

Annex to the summary record of the 2nd Commission Expert Group/Multi-Stakeholder Platform on Protecting and Restoring the World's Forests, including the EU Timber Regulation and the FLEGT Regulation in its composition limited to Member States (EG) Meeting of 9 December 2020

Conclusions¹ of the Competent Authorities for the implementation of the European Timber Regulation (EUTR) on the application of Articles 4(2) and 6 of the EUTR to timber imports from Brazil

Due Diligence: some recommended risk assessment and mitigation measures

These conclusions are based on an article written by researchers of the Universities of São Paulo, São Carlos and Oregon State, and published on Science Advances [P. Brancalion *et al*, 2018: <https://advances.sciencemag.org/content/4/8/eaat1192>] and other recent information such as court cases, NGO reports¹, documents produced by *IBAMA*, *CONAMA*, research institutions and news articles.

Risk assessment:

The said reports and articles indicate that the volume of timber available for cutting in Forest Management Areas (*Áreas de Manejo Florestal, AMFs*) in the Amazon Basin, in particular with regard to *Ipê* (but also to other high value timber such as *Massaranduba* and *Angelim vermelho*), is often based on incorrect factual information (overestimated tree/cubic meters densities or fictitious trees). These overestimations are particularly frequent in *AMFs* neighbouring protected and/or community managed areas². As government officials are involved in the process of signing of on forest inventories and issuing licences, the corruption perception index for Brazil, indicating an overall medium to high risk of corruption, should be, as well, taken into account.

Moreover, recent court cases reveal direct links between illegal timber harvesting and violent crimes against members of communities using the forests for subsistence, aimed at driving them off the land or discourage them to invoke their rights³. There are also records of slave like labour² conditions related to timber harvest, which, while not directly affecting the legality

¹ The Competent Authorities pursuant to Article 7 of the EUTR meet on a regular basis in the [Commission Expert Group/Multi-Stakeholder Platform on Protecting and Restoring the World's Forests, including the EU Timber Regulation and the FLEGT Regulation](#) in its composition limited to Member States (formerly EUTR/FLEGT Expert group (EG) to ensure cooperation between Member States Competent Authorities and with the Commission in order to ensure compliance with the EU Timber Regulation and to assist the Commission in ensuring a uniform implementation of the EUTR across the EU. To this end the Expert Group makes consensual conclusions, which represent the Competent Authorities' common expert opinion and agreement on the approach to be taken with regard to specific implementation related issues. Without being legally binding they provide guidance and render the Competent Authorities' joint interpretation of the EUTR transparent to operators.

of the timber harvest as such, reflect a risk of illegality as regards duties related to timber harvesting and trade legislation concerning the forest sector within the meaning of Article 2 (h) of the EUTR. These developments may also increase the risk of corruption.

These cases have been reported for the Brazilian Amazon basin, in particular from the states of Rondônia, Pará, Mato Grosso and, more recently, the sparsely populated and for the most part strictly protected state of Amazonas.

In addition, a huge increase over the last two years of man-made forest fires has been reported for the Amazon region, which are related to land grabbing. It is reported that, preceding the fires, trees with a market value, like the above-mentioned species, are illegally harvested⁴.

In view of this, insofar as imports of species harvested in natural forests in the Brazilian Amazon basin are concerned, operators should generally consider the level of risk of illegality as non-negligible unless adequate risk mitigation measures have been taken that demonstrably reduce the level of risk to a negligible level.

It is important to be aware that Brazil has three official Timber Control Systems that are part of *SINAFLO* (National System for the Control of the Origin of Forest Products): one for the State of Pará (*Sisflora Pará*), one for the State of Mato Grosso (*Sisflora Mato Grosso*) and one for the remaining states (*DOF*, *Documento de Origem Florestal* - Document of Forest Origin).

The key stages to be checked by operators include (for further details, please see IBAMA Technical Note nº 4/2020/DBFLO, issued on 8th April 2020⁵):

- a) At forest level: ownership status of the forest, logging Permits (*AUTEF* for state of Pará or *AUTEX* for all the other states), issued by the respective State Secretariat for the Environment, with a one year validity, and a declaration submitted by the one responsible for the logging operations stating that the allowable cut (species and volumes) was respected;
- b) Storage, transportation and processing: Timber Transportation Permits (*GFs* or *DOFs*), differentiated according to the type of product.

