



Guideline for Danish forest owners on the EU Timber Regulation (EUTR)

Ministry of Environment and Food

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1. Introduction

The European Timber Regulation (EUTR) is the EU's timber regulation aimed at combatting trade with illegally harvested timber. The regulation affects forest owners who place timber on the market within the EU. Forest owners who import and place on the EU market timber and timber products harvested outside the EU should refer to www.eutr.dk for more information about the EUTR requirements for such activities.

1.1 Objective

The objective of this guideline is to help Danish forest owners understand the requirements imposed by the EUTR so that they can take into account these requirements in their daily forest management operations. An important step in this regard is to define what Danish legislation Danish forest owners should be aware of in connection with the EUTR.

In this guideline, the Agency for Water and Nature Management lists the Danish legislation Danish forest owners must be aware of in accordance with the EUTR. The EUTR stipulates that timber products from Danish producers can only be sold legally within the EU if the forestry activities at Danish properties are in

compliance with applicable Danish legislation. Timber harvested in non-compliance with the relevant legislation and administrative orders listed in Annex 1 to this guideline will be considered “illegally harvested timber” in Denmark. Pursuant to the EUTR, placing such timber on the EU market is illegal and subject to penalties.

Annex 1 is based on a comparison of the requirements stipulated in Article 2(h) of the Timber Regulation and the requirements stipulated in the relevant Danish legislation.

The guideline does not explain the Timber Regulation in its entirety. A number of provisions in the regulation have been selected and are explained here. They are not presented in chronological order. Please look in to the Timber Regulation for more details about the specific provisions.

1.2 EUTR

The full title of the EU Timber Regulation is *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*. Danish forest owners have been subject to the EUTR regulations since 3 March 2013. An EU regulation is directly applicable in the Member State.

The Danish Timber Act, “*lov nr. 1225 af 18. december 2012 om administration af Den Europæiske Unions forordning om handel med træ og træprodukter med henblik på bekæmpelse af handel med ulovligt fældet træ*” entered into force on 18 December 2012. The Danish Act stipulates, among other things, national provisions concerning penalties and enforcement.

An overview of all relevant legislation concerning the EUTR is provided in Annex 2.

2. Definitions

2.1 Legally and illegally harvested timber

A central term in the EUTR is “legally harvested timber”. Legally harvested timber means that the timber is harvested in compliance with applicable legislation in the country of harvest. Article 2(h) of the Timber Regulation narrows down “applicable legislation” to legislation and administrative orders concerning five different areas:

- rights to harvest timber within legally gazetted boundaries,
- payments for harvest rights and timber including duties related to timber harvesting,
- timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting,
- third parties’ legal rights concerning use and tenure that are affected by timber harvesting, and
- trade and customs, in so far as the forest sector is concerned.

Annex 1 to this guideline lists the acts and administrative orders that must be included in a forest owner’s due diligence system (see section 2.5), and with which the forest owner must comply in order for the timber to be considered as legally harvested. There may be special local considerations and provisions for a property, e.g. local conservation orders, Natura 2000 agreements and forests or single trees under special protection, that must also be included in a due diligence system. Annex 1 should therefore be regarded as a

general overview. Forest owners must also take account of local considerations and provisions that apply to their property.

That is, both the legislation listed in Annex 1 and local considerations and provisions define what constitutes “legally harvested timber” and “illegally harvested timber”.

2.2 Placing on the market

For a Danish forest owner, “placing on the market” means any form of timber harvesting for commercial purposes. Regardless of whether the timber is harvested with a view to resale to another woodworking enterprise, to an intermediary operator, to an end user or with a view to use in the forest owner’s own business, the Timber Regulation defines this timber as being “placed on the market”.

The forest owner’s own consumption, for example firewood for heating offices on the property, or timber used as fencing poles on the property, are examples of how timber and timber products are used by the forest owner’s own enterprise and are thus “placed on the market”.

The EUTR concerns the act of harvesting; sales of standing timber are not considered as being placed on the market according to the EUTR, as long as the trees sold are living. The operator with ownership of the timber at the time of harvesting is the person responsible for placing the timber on the market.

The European Commission has prepared a specific guidance document for the EU Timber Regulation (see reference in Annex 2), which describes in more detail what “placing on the market” means.

2.3 Forests

Forests are not defined in the EUTR. Instead, when administering the EUTR, the Danish Agency for Water and Nature Management uses the FAO definition:

“Land spanning more than 0.5 hectares and wider than 20 meters with trees higher than 5 meters and a canopy cover of more than 10 percent, or trees able to reach these thresholds in situ. It does not include land that is predominantly under agricultural or urban land use, including holiday home areas.”

Hedgerow areas, planted game habitats, decorative greeneries, nurseries, forest roads, firebreaks and similar are thus also included in the definition if they meet the requirements regarding size, width, canopy cover and height and are an integrated part of the forest.

