

L.N. 79 of 2015

**ENVIRONMENT AND DEVELOPMENT PLANNING ACT
(CAP. 504)**

**Timber and Timber Products (Placing on the Market)
Regulations, 2015**

IN EXERCISE of the powers conferred by articles 61 and 62 of the Environment and Development Planning Act, the Minister for Sustainable Development, the Environment and Climate Change and the Parliamentary Secretary for Planning and Simplification of Administrative Processes, after consultation with the Malta Environment and Planning Authority have made the following regulations:-

1. The title of these regulations is the Timber and Timber Products (Placing on the Market) Regulations, 2015. Citation.

2. These regulations provide for the implementation of the provisions of 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 as set out in the Annex thereof, as may be amended from time to time, hereinafter referred to as "Regulation (EU) No 995/2010". Scope.

3. (1) In these regulations, unless the context otherwise requires: Interpretation.

"authorized officer" means a person duly authorized by the Director to carry out inspections and other functions related to the enforcement and implementation of any provision of these regulations;

"competent authority" means the Directorate of Agriculture;

"Director" means the Director of Agriculture and includes, to the extent of the authority given, any officer authorized by him, in writing, to act in that behalf for any of the purposes of these regulations;

"the Implementing Regulation" means Commission Implementing Regulation (EU) No 607/2012 of 6 July 2012 on detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organizations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of

the Council laying down the obligations of operators who place timber and timber products on the market;

"internal market" means the internal market of the European Union;

"notice of remedial actions" means a notice served upon an operator in accordance with regulation 7;

"operator" means any natural or legal person that places timber or timber products on the EU market for the first time;

"person" means any person, whether natural or legal, corporate or incorporate, and includes any person acting on his own behalf or under the instructions of any employer, master or owner;

"timber" means timber and timber products, as set out in the Annex to Regulation (EU) No. 995/2010.

(2) Unless the context otherwise requires, words and expressions used in these regulations shall have the same meaning assigned to them in Article 2 of Regulation (EU) No 995/2010.

(3) In the event that any of these regulations conflict with the provisions of Regulation (EU) No 995/2010, the latter shall prevail.

Competent authority.

4. The Directorate of Agriculture shall be the competent authority for the purposes of:

(a) Regulation (EU) No 995/2010;

(b) the Implementing Regulation; and

(c) Commission Delegated Regulation (EU) No 363/2012 of 23 February 2012 on the procedural rules for the recognition and withdrawal of recognition of monitoring organizations as provided for in the Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market.

Inspections.

5. (1) An operator shall permit any authorized officer, at all reasonable times, for the purposes of carrying out his functions under these regulations and upon production of identification:

(a) to enter into premises after giving prior notice:

Provided that the requirement to give prior notice does not apply in cases when efforts to arrange an appointment

have failed, or when such notice would defeat the purpose of the entry, or where there is reasonable suspicion that an offence against these regulations has been committed;

(b) stop and, or board any vehicle, vessel, aircraft or other means of transport that the officer has reasonable grounds to believe is transporting timber;

(c) inspect the premises, any plant, machinery or equipment, containers and timber found on the premises;

(d) have access to, examine and copy any documentation, records or other information to which these regulations may apply, in whatever form they are held, and remove them to enable them to be copied or require computer records to be produced in a form in which they may be easily accessed and taken away by the officer;

(e) take samples of any timber;

(f) carry out any examination, investigation or test; and

(g) take photographs, measurements or recordings.

(2) An operator shall provide all reasonable assistance to any authorized officer acting in terms of sub-regulation (1) and in particular shall:

(a) produce for inspection such document or record as may be required by such authorized officer;

(b) make available for examination any timber as may be required.

6. For the purposes of enforcing the provisions of these regulations, the Director may request the assistance of members of the Police Force and of the Comptroller of Customs. Assistance.

7. (1) Where the Director has reasonable cause to believe that any person has contravened or failed to comply with any provision of Articles 4 and 5 of Regulation (EU) No 995/2010 and Article 5 of the Implementing Regulation, the Director may serve in writing a notice of remedial actions, on such person in accordance with sub-regulation (2). Notice of remedial actions.

(2) A notice of remedial actions served in terms of sub-regulation (1) shall specify:

(a) the nature of the offence;

(b) the facts upon which the allegation that an offence has been committed is based;

(c) the measures that, in the Director's opinion, must be taken in order to ensure compliance;

(d) the period within which any such measures must be taken, as is reasonable in the circumstances.

(3) In addition to the notice of remedial actions, the Director may, as an interim measure, prohibit the placing on the market of the timber until the remedial actions as specified in the notice are carried out:

Provided that the grounds for taking such measures shall be specified in the notice:

Provided further that an authorized officer may mark the timber subject to the notice of remedial actions in any way for identification purposes.

(4) Any notice of remedial actions sent by the Director shall be deemed to have been delivered and duly notified if it is physically delivered or sent by registered post to the person at his place of residence or business or place of work or postal address of such person.

Administrative penalties.

8. (1) Where any person fails to comply with a notice served in accordance with regulation 7 within the time specified therein, the Director may cause a notice in writing in accordance with sub-regulation (2) to be served on that person.

(2) A notice under sub-regulation (1) shall specify:

(a) the date and nature of the offence;

(b) a summary of the facts upon which the allegation that an offence has been committed is based (being a sufficient summary fully and fairly to inform the person of the allegation against him);

(c) any other matter (not being previous convictions) that the Director considers relevant to the imposition of a penalty; and

(d) the amount of the penalty due and, where the penalty

due depends on a previous conviction, the date of such conviction,

and shall be endorsed on a statement setting out the provisions of this regulation.