Storage and transportation: transportation of timber within Brazil requires a timber transportation permit, called *Guia Florestal* ("*GF*", in the states of Pará and Mato Grosso) or *Documento de Origem Florestal* ("*DOF*", in all the other states)⁶ Regarding *GFs*, they are divided into:

- *GF1*: for the transportation of logs, normally from the forest to the sawmill (the Timber Control system directly links *GF1* to its respective *AUTEF/AUTEX*);
- *GF3/DOF*: for the transportation of other wood products, including processed products, which normally includes the segment between one or two sawmills (boards or decking, depending on the end-product) and the port of exportation.
- *GF3/DOF* exportation – to be issued when wood or wood products are exported, identifying the exporter, the importer and the destination country;

Processing at sawmill level: There are mandatory operational/environmental licenses that require a stock control system and a verification of the volume conversion rates that are established in the Resolutions adopted by *CONAMA* (National Environmental Council)⁷. For

deviation from the official conversion rates, https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12651.htm the sawmill is required to submit a technical study according to the ToR defined in Annex IV of the mentioned CONAMA Resolutions that has to be validated by IBAMA as the competent environmental authority.

c) Directly related with the export phase:

- *GF3/DOF* exportation – IBAMA Export Authorization - to be issued whenever wood or wood products are exported, and requires the identification of both the exporter and the importer, the credit balance of forest products available in the yard of origin, the exit port data, information on the itinerary and means of transportation followed from the forest, the fiscal document that accompanies the cargo, and, finally, information on the rear warehouse where the products can be stored until the actual exportation takes place.
- However, Technical Note n° 4/2020/DBFLO incorporates a decision taken on 26/02/2020 by means of 'interpretative order'⁸ n° 7036900/2020-GABIN issued by IBAMA that suspended the effects of some provisions of its own normative instruction n° 15/2011, which required an authorisation for export for all kinds of forest products in addition to the DOF⁹.
- The normative instruction of 2011 was based on a distinction still made in Articles 36 and 37 of the Forest Code of 2012¹⁰ between the DOF (i.e. Transport and Storage Licence) and the Export Authorisation. The 'interpretative order' now makes the assumption that the latter was redundant and caused unnecessary administrative burden for both IBAMA and the timber (product) exporters without any added value. The new interpretation order thus limits the required documentation for export to the one generated at state level through the DOF system, leaving out an additional verification that was performed by a Federal institution, IBAMA, through the Export Authorisation.
- With this change, the need for an Export Authorization is exclusively limited to species covered by CITES (CITES Export permit), species on the National List of Flora Species Threatened by Extinction (the National List)¹¹, and the list of forest products mentioned in Article 5 of normative instruction n° 15/2011¹². This means that, in order to know whether an Export Authorization is still required, operators need to verify for each shipment, whether any of these conditions are met.
- For some species, which are frequently logged illegally like ipé species¹³, all not on the National List, products like thin decking, no longer require an Export Authorisation.
- In practice, without the obligation of an export authorisation, which underwent physical checks by sampling pursuant to Article 10 of normative instruction 15/2011¹⁴, risk assessment and risk mitigation will be rendered more difficult, as the verification of traceability, though possible under the provisions still in force, is left to the discretion of the federal agents.
- A public civil law claim against the above mentioned IBAMA "interpretative order" was submitted on 04/06/2020 to the Brazilian Judicial System by three relevant civil society organizations requesting the suspension of its legal effectiveness. Should it be successful, the Export Authorization becomes mandatory again.

Conclusions:

i) Risk increasing factors

The following factors should be considered as they increase the risk of illegal timber harvest:

1. High value timber species, in particular *Ipé*; timber from *AMFs* in the states of Rondônia, Pará, Mato Grosso or Amazonas and/or from *AMFs* bordering with protected areas and/or indigenous territories; it should be noted that several studies suggest that estimations above 0,52 m³ per hectare of *Ipé* should lead to additional risk mitigation measures.
2. Overestimation of certain species on *AUTEX/AUTEF* documents or wood logged outside the area under permit (see again article by P. Brancalion *et al*, 2018 ¹⁵);
3. Timber from any regions, where land grabbing and violent crime have been linked to illegal timber harvesting¹⁶;
4. The vicinity of nature protected areas;
5. Records on suppliers of illegal practices related to timber harvest¹⁷;
6. Records on the prevalence of forest fires in the region¹⁸;
7. Inability to reconstitute the supply chain, particularly the links between the forest, the processing unit (normally the sawmill) and the exporting point;
8. Dealing with companies with a track record of criminal activities; these activities can be found under the registration code of the company - *CPF/CNPJ* (always set in above described documentation) on the *IBAMA* website¹⁹. In addition, operators should regularly consult local and regional media in this regard.

ii) Risk mitigation

To mitigate the risk of illegally harvested timber entering the EU market to a negligible level, due diligence should specifically include an **independent factual verification** of the reliability of the determination of available timber volumes in *AMFs* as well as on the integrity and the traceability of the operator's supply chain.

