

# Module 1: Enforcement of the Timber Trade Ordinance (TTO) in the cantons

A module of the enforcement aid and notice from the FOEN on the TTO



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# Imprint

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This publication is an enforcement aid published by the FOEN as the supervisory authority. It is aimed primarily at enforcement authorities. It substantiates the requirements of federal environmental legislation (regarding unclear legal concepts and scope/the exercise of discretion), and is intended to foster uniform practice in enforcing environmental law. Enforcement authorities that respect this aid may assume that they are enforcing federal legislation in accordance with the law. Other solutions are permissible providing they are legally compliant.

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A forestry business in Rapperswil-Jona harvesting timber for a single-family home in Jona.

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# 1 Introduction

A new regulatory framework for the timber trade came into force in Switzerland on 1 January 2022. It bans the trade in illegally harvested timber and the products made from it. The legal basis for these regulations is provided by additions to the Environmental Protection Act (EPA)<sup>1</sup> and the new Timber Trade Ordinance (TTO).<sup>2</sup>

Regulations on the timber trade are enforced in the main by the FOEN. However, the cantons are responsible for checking timber harvested in Swiss forests. The Conference for Forests, Wildlife and the Countryside (KWL) and the FOEN therefore agreed that the FOEN would publish an enforcement aid detailing the requirements that the cantons must meet when enforcing the Timber Trade Ordinance.

<sup>1</sup> Federal Act of 7 October 1983 on the Protection of the Environment (Environmental Protection Act, EPA; SR 014.01; AS 2021 614).

<sup>2</sup> Ordinance of 12 May 2021 on Placing Timber and Wood Products on the Market (Timber Trade Ordinance, TTO; SR 814.021).

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## 2 Background

At the core of the new regulatory framework for the timber trade is due diligence on the part of the initial operators for timber and wood products (Art. 4 TTO). 'Initial operator' means any natural or legal person who places timber or wood products on the market for the first time (Art. 3 let. b TTO). They either import timber from abroad into Switzerland, or harvest it from Swiss forests. In the latter case the cantons are responsible for checks on initial operators (Art. 15 para. 3 TTO).

This enforcement aid sets out how these checks should be conducted by the cantonal forestry offices or forest departments that are charged with enforcing the Timber Trade Ordinance. It also shows how these combine with the system of permits issued in accordance with Article 21 Forest Act (ForA)<sup>3</sup> ([timber] felling permits, planting protocols/lists, including the number of uses under approved management plans), as the tried-and-tested forest management monitoring instrument (Section 3). The enforcement aid also explains how cantons have powers to seize and confiscate timber and wood, as a new measure under administrative law (Section 4), and how they can enter data in the FOEN information system effectively in accordance with Article 12 paragraph 2 TTO (Section 5).

<sup>3</sup> Federal Act of 4 October 1991 on Forest (Forest Act, ForA; SR 921.0).

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## 3 Checks on initial operators for Swiss timber

### 3.1 Scope

Forest owners who sell timber they have harvested themselves or had harvested from their forest on their behalf, or who use that timber for commercial purposes, are deemed to be initial operators as defined in Article 3 letter b TTO. Their compliance with their due diligence obligations should be checked by the cantons in accordance with Article 15 paragraph 3 TTO. Anyone who purchases standing timber, fells it themselves (forestry businesses, independent feller-buyers for non-private use such as in agriculture) and passes it on in return for payment or free of charge, or uses it for commercial purposes in their own business, places timber on the market within the meaning of the Ordinance. They are therefore subject to checks as an initial operator. Independent feller-buyers are identified by forest owners.

By contrast, forest owners who harvest timber for their private and personal use or for non-commercial purposes are not deemed to be initial operators as described in Article 3 letters a and b TTO, and are therefore not subject to the due diligence obligation. This means that the cantons are not required to conduct checks on these forest owners under Article 15 paragraph 3 TTO.

### 3.2 Object

The checks that the cantonal forestry authorities must conduct involve verifying that the initial operators of timber felled domestically, i.e. forest owners and managers in Switzerland, comply with their particular obligations under the Timber Trade Ordinance. These obligations essentially consist of fulfilling a duty of due diligence as described in Article 4 ff. TTO. According to Article 4 paragraph 2 TTO, this includes gathering information and documentation (Art. 5 TTO), performing a risk assessment (Art. 6 TTO) and where necessary implementing risk mitigation measures (Art. 7 TTO).

In line with Article 15 paragraph 2 TTO, checks on initial operators are risk-based. The cantons already conduct comprehensive checks on Switzerland's forests as part of their remit to enforce forest legislation (Forest Act (ForA) and Forest Ordinance (ForO; 921.01).<sup>4</sup> These satisfy the requirements of the TTO. The TTO does not require the cantons to conduct any additional checks.

Further tips on risk-based checks can be found in German in the FOEN study entitled 'Grundlagen und Handlungsanleitung für risikobasierte Kontrollen im schweizerischen Umweltrecht' [Fundamentals and instructions for risk-based checks under Swiss environmental law].<sup>5</sup>

<sup>4</sup> Ordinance of 30 November 1992 on Forest (Forest Ordinance, ForO; SR 921.01).

<sup>5</sup> Walker, David; Rieder, Stefan; Leonardi, Silvio (2015): Grundlagen und Handlungsanleitung für risikobasierte Kontrollen im schweizerischen Umweltrecht. Report for the Federal Office for the Environment, Legal Affairs Division. Interface Politikstudien Forschung Beratung, Lucerne and the Swiss Association for Quality and Management Systems (SQS), Zollikofen. Available in German only at: [www.bafu.admin.ch](http://www.bafu.admin.ch) > Topics > Topic Environmental law > Publications and studies > Studies.

