



RISK ASSESSMENT ASSOCIATED WITH ILLEGAL HARVESTING OF WOOD IN ROMANIA & RELATED MITIGATION MEASURES

17 NOV 2020

PURPOSE

Update on risk assessment associated with illegal harvesting of wood, in contradiction of national and international legislation, as well as to identify the best measures to mitigate them, considering the evolution of the legislative framework and the current realities in the Romanian forestry sector.

This update will support operators and stakeholders in order to better implement the (EU) Timber Regulation No 995/2010 (EUTR)

PROCESS DEVELOPMENT

The analysis uses the framework proposed by FSC® (Forest Stewardship Council) for the National Risk Assessment (FSC-PRO-60-002 V3-0). According to this best practice model and based on the Centralised National Risk Assessment (FSC-CNRA-RO V1-0 RO), published in September 2017, an updated analysis of specific indicators regarding the risks of illegal wood harvesting was carried out.

The analysis was conducted within a participatory process consisting of 3 working groups attended by representatives of forest administrators, competent authority, operators and academia, followed by submission of the resulting document to public consultations between 16/07/2020-31/07/2020.

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RISK ASSESSMENT ASSOCIATED WITH ILLEGAL HARVESTING OF WOOD IN ROMANIA & RELATED MITIGATION MEASURES

DEFINITIONS

The risk assessment associated with illegal harvesting of wood is an obligation imposed on operators by (EU) Timber Regulation No. 995/2010 (EUTR) in the process of purchasing wood materials. The assessment of the origin of timber and the fulfilment of legal obligations in the wood harvesting process must be carried out at the level of the wood purchase unit for each product placed on the market. The process of assessing the risks associated with illegal harvesting of wood will be based on the following concepts:

Assessment of legality (general approach) systematic and/or large-scale infringements of applicable law.

Illegally harvested timber means harvested in contravention of the applicable legislation in the country of harvest;

Applicable legislation means the legislation in force in the country of harvest covering the following matters (EUTR, Article 2 (h)):

- 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;
- trade and customs, in so far as the forest sector is concerned.

Sources of information relevant for establishing the level of compliance (level of governance):

- Official governmental reports
- Non-governmental reports (relevant, verifiable by third parties)
- Independent scientific studies and articles
- Evidence resulting from the involvement of stakeholders
- National Geographical Scale (RO)

Functional scale

Spatial delimitation based on non-geographical characteristics (e.g. functional category, property type, type of administration, scale, intensity and risk of forest operations)

- helps to correctly identify risks and mitigation measures, thus avoiding unnecessary administrative burdens (e.g. for national forest fund areas only, which are privately owned – by individuals)

Risk management

involves procedures to identify and mitigate specific risks. The assessment is made in relation to the risk that timber will be harvested, transported or marketed illegally or mixed with material of illegal origin.

Mitigation measure:

SMART: Specific, Measurable, Achievable, Realistic, Time-Bound.



RISK DESCRIPTION & MITIGATION MEASURES

RIGHTS TO HARVEST

1. LAND TENURE AND MANAGEMENT RIGHTS

As over 1 mil. ha are not included in forest management planning and in the absence of a national cadastre, in many cases the limits of the properties are not clear neither on maps nor physically in the field.

The lack of a physical demarcation of properties in the field may lead to the violation of limits, and thus to harvesting of wood from nearby properties, without right.



The property restitution process has been going on for almost 3 decades, many of the owners included in the ownership titles are deceased and in many cases their descendants have not yet initiated legal formalities for succession. A risk of succession forms is identified in the case of natural persons who have not initiated the succession procedure with a view to obtaining the heir certificate. More specifically, successors have the right to inherit, but they are not the legal owners until they have obtained the heir certificate or other legal document attesting ownership.

In practice, at the request of concluding an administration/forestry service contract, some forestry administrations are satisfied with an affidavit from one of the successors (in cases with several successors) as proof of the right of usufruct. Thus, a certain successor may benefit from the advantages of the inheritance at the expense of the other potential legal successors of the same inheritance.

Although there have been clear specifications in the legislation on the status of beneficiary, quality that must be demonstrated in accordance with the provisions of Law 287/2009 - Civil Code, the level of enforcement has not assessed yet.

FUNCTIONAL SCALE:

Wood from areas for which there is no forest management plan or silvopastoral studies.