For that purpose, entities offering independent verification should demonstrate to have appropriate level of resources as well as the adequate scientific competence and professional expertise, and demonstrate that they or their experts are not in a situation of conflicts of interest. In addition, their verification should be based on proven methodologies, such as the one approved by *Embrapa*, *ProManejo* and *IBAMA* ²⁰. These methods should include on-site visits and cannot solely consist of document verification.

To mitigate the risk of illegality to a negligible level, independent third-party verification should be complemented by further mitigation measures, as relevant in view of the specific risk(s) of illegality detected, including, for example:

1. Giving preference to suppliers using a closed supply chain and sourcing logs from single sources;
2. Carrying out additional scrutiny of documents: in addition to requiring forestry permits (*GF1* and *GF3*) and *DOF* exportation documents, operators should check that the appropriate conversion ratios are used and that the rate between cubic meters of timber/tree density per hectare is consistent with scientific data related to the relevant species.
3. Using publicly available satellite images to confirm that the forest area included in an *AMF* had not already been exploited before the start of the concession or has effectively been exploited during the concession²¹ .
4. Verifying the number and volume attributed to a log entering a sawmill and the volume of processed timber made with this log, in view of ensuring that the ratio between the two volumes corresponds to objective parameters and is in accordance with the Resolutions adopted by *CONAMA*;
5. Unless the risk of illegality within the meaning of Article 2 (h) of the EUTR can be positively excluded for the specific shipment(s), avoiding sourcing timber from:
 - a. Areas and companies embargoed by *IBAMA* [see endnote n° 12]
 - b. Areas and companies harvesting in areas in which forest fires prevail;
 - c. Companies whose suppliers are located in areas affected by social conflicts related to tenure rights and to the use of forest resources in general, reported in local and regional media or by NGOs;
 - d. Companies with a track record of criminal activities.

Furthermore, in regions where access to the forest is reported to have been made impossible by the (concession) owners or due to violent crime, independent verification on the ground cannot be guaranteed by any verification body.

It should be noted that Brazil, being a Federal Republic, combines legislation enacted both at federal and state levels. This element, in the case of the forest sector, brings in a certain degree of legal and institutional complexity that is compounded these days by a backdrop of disagreements between different political actors at various levels (executive, legislative and judiciary branches). This requires a regular verification of the legislation, regulations and norms in place and the possibility of their enforcement in a conflicting manner.

iii) Final conclusion:

If it is not possible to carry out the necessary risk mitigation measures to address all risks identified or if after such a process the risk of illegality remains non-negligible, operators should refrain from putting the timber on the EU market.

END NOTES

¹ Report published by Greenpeace in 2018:

https://www.greenpeace.org.br/hubfs/Greenpeace_Report_Imaginary_Trees_Real_Destruction_March_2018.pdf

² The reports and the article reach this conclusion by comparing data on natural tree densities in the Amazonian rain forest, official data of inventories and data from the RADAM project, on the one hand (<http://www4.unifsa.com.br/revista/index.php/fsa/article/download/1182/1065>), with the self-declarations used in the licensing process on the State of Pará, on the other hand.

³ Inspeção do Trabalho (*Labour Inspection*):

<http://agenciabrasil.ebc.com.br/sites/default/files/atoms/files/cadastro-de-empregadores-2019.pdf> - the site of the Labour Inspection provides an updated register of the companies that have been caught employing people with labour conditions equivalent to “slavery”; it is regularly updated - the last update was issued on 16/10/2020.

⁴ See e.g. <https://maaproject.org/2019/amazon-fires-deforestation/>

⁵ <https://www.gov.br/ibama/pt-br/centrais-de-conteudo/2020-04-09-nota-tecnica-4-2020-dbflo-pdf>

⁶ These timber transportation permits can be verified at

https://servicos.ibama.gov.br/ctf/modulos/dof/consulta_dof.php

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- CONAMA Resolution nº 411/2009:
<http://www2.mma.gov.br/port/conama/legiabre.cfm?codlegi=604>
- CONAMA Resolution nº 474/2016:
<http://www2.mma.gov.br/port/conama/legiabre.cfm?codlegi=720>
- CONAMA Resolution nº 484/2018:
<http://www2.mma.gov.br/port/conama/legiabre.cfm?codlegi=733>

⁸ “Despacho Interpretativo” nº 7036900/2020-GABIN from the President of IBAMA issued on 25/02/2020, annexed to the present conclusions in Portuguese language, referenced under 4.1 of [IBAMA Technical Note nº 4/2020/DBFLO, issued on 8th April 2020](#).

