

# **Barking up the wrong tree? Status quo of the EU Timber Regulation**

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## Status quo

Regulation (EU) No. 995/2010 (EUTR) took effect on 2 December 2010, with the objective of curbing illegal logging. The competent authority in Germany, the Federal Office for Agriculture and Food (BLE), has not been inactive in this regard, performing [inspections of the 200 largest market operators](#), accounting for more than 70% of EUTR timber imports into Germany, through the end of 2018.

According to the [German government](#), the inspections performed by the Office in 2017, with 154 inspection procedures evaluated, revealed deficiencies in 121 cases, resulting in 73 proceedings for administrative offenses. § 7(5) of the German Timber Act provides for fines of up to 20,000 or 50,000 Euros for violations of the EUTR. While the German government's figures show that the Office is not imposing the maximum fines, the fines it assesses are typically above the 200-Euro threshold required for entry into the Central Trade Register pursuant to §149(2) No. 3 of the Industrial Code.

It should be kept in mind that proceedings for administrative offenses, and therefore entries in the Central Trade Register, are typically not directed against the legal entity itself, but rather against its corporate officers. Accordingly, managing directors and management board members face the risk of entry into the Central Trade Register for each individual violation of the EUTR.

## Duties of economic operators

The scope of the EUTR is broad, but not all-encompassing. Economic operators should classify their products based on the [EU combined nomenclature](#) and determine whether their products fall within the scope of the EUTR.

It is also necessary to determine whether the economic operator is to be regarded as an operator or as a trader for each individual product:

- ▶ an operator is someone who places timber or timber products in the market;
- ▶ a trader is someone who, in the course of a commercial activity, sells or buys timber or timber products which were already placed on the internal market.

While the requirements for traders are essentially documentation requirements, operators are required to undergo a due diligence process (DDP) which includes collecting information to establish the legality of the timber, as well as risk assessment and risk mitigation. Recognized monitoring organizations like [NEPCon](#) and [DIN CERTCO](#) provide assistance in formulating the DDP.

### Practical tip

The scope of the information which is to be obtained, as well as the risk assessment, depend on the supply chain in each case: a "one size fits all" approach is doomed to fail.

Operators need to build up the expertise necessary to request useful documents for the individual links of the supply chain, with due regard for conditions in each country. This will allow them to demonstrate to BLE that they have fully understood the documents and their context, that they have performed a comprehensible risk assessment and that any risks have been reduced to a negligible amount (particularly in case of foreign-language documents).

In particular, the following points should be heeded:

- ▶ timber imports from Indonesia require a [FLEGT license](#) in order to conform with the EUTR;
- ▶ timber imports from Myanmar require special attention and are a subject of focus for [BLE](#);
- ▶ a [corruption index](#) of greater than 50 may cause BLE to [doubt the veracity](#) of government documents;
- ▶ certificates from third parties (e.g. [FSC](#)) have the potential to reduce risk, but are not proof of legality.

Further links:

[EU Commission's guidelines on the EUTR](#)

[BLE instruction sheet on the EUTR](#)

[List of recognized monitoring organizations in accordance with Article 8 of the EUTR](#)



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