

**Expert Group on the EU Timber Regulation and the Forest Law Enforcement, Governance and Trade (FLEGT) Regulation**

**Guidance document<sup>1</sup> - Due Diligence**

**Relevant Legislation: *EU Timber Regulation - Article 4 - Operators shall exercise due diligence based on a framework of procedures and measures, as set out in Article 6;***

**Commission Implementing Regulation (EU) No 607/2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organisations Articles 2 and 5**

### **CLARIFICATION OF DUE DILIGENCE**

Any Due Diligence system should ensure that the risk of illegally harvested timber or derived products reaching the EU market is negligible<sup>2</sup>, by gathering all relevant information and identifying, fully assessing, and, where necessary, adequately mitigating such risks to a negligible level.

As the EU Timber Regulation prohibits the placing of illegally harvested<sup>3</sup> timber on the market, due diligence needs to be carried out prior to any placing of timber or timber products on the EU market. Therefore, the operator shall put in place a set of procedures, measures and risk criteria in order to identify and assess the risk of sourcing illegally harvested timber or timber products that may contain illegally harvested timber, and, on that basis, exercise due diligence prior to their acquisition. As operators vary in size, market operations and import activities, due diligence systems and the exercise of due diligence may also differ.

If the conclusion of the risk assessment is that the risk of illegally harvested timber or derived products entering the EU market is non-negligible, the operator needs to take risk mitigation measures<sup>4</sup> that are adequate to lower the risk to a negligible level. If there is no access to the applicable legislation or other relevant information, the risk cannot be fully assessed and thus not mitigated to a negligible level. **If the risk cannot be mitigated to a negligible level the operator should not place the timber on the EU market.**

#### **Guidance:**

Due diligence, in terms of the EU Timber Regulation, shall contain the following elements:

- 1) **A due diligence system**, which consists of:
  - a) **Measures and procedures providing access to all relevant information** about the country of harvest and the timber or timber product to be acquired (such as applicable legislation in the

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<sup>1</sup> This guidance document has been developed by the Member States' Competent Authorities and the European Commission DG Environment in the context of the Commission Expert Group on the EU Timber Regulation and the Forest Law Enforcement, Governance and Trade (FLEGT) Regulation. The views expressed may not be, in any circumstances, regarded as stating an official position of the European Commission.

<sup>2</sup> See Commission Guidance document 12.02.2016, section 2. DEFINITION OF 'NEGLIGIBLE RISK" ([Commission EUTR webpage](#))

<sup>3</sup> Article 2 (g), 'Illegally harvested' means logging in contravention of the applicable legislation in the country of harvest

<sup>4</sup> See guidance document on risk mitigation measures [here](#)

country of harvest, institutional and political environment, species, type of timber product, supplier and complexity of the supply chain (Articles 4(2) and 6 (1)(a) – non-exhaustive list).

- b) Procedures to collect and analyse relevant information and documents in order to establish links among these (applicable legislation of the country of harvest, certificates, proving documents, invoices, receipts, notes etc. that are relevant and correspond with each other), in order to assess the risk properly (Articles 4(2) and 6(1)(b)) and in order to ensure the proper verification of information and application of criteria to assess the risk of illegally harvested timber being placed on the EU market, a) and b) need to be provided for (Articles 4(2) and 6(1)(b)).
- c) Foreseeing adequate and proportionate measures and procedures to mitigate the risk should it be assessed as non-negligible (Articles 4(2) and 6(1)(c)).

2) **The exercise of due diligence**, which consists of:

- a) Accessing and organising all relevant information to determine whether the risk of illegal harvest of timber, according to the applicable legislation in the country of harvest (Article 2(h)), is negligible.
- b) Using the information as described in the due diligence system for a risk assessment to analyse and evaluate the risk of illegally harvested timber entering in the supply chain - from harvest to placing on the EU market (Article 6(1)(b) – non-exhaustive list).
- c) Except where the risk identified is negligible (step2) b)), using the due diligence system to take adequate and proportionate measures in order to minimise the risk of illegality effectively to a negligible level (Article 6(1)(c)) (See section 2.B. of the [Guidance document- Risk Mitigation measures](#)). The due diligence exercise shall follow the procedures as described in the [Commission Implementing Regulation 607/2012](#), Article 2. Step 2 C) has to be followed by another risk assessment to analyse whether all detected risks are mitigated to a negligible level.

**If the risk cannot be mitigated to a negligible level the operator should not place the timber on the EU market.**

3) **Due diligence documentation**, which consists of:

Keeping all relevant records, written measures and procedures on how the information gathered was checked against the risk criteria (Article 6(1)(b)), how decisions on risk mitigation measures have been taken and how the level of risk was determined. The records and methods shall be stored for at least five years and be kept available for checks by the competent authorities ([Commission Implementing Regulation 607/2012](#), Article 5).