

Info-brief: EUTR enforcement in Denmark

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 Danish implementing legislation for the EUTR, as well as top-line information on the enforcement approach in Denmark 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

- The Danish Environmental Protection Agency is, as of 1 February 2017, the Competent Authority (CA) for imported and domestic timber. Before, the CA was the Danish Agency for Water and Nature Management.
- Implementation through the *Lov 2012-12-18 nr. 1225 om administration af Den Europæiske Unions forordninger om handel med træ og træprodukter med henblik på bekæmpelse af handel med ulovligt fældet træ* (Act No. 1225), and *Bekendtgørelse 2016-06-27 nr. 849 om handel med træ og træprodukter med henblik på bekæmpelse af handel med ulovligt fældet træ* (Statutory Order No. 849). Act No. 1225 entered into force on 1 January 2013 and Statutory Order No. 849 in July 2016.

Resources

- Two full time posts at CA level, supported by a lawyer and an administrative assistant.

Penalty regime

- Criminal penalties are set out by Act No. 1225 and Statutory Order No. 849 and apply to operators breaching the provisions of the EUTR. They also extend to a lack of cooperation during checks (in particular omitting required information or samples) and failing to comply with an injunction or prohibition order.
- Penalties under these criminal provisions include fines (amount determined by judge) and/or confiscation of profits. If no confiscation has taken place, the amount of the fine is raised correspondingly by the judge. Fines may also be applied to companies according to the rules set in the criminal code.
- Penalties may also include detention (up to one year) if:
 - The offence has been committed intentionally or by gross negligence;
 - The offence has caused damage or risk of damage to the interests intended to be protected by the EUTR; or
 - An economic advantage has been obtained or intended to be obtained by the perpetrator or others.
- The CA may issue an injunction or a prohibition order against an operator to ensure they achieve compliance with the EUTR.

Checks by the Competent Authority

- The Danish CA conducted five checks in 2013, 14 in 2014, 24 in 2015 and 46 in 2016.
- In March 2017, the CA issued injunctions against a number of companies for failing to exercise due diligence to minimize the risk of importing illegally harvested timber from Myanmar. The CA also issued a warning that timber coming from Myanmar is at high risk of illegality.

- Monitoring organisations are to be checked every two years.

Substantiated concerns (SCs)

- No prescribed format for SCs. Beyond rules on good administrative practices, no national rules on how the CA should handle a SC.
- The CA has no obligation to issue a formal decision after investigating a SC.
- It is not possible to appeal the CA's decision (or inaction) to a higher administrative authority, or to an administrative jurisdiction (as these jurisdictions do not exist in the Danish court system).
- NGOs may only be able to challenge an inaction of the CA before the civil courts on the basis of administrative malpractice, provided the court considers the inaction to be an administrative decision (this would require a strong case).
- To initiate such civil proceedings and to have standing, an NGO would need to demonstrate legal interest, by showing that its statutes refer to illegal logging (or at least the protection of the environment in general terms).
- A complaint on the grounds of administrative malpractice could also be lodged with the Parliamentary Ombudsman. The outcome of such a complaint could be a recommendation to the CA to reopen a case but not to overturn a decision by the CA.

Possibilities to challenge operators in legal proceedings

- The CA can decide whether or not to inform the police about an EUTR violation.
- An NGO can file a criminal complaint if it suspects a company is in violation of the EUTR directly with the police. Strong evidence would be needed to initiate an investigation (unlikely that an NGO report alone would be sufficient).
- In theory, intentionally selling timber as EUTR-compliant while it is not could amount to fraud under the Penal Code. However, as specific EUTR-based criminal provisions exist, the application of the Penal Code is unlikely.
- A competitor or the Consumer Ombudsman could initiate civil proceedings based on a violation of the Danish Marketing Practices Act if the operator engages in misleading marketing practices.

Other key elements

- Identification of operators through customs register.

Key implementation/enforcement strengths

- The CA cooperates with customs authorities.

Key implementation/enforcement weaknesses

- No financial administrative fines.
- Difficult for an NGO to pursue SCs if the CA does not follow up.

Resource information

Law:

- [Act No 1225](#)

Subsidiary regulation:

- [Statutory Order No 849](#)

Competent Authority contact information:

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