Fruit orchards, short rotation energy plantations, decorative greenery and Christmas trees, etc. located on agricultural land are not included.

Parks, gardens and similar are not included, even if they meet the requirements for size, width, canopy cover and height.

It has no significance if the area is subject to the Danish protection of forest land against change in land-use (Danish: fredskov); however, areas without this 'fredskov' are not subject to the provisions of the Danish Forest Act.

2.4 Forest owners

A forest owner is the owner of forest land as defined in section 2.3. Approximately 28,000 forest properties exist in Denmark.

2.5 Due diligence

The term *due diligence system* refers to the system of special measures and precautions that is used in the management of forestry at property level in accordance with the EUTR.

The Timber Regulation uses the term due diligence, and this is why this term is also used in the present guideline. All forest owners must incorporate *due diligence* in their forestry activities.

2.6 Operator

The term 'operator' means any natural or legal person placing timber or timber products on the market. In accordance with the EUTR, Danish forest owners are operators.

2.7 Sales of standing timber

The EUTR concerns harvested timber; the Danish Agency for Water and Nature Management does *not* consider standing timber to have been placed on the market.

When living trees are sold, the buyer is responsible for demonstrating due diligence.

A forest owner who sells (living) standing timber is thus only subject to the requirement for traceability (see section 3).

In contrast, the buyer of the timber is subject to the requirement for traceability and the requirement to show due diligence when harvesting the timber. Here, it is the buyer who places the timber on the market, even in situations where the forest owner, or the forest owner's employees, have selected the timber, and thus identified which trees are to be harvested.

3. Requirements of the Timber Regulation (EUTR)

The requirements of Articles 4 and 5 of the Timber Regulation can be summed up in the following three requirements:

1. *Prohibition*

- It is prohibited to place illegally harvested timber and timber products made from such timber for the first time on the internal market.

2. *Due diligence*

- Operators who place timber and timber products for the first time on the internal market must exercise due diligence to minimize the risk of placing illegally harvested timber and timber products

derived from such timber on the internal market. To that end, operators must have in place a due diligence system.

3. *Traceability*

- Throughout the entire supply chain, traders and intermediaries must be able to identify the operators or the traders who have supplied the timber and timber products, and the traders to whom they have supplied timber and timber products.

Danish forest owners who place harvested timber on the market from their own forests must comply with these three requirements.

Forest owners who *only* sell standing timber will not be required to comply with the regulation's requirements (see also section 2.7). This is because the Danish Agency for Water and Nature Management does not assess that sales of living trees are covered by the regulation. In such situations, the buyer of the timber will be subject to the requirements when the timber is harvested and placed on the market (by the buyer) as harvested timber. If forest owners have acted as intermediaries, i.e. they buy timber that has already been placed on the internal market by another party and then resell it, the forest owners will also be subject to the traceability requirement. The Danish Agency for Water and Nature Management will in general assume that forest owners have placed harvested timber from their own forests on the market unless the forest owners can document that this is not the case.

The present guideline provides an overview of what Danish forest owners must pay particular attention to, so as to ensure that they comply with the EUTR. This includes a definition of the terms "illegally harvested timber" and "placing timber on the market" as well as a description of the minimum requirements for a due diligence system.

Moreover, the guideline includes a number of examples that illustrate what forest owners must pay particular attention to in relation to the EUTR.

A forest owner can seek help to meet the due diligence obligation from a monitoring organization that has been recognized by the Commission. A list of recognized monitoring organizations can be found here: <http://ec.europa.eu/environment/forests/pdf/mos.pdf>.

3.1 Prohibition

Timber harvested in violation of the applicable legislation as listed in Annex 1, and defined in more detail in section 2.1, will be considered illegally harvested timber in Denmark, and in accordance with the EUTR, it is illegal and subject to a penalty to place such timber on the internal market.

If a forest owner places illegally harvested timber on the market, the forest owner may be subject to a penalty in accordance with the provisions laid down in the EUTR as well as the legislation listed in Annex 1. The EUTR does not change the content and use of applicable legislation in Denmark, however the EUTR represents new timber legislation pursuant to which the authorities can impose penalties on a forest owner. The penalties are described in more detail in section 5 about enforcement.

3.2 Due diligence system

A due diligence system consists of a number of actions to be performed by the forest owner to ensure that operators who place timber and timber products on the market can document that they are exhibiting due diligence with regard to ensuring that they are not trading illegally harvested timber. The forest owner, and the forest owner's employees and subcontractors must live up to the due diligence system in connection with their harvesting activities.

According to the EUTR, the due diligence system must consist of three elements:

- 1) measures and procedures providing access to relevant information,
- 2) risk assessment procedures, and
- 3) risk mitigation procedures.

It is important that the forest owner's due diligence system provides documentation of compliance with, and knowledge about, the relevant legislation in connection with harvesting and operation of the forest. The system should also document activities carried out to comply with the three elements above.