⁹ Translation to English: 5.21. *For the forest product of native origin that is subject to foreign trade operations, a specific DOF must be issued for this purpose. In addition to covering the transport between the Yard of Origin until the Customs Terminal, the DOF Export is the license provided for in Art. 37 of Law 12.651 / 2012, with the exception of products and by-products of CITES species, which require the additional issue of a CITES License; and products and by-products of the species included in the official lists of endangered species originating from Sustainable Forest Management Plans (PMFS) and / or covered by Art. 5 of the Normative Instruction IBAMA 15, of December 6, 2011, which require the additional issue of an IBAMA Export Authorization.*

¹⁰ https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12651.htm

¹¹ [Ministerial Order nº 443 of 17 December 2014](#), which includes the four categories that make up the “National List of Flora Species Threatened by Extinction”. The only category that allows for logging is VU (Vulnerable), but only if the respective PMFS (Sustainable Forest management Plan) is developed

in accordance with [Normative Instruction Nº 1 from the Environment Ministry of 12 February 2015](#), and is approved by the competent authority, IBAMA.

¹² Unofficial translation to English: *Art. 5 The products and by-products listed below will, in addition to the above, be exported with the Directorate for Sustainable Use of Biodiversity and Forests and will follow the procedures described in this Normative Instruction:*

I - roundwood

II - sawn wood over 250 mm

III - charcoal

IV - industrial wood waste,

V - firewood of native species

¹³ Genera *Tabebuia* and *Handroanthus*, *Bignoniaceae* family.

¹⁴ Unofficial translation to English: *Art. 10 The products and by-products required for export authorization by Ibama will be inspected by sampling, preferably in bulk or "loose cargo" in warehouses in the retro-area, giving the following items: I - volume; II - species (scientific name); III - products, with the respective degree of industrialization; and III - batch mark.*

¹⁵ P. Brancalion *et al*, 2018 – "Fake legal logging in the Brazilian Amazon" (*Science Advances*): https://advances.sciencemag.org/content/4/8/eaat1192?fbclid=IwAR3m9LQI3RIsMUF2BuQm_QC13JA6KPXpn647jHBzWLNAEMoluxTOERfTGXs&utm_source=TrendMD&utm_medium=cpc&utm_campaign=TrendMD_1

¹⁶ Information on land grabbing and violent crime is publicly available via reports of local social organisations (*Comissão Pastoral da Terra - CPT* and *Comissão Indigenista Missionária - CIMI*).

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- Information related with denouncing slavery like labour conditions and rescue of victims of slave-labour can be found through the *Ministério da Economia – Secretaria do Trabalho* (<https://www.gov.br/economia/pt-br> - Ministry of Economy – Secretariat for Labour)
- Last update on the Amazon Basin (24th July 2020): <https://www.gov.br/economia/pt-br/assuntos/noticias/2020/trabalho/julho/operacao-de-combate-ao-trabalho-escravo-resgata-14-trabalhadores-no-amazonas>
- Statistics and information dashboard on Labour Inspection in Brazil: <https://sit.trabalho.gov.br/radar/>

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- <https://gwis.jrc.ec.europa.eu/reports-and-publications/2020-amazon-weekly-reports/>
 - <https://www.greenpeace.org/international/tag/fires/>
- Satellite apps:
- <http://www.inpe.br/queimadas/bdqueimadas/#>;
 - <http://terrabrasilis.dpi.inpe.br/app/map/deforestation>;
 - <http://glad-forest-alert.appspot.com/>;
 - <https://globalfiredata.org/pages/amazon-dashboard/>

¹⁹ Link to the IBAMA website where information is provided on the companies that have been embargoed because of any trespass that has been identified: <https://servicos.ibama.gov.br/ctf/publico/areasembargadas/ConsultaPublicaAreasEmbargadas.php>

²⁰ Link for a "Manual on Field Checks and Forest Management Plans" produced by Embrapa, Promanejo and IBAMA, 2006: http://bommanejo.cpatu.embrapa.br/arquivos/1-Manual_de_Vistoria.pdf

²¹ Use of free Landsat 8 data: https://www.usgs.gov/core-science-systems/nli/landsat/landsat-data-access?qt-science_support_page_related_con=0#qt-science_support_page_related_con