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GUIDANCE DOCUMENT

FOR THE EU TIMBER REGULATION¹: CONSIDERATION OF PREVALENCE OF ARMED CONFLICT AND SANCTIONS IN DUE DILIGENCE SYSTEMS

Relevant Legislation: EUTR — Recital (3) and Article 6(1)(b)

A. Prevalence of armed conflict and sanctions

Recital (3) of the EU Timber Regulation (EUTR) recalls that illegal logging can be linked to armed conflict. Under Article 6(1)(b), operators' due diligence systems must incorporate relevant risk assessment criteria to analyse and evaluate the risk of illegally harvested timber being placed on the EU market, including consideration of the prevalence of armed conflict and the presence of sanctions imposed by the UN security council or the Council of the European Union on timber imports or exports.

While the EUTR does not include an operational definition of 'the prevalence of armed conflict'², it is recommended that for the purpose of the EUTR, MS' Competent Authorities and operators apply this risk assessment criterion taking into particular consideration the definition of "conflict-affected and high-risk areas" in Regulation (EU) 2017/821 on conflict minerals³ (Conflict Minerals Regulation) which states that:

"Conflict-affected and high-risk areas' means areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuses".

A more detailed explanation of this definition, including its key elements can be found in Section 3 - "Understanding the definition of conflict-affected and high-risk areas" of [Commission Recommendation \(EU\) 2018/1149](#)⁴ on non-binding guidelines for the identification of conflict-affected and high-risk areas and other supply chain risks under Regulation (EU) 2017/821.

¹ Nothing in this guidance document either replaces or substitutes direct reference to the instruments described and the Commission does not accept any liability for any loss or damage caused by errors or statements made in it. Only the European Court of Justice can make final judgments on the Regulation's interpretation.

² See Article 6(1)(b).

³ Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.

⁴ Commission Recommendation (EU) 2018/1149 on non-binding guidelines for the identification of conflict-affected and high-risk areas and other supply chain risks under Regulation (EU) 2017/821, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018H1149&from=EN>

The EUTR also explicitly lists sanctions on timber imports or exports imposed by the UN Security Council or the Council of the European Union among the relevant risk assessment criteria as part of the operators' due diligence system. Information on these sanctions are publicly available on the website of the UN⁵ and of the European Commission⁶. It should be noted that while these sanctions may not specifically be aimed at "timber imports or exports", shipments of timber and timber products may be linked to entities (inter alia logging, processing, or exporting companies) or individuals (inter alia beneficial owners of related companies, managers and employees, or contractors) that are themselves subject to sanctions; national government watchlist information could also be checked⁷.

B. Guidance

To determine 'the prevalence of armed conflict', operators should not rely on any single source of information. International organizations and government sources, reports by civil society organisations, academic publications, etc. could all inform due diligence systems. Section 4 of [Commission Recommendation \(EU\) 2018/1149](#) provides an indicative, non-exhaustive list of relevant open-source information to help authorities and companies identify conflict-affected and high-risk areas. Other national or regional sources, such as the websites of ministries of foreign affairs of EU Member States and of third countries also often provide up to date information on in this context. It should be recognized, that the prevalence of armed conflict may not be uniform across a country, and thus, due diligence systems must be sufficiently robust to detect variation in risk at the appropriate sub-national level and across the supply chain.

When assessing 'the prevalence of armed conflict', due diligence systems must identify situations where the forestry sector is affected by and contributes to fuelling the outbreak or continuation of violent conflict, undermining national endeavours towards development, good governance, and rule of law. The due diligence system must be sufficiently robust to detect whether the products covered by the EUTR were harvested, traded or exported by parties involved in the conflict]. It is important that the operator is also aware of any prevalence of armed conflict at the foreseen time of harvesting. Likewise, due diligence systems must be robust enough to detect when sanctioned individuals and/or companies are involved in a supply chain. Operators should therefore take into consideration to whom and where they transfer their payments for the timber products.

Carrying out due diligence in the context of prevalence of armed conflict will require identifying and assessing the risk in the supply chain that timber and timber products might have that are harvested in conflict-affected, high-risk areas and lack of law enforcement.

When assessing the nexus between the prevalence of armed conflict, illegal logging and associated timber trade, operators should take into consideration, *inter alia*:

- **Whether any aspect of the timber supply chain is located in conflict affected and high-risk areas and where and when the risk might be particularly high;**

⁵ <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>

⁶ See http://ec.europa.eu/dgs/fpi/what-we-do/sanctions_en.htm for the updated list of "Restrictive measures (sanctions) in force", for the "Consolidated list of persons, groups and entities subject to EU financial sanctions" and "Consolidated financial sanctions in PDF"

⁷ e.g. the OFAC (Office of Foreign Assets Control) Specially Designated lists: <https://sanctionssearch.ofac.treas.gov/>

- Whether there is any **information that illegal harvesting of timber or illicit trade in timber is used to finance violence or other gross violations of international humanitarian law**;
- **To what extent security forces (military, police, etc.) and armed groups are known to be involved in the exploitation** (e.g. harvesting, trade, or export) of timber and timber products, including extorting money by blocking the production or transportation of legally harvested timber,
- Whether **local governance and security failures contribute to significantly increase the risk of violation of applicable legislation** concerning third parties' legal rights concerning use and tenure that are affected by timber harvesting. As in all cases, where applicable legislation related to timber harvesting in the broader sense is violated through criminal acts (e.g. slave-like labour) and these practices are known and the related information is publically available, they should be taken into account in the risk assessment, since such criminal practices increase the risk of illegality in the stricter sense;

Where relevant, the operators' risk assessment procedure must contain a clear and coherent assessment of the prevalence of armed conflict. The operator must also be able to demonstrate how a decision on risk mitigation measures was taken and how the operator determined the degree of risk⁸.

In a context of prevalence of armed conflict or sanctions by the UN Security Council or the Council of the European Union, operators should also consider specific steps, including *inter alia*:

- obtaining “information on the ownership (including beneficial ownership) and corporate structure of suppliers and their affiliates, including the names of corporate officers and directors; the business, government, political or military affiliations of the company and officers (in particular focusing on potential relationships with non-state armed groups or public or private security forces)”⁹;
- obtaining independently audited¹⁰, forensic financial reports from suppliers to verify that no payments were made to armed groups e.g. to allow for transport of timber through territory under their control, including both state and non-state, or their affiliates in violation of applicable national law;

Where the risk of illegal harvesting and practices identified is non-negligible, the operator has to either take mitigation measures, followed by a new risk assessment¹¹, or refrain from placing the timber or timber-product(s) on the EU market. Risk mitigation measures taken together must effectively reduce the risk to a negligible level. In the case where all risk mitigation measures¹² together cannot attain a negligible level of risk, the operator must

⁸ See Article 5.2 of Commission Implementing Regulation (EU) 607/2012

⁹ OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition, <http://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>

¹⁰ See section 6

¹¹ See section on [Risk mitigation measures](#)

¹² See section on [Risk mitigation measures](#)

refrain from placing the timber on the EU market. The risk of illegal harvesting and practices linked to the prevalence of armed conflict and the presence of sanctions should also be duly taken into account by the EUTR Competent Authorities when drawing their periodically reviewed risk-based plans for checks.