There are no formal requirements about how to set up and file a due diligence system. However, it is a good idea to write down and file the system somewhere on the property, and to regularly assesses and update the system.

For Danish forest owners, the due diligence obligation means that the forest owner must ensure that employees and contractors working in the forest have sufficient knowledge about the relevant legislation, see Annex 1, and also any local considerations and provisions. The required basic information about the harvested timber should also be readily available. This means that the due diligence system as a minimum must:

- give access to information about the trade name and type of product as well as the common name of the tree species and, where applicable, the full scientific name of all timber placed on the market,
- include information about the relevant applicable legislation in Denmark (Annex 1 can be used for this purpose),
- include information about any special local considerations and provisions concerning the property (e.g. conservation orders, Natura 2000 agreements and forests or single trees under special protection),
- include risk assessment procedures and risk mitigation procedures that provide all employees and contractors involved in harvesting timber with sufficient knowledge about the applicable legislation. All concerned parties must comply with this legislation.

Products that consist of several timber species must include specification of the most dominant tree species used, for example using internal procedures. The less significant timber species used in the product can simply be included in categories such as "mixed deciduous timber", "mixed coniferous timber" or "mixed deciduous/coniferous timber".

If a risk is identified, the forestry operator must limit this risk in a way commensurate with the risk identified. Risk mitigation procedures to prevent placing illegal timber or timber products on the market should be checked regularly.

It should be noted that failure to have a due diligence system is in itself a violation of the EUTR, even if no violation of relevant applicable legislation has been established on the forest property or violation of local

provisions such as local conservation orders, Natura 2000 agreements or forests or single trees under special protection, see Annex 1.

3.3 Traceability

Traders and intermediaries of timber and timber products must be able to document traceability one step back and one step forward in the supply chain. In practice, this means the operators or traders who have supplied the timber and timber products, and the operators or traders to whom they have supplied timber and timber products. This information can be documented via e.g. invoices.

Throughout the entire supply chain, traders must be able to identify the operators or the traders who have supplied the timber and timber products, and the traders to whom they have supplied timber and timber products. Documentation could be the operator's CVR no. (Central business registration number) or the name and address of the operator. Supply to end users (private individuals) is not covered by this requirement.

In accordance with the traceability requirement, forest owners who sell timber from their own forests must store information about to whom they have sold their timber. The forest owner is not required to document a buyer's resale of timber. Forest owner's sales to private individuals are exempt from the traceability requirement.

This information must be stored for at least five years, however information regarding sales before 3 March 2013 when the EUTR regulations entered into force does not need to be stored.

4. The Agency for Water and Nature Management is the authority

The Danish Agency for Water and Nature Management is the competent authority responsible for managing and enforcing the EUTR in Denmark. The Danish Agency for Water and Nature Management is therefore responsible for monitoring that forest owners and other operators who place timber and timber products on the market for the first time comply with the regulations, and the Agency is responsible for monitoring traders and intermediaries of timber and timber products. The provisions describing the tasks and powers of the Danish Agency for Water and Nature Management, including their right to conduct check visits (EUTR checks) are stipulated in the Danish Timber Act and its associated Administrative Order (see Annex 2).

The Agency for Water and Nature Management can choose to let another public authority participate in a specific EUTR check of a property. This could be the local authority/municipality.

As of 1 July 2016, the responsibility for enforcing the EUTR was transferred to the Agency for Water and Nature Management, a new agency under the Danish Ministry of Food, Agriculture and Fisheries in connection with a division of the Nature Agency's tasks into two new agencies.

5. Enforcement

5.1 Administrative enforcement

Enforcement of the EUTR includes the Timber Regulation itself, the Danish Timber Act and associated administrative orders, see Annex 2. “Illegal situations” are, for example, violation of the provisions of EUTR or violation of prohibitions or notices or terms in an authorisation or exemption pursuant to the EUTR. An illegal situation could also be violation of the acts listed in Annex 1, due to the fact that violation of these special laws also constitutes violation of the provisions of EUTR.

If, during a check, an illegal situation is found, including an inadequate due diligence system, the competent authority has a duty to react. The Danish Agency for Water and Nature Management may issue a notice of prohibition or remedial actions, and, depending on the nature of the shortcomings detected, may take temporary measures, including seizure of timber and timber products, fines, and bans on marketing timber and timber products. Practice will be determined on the basis of specific experience and examples of infringements, and the guideline cannot, at the present time, describe in more detail how infringements will be dealt with. Section 6 of this guideline includes 12 examples of legal and illegal situations pursuant to the EUTR.

Rulings by the Danish Agency for Water and Nature Management cannot be appealed to another administrative authority. A ruling can always be brought before the courts in accordance with the standard regulations.

5.2 Reports to the police and penalties

The Danish Agency for Water and Nature Management determines whether and when a case concerning enforcement should be reported to the police. If the Agency for Water and Nature Management assesses that a violation warrants administrative enforcement proceedings, the case will only be reported to the police in the event that the administrative proceedings have no effect. The decision to report a case to the police is based on a detailed description of the preceding enforcement proceedings.