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### 3.3 Information and documentation (Art. 5 TTO)

Affected forest owners and managers should record certain basic information about the timber they harvest. They usually already provide these details as part of their commercial operations. These include a description of the timber including its trade name, the common name of the tree species and its full scientific name (Art. 5 para. 1 let. a TTO), Switzerland as the timber's country of origin (Art. 5 para. 1 let. b TTO) and the quantity of timber in volume or weight (Art. 5 para. 1 let. e TTO). According to Article 8 TTO, this information must be retained for five years. It may also be stored in digital form. The information should be visible on the relevant permit, invoice or delivery note.

In addition, Article 5 paragraph 1 letter g TTO requires forest owners and forest managers to provide evidence of compliance with the applicable legislation in the country of origin. In Switzerland, this evidence can be provided easily in the form of the harvesting permit as described in Article 21 ForA. The competent forestry authority will issue a permit only if the applicable management requirements, as set out in Article 20 ff. ForA, are met. From the purely legal perspective, the permit constitutes an official ruling (Hans-Peter Jenni, 'Vor lauter Bäumen den Wald noch sehen: Ein Wegweiser durch die neue Waldgesetzgebung' [Seeing the wood despite the trees: a guide to the new forest legislation], SAEFL 'Umwelt' series No 210, 1993, p. 63). As such it fulfils the requirement that evidence must have been issued by a recognised authority. In sum it is therefore deemed to be sufficient information in the sense of Article 5 paragraph 1 letter g TTO. As might be expected, a permit already contains the information listed above about the timber that is to be harvested (tree species, volume of timber and the plot of land concerned). Forest owners are therefore required to retain this evidence of 'legal harvest'.

The canton is not required to conduct any checks with regard to information and documentation providing the permit it has issued does actually contain all of the information required under Article 5 TTO. Cantonal forestry services nonetheless continue to check compliance with these permit requirements.

With this in mind, cantons should ensure that the permits they issue contain the information required under Article 5 TTO, that they are issued in archivable form, and that they are retained for at least five years (Art. 8 TTO).

Furthermore, forest owners and managers must document to whom they have passed on the timber or wood products (Art. 5 para. 2 TTO). The documents that they produce and archive anyway in their everyday business activities are sufficient here. Examples include invoices or delivery notes, as hard or electronic copies.

The FOEN rather than the cantons conduct risk-based checks on these documents with forest owners and managers. This is justified by the fact that the FOEN is already responsible for checking the traceability of the entire chain of custody.



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### **3.4 Risk assessment and risk mitigation (Arts 6 and 7 TTO)**

In the case of timber felled in Switzerland, in terms of a general risk assessment under Article 6 TTO, the permit referred to in Article 21 ForA constitutes evidence (Art. 5 para. 1 let. g TTO) that the risk of placing illegally felled timber on the market appears negligible.

Furthermore, the incidence of illegal timber harvesting (Art. 6 lets b and c TTO) in Switzerland has been found to be very low. For example, the data reported to the FOEN under Article 53 paragraph 2 ForA for 2020 shows that just 11 individuals were convicted for contravening Article 43 paragraph 1 letter e ForA (unauthorised felling) in that year. This is the result of effective, universal enforcement of forest legislation on the part of the cantonal forestry services.

Even when further risk assessment criteria such as UN sanctions (Art. 6 let. d TTO), the complexity of the supply chain (Art. 6 let. e TTO) or the risk of corruption (Art. 6 let. f TTO) are applied, the particular risk that timber harvested in Switzerland originates from illegal harvesting can be said to be very low.

Generally speaking, forest owners and managers in Switzerland are therefore not required to take any risk mitigation measures as described in Article 7 TTO.

Given sufficient legal provisions on the use of timber in Switzerland's forests, as well as effective universal enforcement by the cantonal forestry services, the cantons do not need to conduct checks on risk assessments or risk mitigation measures.

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## 4 Seizure and forfeiture

Should a check give rise to the justified suspicion that timber has been felled illegally in Switzerland, cantonal authorities have the power under Article 18 paragraph 1 TTO to seize the timber in question, which may subsequently be forfeited (for the legal basis, please refer also to Art. 35f para. 4 EPA). Seizure secures evidence and ensures that the market actor permanently forfeits the timber if it is later confirmed that the latter has been illegally harvested (Art. 18 para. 3 TTO). The procedure for seized and forfeited products is described in Article 19 TTO. Please otherwise refer to the remarks on Articles 18 and 19 TTO.

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## 5 Entry of data in the information system and access

The FOEN operates the information system governed by Article 12 paragraph 1 TTO. The purpose of access for the cantons, as described in paragraph 2, is to allow them to report the checks they have conducted and the results of those checks (Art. 12 para. 1 let. b TTO), and to enter data on any sanctions under criminal law (Art. 12 para. 1 let. c TTO) or on administrative measures (Art. 12 para. 1 let. d TTO).

The cantons should enter the data in the FOEN information system (currently the DETEC eGovernment portal) using an electronic reporting form. Specifically, for each reporting period they should state the number of permits issued under Article 21 ForA ([timber] felling permits, planting protocols/lists, including the number of uses under approved management plans) and the number of on-site checks conducted on the same. The information given should also include the number of justified indications of contraventions of the ban on placing illegally harvested or traded timber on the market, of administrative measures and of criminal proceedings. The data must be reported to the FOEN by the end of the first quarter of the following year at the latest.