Info-brief: EUTR enforcement in Austria

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 Austrian implementing legislation for the EUTR, as well as top-line information on the enforcement approach in Austria as of January 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 through the *Holzhandelsüberwachungsgesetz (*HolzHÜG*)*, which entered into force on 6 August 2013.
- The *Bundesamt für Wald* is the Competent Authority (CA) for imported timber. The *Bezirksverwaltungsbehörden* (district administrative authorities) are responsible for domestic timber.

Resources

- Approx. 2.5 full time posts at the CA, and eight in the district administrative authorities in 2016.
- Annual financial resources for EUTR implementation and enforcement are approx. € 50,000.

Penalty regime

- All administrative sanctions:
  - Notices of remedial action can be issued, for example:
    - To prohibit the disposal or transfer of timber or timber products when there is reasonable suspicion of placing illegal timber on the market or of a violation of the due diligence requirement;
    - To order the transfer of timber to a third country or its destruction when it has been illegally placed on the market or where the due diligence requirement has not been complied with, and legal origin is not demonstrated by the operator within a month.
  - Operators who place illegally harvested timber or timber products on the market can be fined up to € 15,000. The same penalty also applies for a failure to comply (including in a timely manner) with a prohibition to transfer or dispose of timber, an order to bring timber (products) in a third country, and an order to destroy timber.
  - Operators who intentionally place illegally harvested timber or timber products on the market, and have already been punished for such an act at least once, can be fined up to € 30,000.
  - Violations of due diligence requirements, failure to provide necessary information (notably regarding traders' traceability obligation) and documents, failure to provide evidence of risk assessment, and the failure to permit or support an agency's investigative efforts (such as by granting access to property, allowing assessment, the taking of samples, etc.) can be punished by a fine up to € 7,000.
  - The district administrative authorities may seize timber in addition to the above mentioned fines.

Checks by the Competent Authority

- No recent public information available. Fourteen checks on imported timber and 505 checks on domestic timber were undertaken between March 2013 and February 2015.

ClientEarth

Substantiated concerns (SCs)

- No prescribed format for SCs and no national rules on how the CA should handle a SC.
- Information from the CA can be requested via the federal Environmental Information Law (*B-UIG*). A refusal to issue the information could be legally challenged by an NGO under certain circumstances.
- No way for NGOs to legally challenge the CA's inaction upon receiving a SC or failure to penalise EUTR offenders: submitting a SC is not regarded as an application for an administrative procedure, and NGOs would, in any case, lack standing in any procedure the CA might conduct.
- The CA is under an obligation to report a crime concerning its "field of action" when it learns of such a crime (as are all authorities in Austria).

Possibilities to challenge operators in legal proceedings

- NGOs can file a criminal complaint directly with the police or the state's prosecutor's office.
- Restrictions exist for NGOs to bring civil cases. For example, NGOs do not have standing to bring a case based on the Unfair Business Practice Law - but the *Verein für Konsumenteninformation* (Association for Consumer Information) could.

Other key elements

- Relevant criminal provisions apply to Austrian companies engaged in illegal logging operations outside of Austria, including:
  - Fraud - punishable by up to six months imprisonment or a penalty of up to 360 daily rates (amount calculated on the basis of net income). This could cover those who intentionally place illegal timber on the market or trade it while deceiving other traders or purchasers as to the legality of its origin and harvesting. Serious fraud is penalised by up to three years' imprisonment (where fraud is committed by using false or forged documents or data, or causes more than € 5,000 of damage). The penalties are higher in case of 'professional' fraud;
  - Money laundering (where foreign money derived from illegal harvesting and trading of timber is laundered in Austria) - punishable by imprisonment for up to three years or more, depending on circumstances; and
  - Receiving and dealing in illegal goods can be punished by up to two years imprisonment or more, depending on circumstances.
- No registration of operators, however the CA cooperates with customs.

Key implementation/enforcement strengths

- The CA cooperates with customs authorities.

Key implementation/enforcement weaknesses

- No criminal sanctions laid down in the HolzHÜG and financial administrative penalties set at low flat rates.
- Domestic timber was subject to a significantly higher number of checks (505, as opposed to 14 checks on imported timber - from March 2013 to February 2015).
- Difficult for an NGO to pursue SCs if the CA does not follow up.

Resource information

Law:

- *Holzhandelsüberwachungsgesetz*

Competent Authority contact information:

Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft | Marxergasse 2, 1030 Vienna | T: +43 1 71100 7309 | E: johannes.hangler@bmlfuw.gv.at | Find the Competent Authority online here