When a case has been reported to the police, the police and prosecuting authority determine whether the case can be prosecuted. The individual who has violated the provisions of the laws is punishable. Thus, the penalty provisions are not limited to the owner or the user of the property. Other individuals can also be sanctioned if they have violated legislation. Legal persons can also be penalised, i.e. companies, stakeholders, associations, foundations, etc. They can either be issued a fine or be sentenced to up to one year in prison.

There is no requirement for administrative enforcement proceedings before reporting a case to the police. Serious violations where the owner/user has been grossly negligent or has failed with intent to comply with legislation will be reported to the police immediately after the illegal situation has been ascertained.

6. Examples

Below follows 12 specific examples of violations of the legislation, and the implications of such violations with regard to the EUTR. The examples focus on whether there has been violation of the EUTR. A situation

that is not covered by the EUTR may still be illegal pursuant to Danish law; in such cases enforcement proceedings follow Danish law and are not described here.

The examples illustrate some of the situations a forest owner must be aware of. They have been chosen to illustrate the requirements of the Timber Regulation compared with the list of EUTR-relevant national legislation that forest owners must include in their due diligence system, see Annex 1. In the examples, all references to the Danish Timber Act and the provisions of the Timber Regulation are referred to as “EUTR” in short.

6.1 Example 1. Changes are made to the bottom level of a watercourse

In connection with planning a harvesting operation where the timber was to be resold, a contractor was asked to clean out the ditches and watercourses in a forest area. The local authority launched legal proceedings based on violation of the Danish Watercourse Act. The local authority ruled that the forest owner should have applied for authorisation to clean out the ditches and watercourses prior to the operation, and that failure to do so was in fact an violation of the provisions of the Danish Watercourse Act regarding changes to the bottom level of the watercourse. This decision was based on the fact that changes were made to the bottom level of the watercourse.

The Danish Agency for Water and Nature Management’s assessment:

– *Danish law: Pursuant to the Danish Watercourse Act, the action was illegal.*

– *EUTR: The violation of the Danish Watercourse Act took place in connection with harvesting timber, and therefore the harvested timber is illegal pursuant to the EUTR.*

– *Reaction: The Danish Agency for Water and Nature Management will commence enforcement of the EUTR.*

– *The forest owner’s due diligence system should include information about any relevant conditions on the property that require authorisation prior to commencing an activity as well as include procedures for mitigating risk of violation. For example, through contracts with a contractor or similar that inform the contractor of any special conditions on the property, so that the contractor can observe these conditions.*

– *If the timber harvesting described in example 1 had been carried out prior to cleaning out the ditches and watercourses, and there was clear indication that this cleaning out was unrelated to the harvesting, the case would only have been tried pursuant to the Danish Watercourse Act.*

6.2 Example 2. Oil spills

A forest owner asked a contractor to clear-cut an area. Subsequently it transpired that the contractor’s equipment was in ill repair. As a consequence, there were significant diesel and oil spills in the forest in areas where the contractor’s workers had been working. The spills were reported by several visitors to the forest, who also took pictures of the spills.

The Danish Agency for Water and Nature Management's assessment:

- *Danish law: It should be clarified whether, during the harvesting operation, the contractor violated the provisions of the Danish Environmental Protection Act concerning protection of soil and groundwater (section 19).*
- *EUTR: If the Danish Environmental Protection Act had been violated, the timber was illegally harvested pursuant to the EUTR.*
- *Reaction: The Danish Agency for Water and Nature Management will commence enforcement of the EUTR.*
- *The forest owner should include procedures in the due diligence system for ensuring that contractors are familiar with relevant environmental protection provisions. In the example, the contractor is operating in the forest under the same conditions as the forest owner's employees.*

6.3 Example 3. Section 3 on agriculture

A property includes both forestry and agriculture. When working in the fields, one of the workers partially ploughed a meadow. The meadow is protected pursuant to Section 3 of the Danish Nature Protection Act. Timber was harvested in the forest and subsequently placed on the market.

The Danish Agency for Water and Nature Management's assessment:

- *Danish law: Violation of the provisions of the Danish Nature Protection Act.*
- *EUTR: The incident is unrelated to whether harvested timber was harvested legally pursuant to the EUTR, and thus has no bearing on the possibility to sell the harvested timber. This is because the activity was not directly related to the forest owner's harvesting.*
- *Reaction: No reaction from the Danish Agency for Water and Nature Management, because the timber was not harvested illegally pursuant to the EUTR. The Danish Agency for Water and Nature Management has a duty to notify the local authority about the incident. The local authority is the competent authority in this matter and is therefore responsible for enforcing the provisions of the Danish Nature Protection Act.*
- *The due diligence system is not required to include conditions that are not related to the EUTR.*

6.4 Example 4. Failure to notify

A forest owner identified ash dieback in a Natura 2000 site, and clear-cut, and thus harvested, and sold all the ash timber. This was done without giving prior notification to the Danish Agency for Water and Nature Management about the plans to clear-cut the area, as is required by the rules for notification for forests located in Natura 2000 sites, see Section 17 of the Danish Forest Act. Clearcutting the area has led to impairment of the designation basis of the Natura 2000 site.

