities rather limited. The evaluation has shown that the financial resources allocated to CAs vary considerably among Member States."

³³ http://europa.eu/rapid/press-release_MEMO-17-3494_en.htm.

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Member States' administrations responsible for EUTR enforcement need to adopt clear and credible enforcement policies related to the EUTR, available to national inspectors, police and customs officers as well as prosecutors and judges, depending on the national enforcement set-up. The way in which these different bodies collaborate along the EUTR 'compliance assurance chain'³⁴ needs to be outlined in these policy documents. This applies also to EU and international cooperation among enforcement officials, which is essential for investigations and evidence gathering in cross-border cases. A main objective of such policies should also be to outline consequences for EUTR breaches where the connection between the seriousness of the offence and the seriousness of the sanction is adequately considered. Policies should be designed to ensure that national operators clearly perceive non-compliance as more costly than compliance.

National enforcement policies should make clear that breaches of EUTR provisions will be immediately and systematically followed up by administrative or criminal proceedings. Some national laws require a phased approach, in which a first inspection must be followed by an official report and a re-inspection. In such cases, the time period between verifications must be reasonably short, so that companies can take appropriate steps to comply but also that harm to the environment is effectively prevented. 'Soft' enforcement approaches may include detailed advice to operators on how to conduct due diligence for timber from specific source countries or for specific products.³⁵ Such approaches should be used to complement sanctions but should not be seen as an appropriate response on their own.

Finally, communication about the existence of such policies is essential to reinforce the effectiveness and dissuasiveness of national penalty systems.

4.2 Increasing timely access to EUTR enforcement information

Under EU law,³⁶ national public authorities are obliged to make available and disseminate environmental information to the general public to the widest extent possible. This obligation applies to information on administrative measures taken by national authorities to protect the environment, and therefore to enforce the EUTR.³⁷

Yet, access to up-to-date information on the types and level of EUTR sanctions imposed by Member States' authorities is not readily available. Only a few competent authorities communicate on their enforcement activities. Some competent authorities have published research reports on specific segments of the timber industry,³⁸ or guidance³⁹ relating to specific source countries, for

³⁴ For more information on this term, see [Commission Staff Working Document, Environmental Compliance Assurance - scope, concept and need for EU actions, COM\(2018\) 10 final](#).

³⁵ The Danish and German competent authorities, for example, issued injunctions in 2016 to companies importing timber from Myanmar informing them of the necessity to provide more detailed information on the supply chain and risk-mitigation procedures when placing timber from this country on the market (https://www.unep-wcmc.org/system/comfy/cms/files/files/000/000/905/original/EUTR_Briefing_note_Dec16-March17.pdf). So did the UK authorities in 2016 in relation to timber imported from Cameroon (<https://news.mongabay.com/2016/07/uk-takes-action-against-companies-importing-timber-from-cameroon-tied-to-illegal-logging/>) and in 2017 concerning timber from Myanmar (https://www.unep-wcmc.org/system/comfy/cms/files/files/000/001/054/original/Briefing_note_April_2017-May_2017.pdf).

³⁶ See Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information.

³⁷ According to Article 2 (c) and (d) of Directive 2003/4/EC, environmental information includes "administrative measures or activities designed to protect elements of the environment" as well as "reports on the implementation of environmental legislation". Article 7(2) (e) of Directive 2003/4/EC states that information subject to dissemination should include at least "data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment".

³⁸ See [NMO research report for imported Chinese plywood in relation to EUTR](#).

³⁹ See Note 35 above for examples of country-specific guidance by the German, Danish and UK competent authorities.

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example, and some competent authorities publish media releases on the outcome of EUTR investigations. Since October 2016, the European Commission has been publishing briefing notes on EUTR implementation and enforcement on its website.⁴⁰

Despite these individual efforts, access to EUTR-related enforcement information currently depends mainly on sporadic communications by certain Member States and on civil society organisations. Given that public authorities have the legal power and resources to control operators, it is crucial that they share information on enforcement. As mentioned above (Section 3.1), there may be legitimate reasons for limiting some specific information published by competent authorities. However, general information would be very helpful – on procedure, the EUTR breach, and geographic provenance and type of products, as well as on the outcome of the investigation, for example.