(3) Any person on whom a notice under sub-regulation (1) is served may, within thirty days after such service, by notice in writing served on the Director, require that proceedings in respect of the alleged offence shall be dealt with by the Court, in which case the following provisions shall apply:

(a) no further proceedings shall be taken under this regulation by the Director; and

(b) nothing in this regulation shall be construed as preventing the institution of any proceedings in respect of the alleged offence or the conviction of the person for the offence by the Court or the imposition of any penalty or forfeiture under these regulations upon such conviction.

(4) Any person on whom a notice under sub-regulation (1) is served who does not wish that proceedings in respect of the alleged offence be dealt with by the Court may, within thirty days after such service, by notice in writing served on the Director:

(a) admit the offence;

(b) pay the amount of the penalty to the Director within thirty days after the penalty notice is served or after such subsequent period as the Director may determine; and

(c) take the necessary remedial actions to ensure conformity with these regulations.

(5) Where under this regulation a person admits an offence, the Director shall impose a monetary penalty on that person in respect of the offence amounting to one-third of the maximum penalty to which the person would be liable if he were convicted of the offence by the Court.

(6) The penalty imposed under sub-regulation (5) shall be due as civil debt enforceable by the competent Court of civil jurisdiction in favour of the Government and the declaration by the person on whom the penalty is imposed that he admits the charge shall constitute an executive title for the purposes of article 253 of the Code of Organization and Civil Procedure in the same manner as if it were a judgement of the competent Court of civil jurisdiction. Cap. 12.

(7) Notwithstanding any other provision of these regulations or of any other enactment, where an offence has been admitted under this article no charge may be laid in respect of the offence against any person by whom it has been admitted.

(8) Where a person on whom a notice under sub-regulation (1) is served does not, within thirty days after the notice is served on him, admit the offence, the Director shall institute proceedings or cause proceedings to be instituted before the Court in respect of the alleged offence.

Offences and penalties.

9. (1) Any person shall be guilty of an offence under these regulations if he:

(a) fails to comply with the prohibition on placing illegally harvested timber on the market in accordance with Article 4(1) of Regulation (EU) No 995/2010;

(b) fails to comply with the obligation to exercise due diligence and maintain and regularly evaluate the due diligence system in accordance with Articles 4(2) and (3) of Regulation (EU) No 995/2010;

(c) fails to comply with the obligation of traceability in terms of Article 5 of Regulation (EU) No 995/2010;

(d) fails to comply with the record-keeping obligation in accordance with Article 5 of the Implementing Regulation;

(e) fails to comply or contravenes any provision of these regulations or fails to comply with any order lawfully given in terms of any provision of Regulation (EU) No 995/2010, the Implementing Regulation or these regulations;

(f) conspires or attempts, or aids, or abets, any other person by whatever means, including advertising, counselling or procurement to contravene the provisions of these regulations or to fail to comply with any such provisions, including any order lawfully given in terms of any of the provisions of these regulations, or to contravene any restriction, prohibition or requirement imposed by or under the said regulations;

(g) intentionally obstructs or causes the obstruction of any person acting in the proper exercise of his functions under these regulations and, or fails to allow an inspection authorized under these regulations;

(h) without reasonable cause, fails to give any person,

acting in the exercise of his functions under these regulations, any assistance or information which he may be required to give under these regulations or any other law, or gives false or misleading information;

(i) alters, forges, counterfeits or destroys any document presented to or issued by the Director under these regulations.

(2) Any person who is found guilty of an offence against the provisions of these regulations shall, on conviction, be liable:

(a) on a first conviction relating to sub-regulation (1)(a), (b), (g), (h) and (i), to a fine (*multa*) of not less than two thousand and five hundred euro (€2,500) but not exceeding twenty-five thousand euro (€25,000);

(b) on a first conviction relating to sub-regulation (1)(c), (d), (e) and (f), to a fine (*multa*) of not less than one thousand and five hundred euro (€1,500) but not exceeding five thousand euro (€5,000);

(c) on a second or subsequent convictions, to a fine (*multa*) of not less than two thousand and five hundred euro (€2,500) but not exceeding fifty thousand euro (€50,000).

(3) Where any person is convicted of an offence against these regulations, the Court may in addition to any other penalty that it may impose:

(a) order that the timber and any other goods or things to which the offence relates be forfeited to the Government and if so forfeited shall be disposed of in such a manner as the Court may determine on the advice of the Director;

(b) suspend for a period as the Court may deem proper, not being less than one month, any licence or permit held by the offender and related to any trade or business to which the offence relates;

(c) impose an additional fine equivalent to the estimated economic benefit which the convicted person derived from the commission of the offence or would have derived had the offence remained undetected; and

(d) sentence the offender to imprisonment for a term of not less than thirty days and not exceeding two years.

(4) In respect of proceedings for any offence charged against

these regulations, the Court may award in favour of the Government such costs and expenses incurred in relation to these proceedings as it may deem proper.

Onus of proof. **10.** In any proceedings for an offence under these regulations consisting of a failure to comply with Articles 4 and 5 of Regulation (EU) No 995/2010 and Article 5 of the Implementing Regulation, it shall be for the accused to prove (as the case may be) that all the necessary due diligence was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement.

Applicability of the Criminal Code. Cap. 9. **11.** (1) The provisions of articles 23 and 30(1) of the Criminal Code shall, *mutatis mutandis*, apply to proceedings in respect of offences against these regulations, so however that the disqualification from holding or obtaining a warrant, licence, permit or authority shall in no case be less than one year.

Cap. 9. (2) Notwithstanding the provisions of article 370 of the Criminal Code, proceedings for an offence against these regulations shall be held before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, and shall be in accordance with the provisions of the Criminal Code regulating the procedure before the said courts as courts of criminal judicature.