The Danish Agency for Water and Nature Management's assessment:

- Danish law: The incident is a violation of the Danish Forest Act.
- EUTR: The incident is a violation of the EUTR, due to the fact that the illegal activity (lack of notification required pursuant to the Danish Forest Act) is directly related to the harvesting of timber and is thus covered by the EUTR. Consequently, the harvested timber is considered “illegally harvested timber” pursuant to the EUTR, and thus placing this timber on the market is prohibited in the EU.
- Reaction: The Danish Agency for Water and Nature Management will commence enforcement of the EUTR.
- The forest owner's due diligence system must include information about all NATURA 2000-designated sites in which the forest is located, as well as all the natural habitat and species mapped in the Natura 2000 sites. Similarly, procedures must be in place to ensure compliance with the regulations when harvesting timber on the property.

6.5 Example 5. Harvesting non-harvestable timber

A forest owner sold standing timber to a contractor who was then responsible for harvesting and transporting the timber from the forest for resale. It transpired that the timber was harvested in contravention of Section 8 of the Danish Forest Act as it was not ready to be harvested and because the harvesting an element in thinning out vegetation. The forest owner identified the trees to be sold to the contractor, and thus identified the trees to be harvested.

The Danish Agency for Water and Nature Management's assessment:

- Danish law: The provisions of the Danish Forest Act were violated.
- EUTR: The contractor is responsible for violation of the provisions of the EUTR, and is thus responsible for placing illegally harvested timber on the market for the first time.
- Reaction: The Danish Agency for Water and Nature Management will commence enforcement of the EUTR and the Danish Forest Act.
- As sales of standing timber (living trees) do not fall under the definition of “placing on the market” pursuant to the EUTR, sales of this nature are not part of the forest owner's due diligence obligation. Thus is it solely the contractor who is responsible for ensuring due diligence, and for ensuring that the due diligence system includes information about the provisions of the Danish Forest Act. This applies even though it was the forest owner who identified the trees to be harvested. In this example, the forest owner is only covered by the traceability requirement; that is he must be able to trace to whom he sold (the living) timber.

6.6 Example 6. Illegal labour

A forest owner who sold timber from a forest road suitable for lorries hired a contractor to harvest the timber and remove it from the forest. It transpired that the contractor had several employees who were not employed under Danish labour rules.

The Danish Agency for Water and Nature Management's assessment:

- Danish law: Whether the contractor's employees are employed under a collective agreement or not is not covered by the EUTR, see Annex 1.
- EUTR: The timber was not harvested illegally pursuant to the EUTR. Pay and tax conditions, including the Danish Holiday Act, are not covered by the EUTR, see Annex 1.
- Reaction: There are no grounds for enforcement of the EUTR. The Agency for Water and Nature Management is a public institution and as such it has a duty to contact the relevant authority and inform the authority about the situation.
- There is no requirement that the forest owner's due diligence system take account of this kind of situation.

6.7 Example 7. Drainage of waterhole

A forest owner drained a waterhole in the forest in conflict with the regulations in section 28 of the Danish Forest Act. The water hole was drained to enable a forestry harvester to access the area. The forestry harvester harvested the timber in the sub-plot. The timber harvesting was not in conflict with any regulations as such, however the drainage was.

The Danish Agency for Water and Nature Management's assessment:

- Danish law: The drainage is in conflict with section 28 of the Danish Forest Act (depending on the size of the waterhole, it could also be in conflict with regulations in Section 3 of the Danish Nature Protection Act).
- EUTR: The timber was harvested illegally pursuant to the EUTR, see Annex 1.
- Reaction: The Danish Agency for Water and Nature Management will commence enforcement of the EUTR.
- The provisions of the Danish Forest Act (and the Danish Nature Protection Act) must be incorporated in the forest owner's due diligence scheme, see Annex 1.
- It is unlikely that timber from the specific sub-plot can be sold, however this can only be determined upon assessment of the specific case. Based on the description of the example, the Danish Agency for Water and Nature Management will initially include all the timber harvested from the sub-plot.

6.8 Example 8. VAT

A forest owner sold timber without adding VAT.

The Danish Agency for Water and Nature Management's assessment:

- Danish law: Violation of the Danish VAT Act.

– EUTR: Taxes related to harvesting are covered by the EUTR. Therefore the example given here is a violation of both the Danish VAT Act and the EUTR.

– Reaction: The Danish Agency for Water and Nature Management will commence enforcement of the EUTR.

– Procedures for ensuring compliance with the Danish VAT Act must be incorporated in the forest owner's due diligence system.