EUTR biennial reports aggregate information on EUTR implementation and enforcement in all Member States. National authorities are obliged to provide the information to the European Commission, which in turn is required to disseminate it.⁴¹ This information is essential for the transparent, accountable functioning of the law – and for stronger EUTR enforcement. Yet, such information is still lacking. It is crucial to note in this context that the current format for these national reports does not include information on levels of penalties imposed by competent authorities. This should be included to enable a meaningful assessment of the effectiveness and dissuasiveness of EUTR penalties.

4.3 Developing guidance on effectiveness and dissuasiveness

Article 19(2)(a) of the EUTR gives some indication of the criteria that Member States can take into account in determining the type and level of financial penalties to apply to EUTR breaches. The list includes environmental damage, value of the timber products placed on the market, tax losses, economic detriment and economic benefits resulting from the infringement. Certain national legislations transposing the EUTR already include such criteria.⁴² Working towards a common understanding of these criteria and concepts would support a more meaningful level of enforcement across all Member States. Therefore, it could be useful to amend the EUTR guidance to include these concepts.

In the context of a future review of the functioning and effectiveness of the EUTR,⁴³ the possibility of including more specific guidance on the level of penalties should also be examined.⁴⁴ This could

⁴⁰ Compiled by UNEP-WCMC for the Commission and accessible on the European Commission's EUTR [website](#).

⁴¹ Art. 20(1) EUTR. At the time of finalising this report in March 2018, the Commission had not yet published the biennial reports submitted by Member States in April 2017, which contain enforcement information up to February 2017. Yet, the biennial reports constitute 'environmental information', within the meaning of Article 2(1)(d)(iv) of Regulation 1367/2006, since they are reports on the implementation of environmental legislation. In line with Article 4(1) of Regulation 1367/2006, 'Community institutions and bodies shall organise the environmental information which is relevant to their functions and which is held by them, with a view to its active and systematic dissemination to the public'. Article 4(2) specifically mentions progress reports on the implementation of EU environmental law as among the environmental information that should be actively disseminated. This should be done in a continuous and systematic manner in accordance with Articles 11(1), 11(2) and 12 of Regulation 1049/2001 through a public register of documents.

⁴² In Poland, for example.

⁴³ According to Article 20(3) EUTR.

⁴⁴ As an example, Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing lists certain behaviours as serious infringements. For this category of infringements, Article 44(2) of the Regulation provides for an approximation of the maximum levels of administrative fines foreseen in relation to serious infringements, requiring Member States to impose a maximum sanction of at least five times the value of the fishery products obtained by committing the serious infringement.

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be by harmonising levels for certain categories of EUTR fines or adopting a common methodology to determine the level of fines, such as a common percentage of the product value or of the economic benefit resulting from the infringement.

5 Conclusion

Effective, proportionate and dissuasive penalties need to be imposed for all EUTR infringements detected by competent authorities across the EU. The meaning of 'effective, proportionate and dissuasive' penalties depends on the specific national context but CJEU case law contains helpful guidance to determine compliance with the EU standard. According to this initial assessment, and based on the limited information available, this briefing concludes that current EUTR enforcement practice does not yet seem fit for the EU standard and that EUTR enforcement should be strengthened across the EU. A comprehensive overview would require very significant increase in transparency around EUTR enforcement action. All stakeholders involved in EUTR enforcement should therefore engage in scrutinising national enforcement policies and disseminating relevant information, so that the EUTR can achieve its full potential.

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For comments and feedback, please contact

Diane de Rouvre

Lawyer

+ 32 2 808 0484

dderouvre@clientearth.org

www.clientearth.org

Emily Unwin

Senior Lawyer

+44 203 030 5957

eunwin@clientearth.org

www.clientearth.org

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Brussels

Rue du Trône 60

3ème étage

1050 Bruxelles

Belgique

London

274 Richmond Road

London

E8 3QW

UK

Warsaw

ul. Żurawia 45

00-680 Warszawa

Polska