6.9 Example 9. Harvesting trees in a forest lot

A forest is owned by several owners who each own one or more forest lots. The cadastral borders are not visible in the forest. Owner AB, who owns lot 1ab, harvests timber on his own land and on the neighbouring lot 1cd without prior consent from owner CD.

The Danish Agency for Water and Nature Management's assessment:

– Danish law: The provisions in Article 2(h) of the Timber Regulation: "rights to harvest timber within legally gazetted boundaries" have been violated, and thus also the Danish Contracts Act and the Danish Land Registration Act, which provide documentation of who has the legal ownership/rights of use of the area.

– EUTR: The timber is regarded as being "illegally harvested timber" and therefore the EUTR has been violated.

– Reaction: The Danish Agency for Water and Nature Management will commence enforcement of the EUTR.

– The rights to harvest timber must be included in the forest owner's due diligence system.

6.10 Example 10. Illegal transport

A forest owner hired a haulier to pick up a stack of timber from a forest road suitable for lorries. The stack was to be delivered to a saw mill nearby that had bought the stack. En route to the saw mill, the lorry was stopped by the police who established that the lorry was overloaded (the axle load was too high) by approx. 20%. The police issued a fine and ordered that the stack be reloaded to a weight that matched the lorry. The saw mill learnt about the incident and contacted the forest owner to ask if the timber is legal.

The Danish Agency for Water and Nature Management's assessment:

– Danish law: In accordance with Annex 1, no Danish law has been violated as regards the EUTR.

– EUTR: The timber is not illegal for the sawmill to receive as, according to the EUTR, the saw mill is a trader and has therefore not violated any EUTR requirement. Neither the forest owner nor the haulier have violated any EUTR requirement; the incident concerned violation of the Danish Road Traffic Act, which is not covered by the EUTR, see Annex 1.

- *Reaction: No reaction from the Danish Agency for Water and Nature Management, because the timber was not harvested illegally pursuant to the EUTR.*
- *There is no requirement that the forest owner's due diligence system take account of this kind of situation.*

6.11 Example 11. Nest trees

In February a rook colony began to nest in a forest. To avoid noise complaints from the neighbours, the forest owner decided to thin out the nest trees immediately. A contractor carried out the thinning out and moved the timber to a forest road suitable for lorries. A local resident witnessed the incident and reported it to the local unit of the Danish Agency for Water and Nature Management.

The Danish Agency for Water and Nature Management's assessment:

- *Danish law: Birds' nest trees are protected from February to July pursuant to the Administrative Order on the protection of species ("artsfredningsbekendtgørelsen", only available in Danish), and nests are protected by the Act on hunting and game management.*
- *EUTR: The timber was harvested illegally pursuant to the EUTR.*
- *Reaction: The Danish Agency for Water and Nature Management will commence enforcement of the EUTR.*
- *The provisions of the Administrative Order on the protection of species and the Act on hunting and game management act with regard to harvesting must be incorporated in the forest owner's due diligence system.*
- *It is unlikely that timber from the specific sub-plot can be sold, however this can only be determined upon assessment of the specific case. Based on the description, the Danish Agency for Water and Nature Management will generally include all the nest trees harvested from the sub-plot. The case does not have any affect on sales of timber and timber products from the rest of the forest property by the forest owner, because the case is not related to harvesting in other parts of the forest than the specific sub-plot.*

6.12 Example 12. Felling a large tree designated to be left to decay

A tree is mistakenly felled on a forest property. The tree is located in an area covered by a Natura 2000 agreement about leaving trees to decay. The felled tree was covered by a registered grant agreement to be left to decay. The tree was located in a sub-plot in which trees ready for harvesting are harvested legally.

The Danish Agency for Water and Nature Management's assessment:

- *Danish law: The provisions of the Danish Forest Act concerning agreements for Natura 2000 sites have been violated (violation of the conditions of a grant agreement).*
- *EUTR: The timber was harvested illegally pursuant to the EUTR.*

– *Reaction: The Danish Agency for Water and Nature Management will commence enforcement of the EUTR and the Danish Forest Act.*

– *The provisions of the Danish Forest Act and the specific local conditions, e.g. leaving trees to decay, must be incorporated in the forest owner's due diligence system.*

– *The protected trees that have been felled may not be sold. However, the forest owner may sell other trees from the same sub-plot as the protected trees. In contrast to example 7, not all the timber from the sub-plot in question is covered by the ban on sale.*

7. For more information

With this guidance document, the Danish Agency for Water and Nature Management hopes to clarify which regulations apply in Denmark pursuant to the EUTR. Moreover we hope that you can find inspiration with regard to how to incorporate the Timber Regulation's provisions into your forestry activities, before you start any new activities on your forest property.

There are several websites that provide more information about the EU Timber Regulation. The majority of these sites focus on operators that import timber and timber products to the internal market. As a forest owner you are most likely to be the first person to place timber on the internal market when you have harvested your timber. Thus, according to the Timber Regulation, you are an operator.

Annex 1 is an overview of the Danish legislation relevant for Danish forest owners with regard to compliance with the Timber Regulation. This legislation determines whether the timber has been harvested illegally and is therefore illegal to sell. The legislation listed in Annex 1 must be incorporated in the required due diligence system. This system should also take into account local considerations.

Annex 2 provides an overview of all EU timber regulations that apply in Denmark, as well as the Danish legislation on transposition of EU law.

The European Commission's website for the EUTR:

http://ec.europa.eu/environment/eutr2013/index_en.htm

The Danish EUTR website, which is run by the Danish Agency for Water and Nature Management in collaboration with a number of trade organisations:

www.eutr.dk

You can also contact the Danish Agency for Water and Nature Management at: www.svana.dk or svana@svana.dk or telephone +45 72543000.

We hope this guideline will be of use!

8. Annexes

8.1 Annex 1. Applicable Danish legislation indirectly covered by the EUTR

In addition to the acts and administrative orders listed in Annex 1, there may be special local considerations and provisions regarding a property, e.g. local conservation orders, Natura 2000 agreements and forests or single trees under special protection, that forest owners must include in their due diligence system. Therefore Annex 1 should be regarded as a general guideline, and the owner should add additional information about local conditions that apply to the specific property.

Common name <i>Full name of regulation without reference number (Danish name can be used for searches on www.retsinformation.dk - in Danish)</i>	The Danish Agency for Water and Nature Management's assessment <i>Brief description of why the act or administrative order has been included, and what you as a forest owner should be aware of in your due diligence system.</i>
Danish Contracts Act <i>The Consolidated Act on contracts and other legal transactions within the area of property law ("Bekendtgørelse af lov om aftaler og andre retshandler på formuerettens område", only available in Danish)</i>	<i>Documentation for legal ownership/right of use of a specific plot/tenancy agreement.</i>
Administrative Order on the protection of species <i>Administrative Order on the protection of specific animal and plant species and care of injured game ("Bekendtgørelse om fredning af visse dyre- og plantearter og pleje af tilskadekommet vildt", only available in Danish)</i>	<i>Information about relevant protection of animal and plant species, including resting places or breeding sites, e.g. nest trees in forests. Especially Sections 1, 6, 10 and 14 are relevant here.</i>
Danish Hunting Act (the Danish Act on hunting and game management) <i>Consolidated Act on hunting and game management ("Bekendtgørelse af lov om jagt og vildtforvaltning", only available in Danish)</i>	<i>Information about the protection of animals in the breeding season and animal habitats, e.g. breeding bats or resting places in tree hollows. Especially Sections 1 and 6a are relevant here.</i>
Danish Environmental Protection Act <i>Consolidated Act on environmental protection ("Bekendtgørelse af lov om miljøbeskyttelse", only available in Danish)</i>	<i>Forest owners' due diligence system should contribute to the protection of nature and the environment on their property. Especially Sections 1, 2, 4, 19 and 27 are relevant here.</i>

<p>Danish Environmental Damage Act</p> <p><i>Act on investigation, prevention and mitigation of environmental damage ("Bekendtgørelse om lov om undersøgelse, forebyggelse og afhjælpning af miljøskade", only available in Danish)</i></p>	<p><i>Mitigation and prevention of environmental damage. Especially Sections 7-11 are relevant here.</i></p>
<p>Danish Museum Act</p> <p>The Consolidated Act on Museums</p>	<p><i>Especially Part 8a on the preservation of walls of stone and earth and ancient relics or monuments is relevant here.</i></p>
<p>Danish VAT Act</p> <p><i>Consolidated Act on value added tax ("Bekendtgørelse af lov om merværdiafgift", only available in Danish)</i></p>	<p><i>Documentation of payment of taxes (VAT) to the state.</i></p>
<p>Danish Protection of Nature Act</p> <p><i>Consolidated Act on Nature Protection ("Bekendtgørelse af lov om naturbeskyttelse", only available in Danish)</i></p>	<p><i>Forest owners' due diligence system should contribute to the protection of nature and the environment on their property. Especially Sections 1, 3, 17, 18, 19b, 29a and 77 are relevant here.</i></p>
<p>Danish Planning Act</p> <p><i>Consolidated Act on planning ("Bekendtgørelse af lov om planlægning", only available in Danish)</i></p>	<p><i>Pursuant to Section 11g of the Planning Act, an EIA must be completed before construction can commence. The specific regulations concerning EIAs are stated in the Administrative Order on EIAs (see this order).</i></p>
<p>Danish Forest Act</p> <p><i>Consolidated Act on Forests ("Bekendtgørelse af lov om skove", only available in Danish)</i></p>	<p><i>All sections of this Act must be incorporated in the forest owner's due diligence system. The Act conserves and protects Danish forests that are subject to forest reserve regulations.</i></p>
<p>Danish Land Registration Act</p> <p><i>Consolidated Act on Land Registration ("Bekendtgørelse af lov om tinglysning", only available in Danish)</i></p>	<p><i>Documentation of legal ownership/right of use of a specific plot/tenancy agreement. For example the Land Registry or a deed.</i></p>
<p>Danish Customs Act</p> <p><i>Consolidated Act on Customs ("Bekendtgørelse af toldloven", only available in Danish)</i></p>	<p><i>Documentation of the payment of taxes and customs to the state.</i></p>

<p>Danish Watercourse Act</p> <p><i>Consolidated Act on Watercourses (“Bekendtgørelse af lov om vandløb”, only available in Danish)</i></p>	<p><i>Drainage of water with consideration for the environmental quality of the watercourse. Especially Sections 3, 6, 16, 17, 18, 21, 27, 34 and 69.</i></p>
<p>Administrative Order on EIAs</p> <p><i>Administrative Order on environmental impact assessment of certain public and private construction projects in accordance with the Planning Act</i></p>	<p><i>Annex 1, no. 31 and Annex 2, no. 1d contain provisions for an EIA to be completed for certain forest harvesting projects.</i></p> <p>Neglecting to report harvesting that is covered by the EIA regulations relates to the harvesting itself, and is thus covered by Article 2(h), point 1 of the Timber Regulation: “rights to harvest timber within legally gazetted boundaries”.</p>
<p>Other legislation and provisions</p> <p>In addition to the above, special local considerations and provisions may apply to your property, e.g. local conservation orders, Natura 2000 agreements and forests or single trees under special protection that you as a forest owner are obligated to incorporate into your due diligence system.</p> <p>Relevant applicable Danish acts, administrative orders and regulations can be found at: https://www.retsinformation.dk/ (in Danish). Please note that the Danish Agency for Water and Nature Management is not the competent authority for all the acts, administrative orders and regulations mentioned in this guide.</p>	

The EUTR does not lay down any specific requirements regarding documentation of a due diligence system. Therefore this system can be integrated in the operator’s other systems, procedures and document. The Danish Agency for Water and Nature Management recommends that forest owners and contractors consider how they can document their own due diligence system. The Danish Agency for Water and Nature Management assesses that the easiest way for providing documentation is to prepare written procedures and to document identification of risks and risk mitigation procedures.

8.2 Annex 2. Applicable timber legislation in Denmark

‘Regulation’ refers to EU regulations that apply to all EU Member States, whereas ‘act’ and ‘administrative order’ refer to regulations prepared by the Danish Parliament and that only apply in Denmark.

The EU Timber Regulation (EUTR)

- Regulation (EU) No 995/210 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 (the Timber Regulation)

Other relevant EU regulations concerning timber and imports of timber and timber products

- COMMISSION DELEGATED REGULATION (EU) No 363/2012 of 23 February 2012 on the procedural rules for the recognition and withdrawal of recognition of monitoring organisations 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

- COMMISSION IMPLEMENTING REGULATION (EU) No 607/2012 of 6 July 2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organisations 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
- COMMISSION REGULATION (EC) No 1024/2008 of 17 October 2008 laying down detailed measures for the implementation of Council Regulation (EC) No 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community
- COUNCIL REGULATION (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community

EU guidance documents etc.

- COMMISSION NOTICE of 12.2.2016 GUIDANCE DOCUMENT FOR THE EU TIMBER REGULATION (http://eutr.dk/wp-content/uploads/2013/02/C_2016_755_F1_ACT_EN_V6_P1_831439.pdf)

The Danish Timber Act

- Act no. 1225 of 18 December 2012 on administration of the EU regulation on trade of timber and timber products with a view to combatting trade with illegally harvested timber (*the Danish Timber Act*)

Other Danish regulations concerning timber and imports of timber and timber products

- Administrative Order no. 849 of 27 June 2016 on trade with timber and timber products with a view to combatting trade with illegally harvested timber

9. Why regulations on timber trading have been introduced in the EU

Illegal harvesting of timber poses a great challenge in many places in the world. Illegal harvesting may undermine efforts in the affected countries to promote sustainable forest management. This may lead to negative impacts on local and indigenous peoples, on wild fauna and flora in forests, and on valuable nature protection areas. It may also undermine climate-change adaptation efforts by the affected countries or their efforts to protect forests against flooding or protect forests with regard to other important functions. Moreover, illegal harvesting means that the affected countries miss out on considerable revenues in the form of VAT and other timber-related taxes. Finally, illegal harvesting and trade distorts competition on the timber market, leading to unfair competition for operators who comply with legislation. This is why the European Union has introduced regulations that aim at eliminating the placing of illegally harvested timber on the internal market.

Ministry of Environment and Food of Denmark, 1 July 2016

Note:

This guideline is translated in to English to inform the EU Commission, and its member states, about the work related to EUTR being done in Denmark. Regarding a specific case or in court only the Danish version can be used.