Mitigation measures (M):

Verification as appropriate of the limits of the property and of harvesting sites;

Verifiers (V), as applicable:

- Site maps accompanied by an affidavit, in accordance with the provisions of Article 326 of the Criminal Code on perjury.
- Plan of the harvesting site
- Harvesting site handover protocol.

M:

Access to additional documents attesting the legal ownership in situations specified by the functional scale (lack of forest management plan and missing cadastre);

V:

- Ownership document;
- Sale and purchase contract;
- Extract from the Land Registry;
- Heir certificate;
- Final court judgment relating to splittings;
- Power of attorney (in the case of multiple beneficiaries).



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For areas included in the national forest fund (NFF) for which there is no forest management planning (including forest management maps), as well as in the situation of over 500,000 hectares of land covered with forest vegetation outside the national forest fund, listed in the National Forest Inventory (NFI) for which no silvo-pastoral studies are developed, there is also a specified risk of infringement of the ownership right justified by the lack of clear delimitation of properties.

In these situations (unmanaged forests and for which there are no clear forms and limits of ownership), there is a high risk of trespassing, both from the perspective of legal successors and wood harvesting.

2. MANAGEMENT AND HARVESTING PLANNING

Under environmental legislation, forest management plans are subject to environmental assessment.

One of the principles governing environmental protection is the precautionary principle in decision-making, which is mentioned by: “the carrying out of the environmental assessment prior to the approval of plans and programmes likely to have a significant effect on the environment” (GEO 195, Article 4(d),

“1. Requesting and obtaining the environmental approval for plans and programmes shall be mandatory for the adoption of plans and programmes which may have significant effects on the environment,

(2) The environmental assessment shall aim at integrating environmental protection objectives and requirements into the preparation and adoption of plans and programmes,

(4) Approval of plans and programmes at any hierarchical level shall be conditional on the existence of the environmental approval for that plan or programme.” – (GEO 195, Article 9)

In practice, the environmental regulatory act is obtained after the notice meeting, respectively the opinion of the Technical Commission for Approval in Forestry (CTAS), and sometimes, even after the approval of the forest management plan by ministerial order. During this time (CTAS approval – Ministerial Order), “the provisions of meeting for preliminary approval of solutions shall apply” - (Law 46/2008, Article 21, paras. 2 ~ 1), which are not subject to any assessment in terms of environmental protection.

These issues were also raised by the European Commission in the letter of formal notice – Case No 20202033

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Thus, there is a risk that many of the valid forest management plans hold no environmental approval nor have started the procedures necessary for obtaining environmental approvals. For these situations, the risk is considered to be specified.

FUNCTIONAL SCALE:

Wood originating from areas with forest management plans for which an environmental assessment has not been carried out according to the legal provisions.

M:

- Assessment of the existence of environmental approvals for forest management plan or the start of assessment procedures;
- Harvesting will start once the environmental assessment is obtained
- If the owner/manager has internal environmental impact assessment and stakeholder consultation procedures, the risk is considered to be low

V:

- Environmental report
- Environmental approval



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3. HARVESTING PERMITS

The harvesting permit is issued on the basis of the Volume Estimation Document (APV), which is an estimation of the volume of standing wood volume, with a standard error of only the dendrometric model of more than 12 %, plus the measurement errors.

There are also differences that may exceed 20 % in terms of the volume of wood calculated by different dendrometric methods, depending on the particularities of APVs. As it is an obviously estimative document (according to the Forest Code, Article 60, para. 2), there may be situations where the volume of marked trees, as a result of harvesting, differs from the total volume referred to in the APV.

The current procedures on the harvesting of standing timber through which the payment of wood is made on the basis of estimates generate conflicts of systemic interest and no longer respond to socio-economic realities.

In practice, there are situations where, during the inventory of standing trees, the volume is abusively underestimated and not only due to legal measurement errors, thus violating the APV-drafting rules. Moreover, the legal procedures for checking APVs by sampling are not followed, and in many cases the verification is carried out only on paper, not in the field.

Moreover, although the procedure for selling the wood mass harvested from public forests allows verification of APVs before auctioning, this requires too much effort in the absence of certainty about the batches to be purchased by auction. In some cases, in order to avoid a number of administrative burdens in relation to the forestry management, the operator no longer carries out the verification of APVs.

It is thus considered that the harvesting authorisation of standing timber entails a specified risk related to the estimated volume referred to in the APV.

TAXES AND FEES

4. PAYMENT OF HARVESTING FEES AND FOREST-SPECIFIC FEES

With regard to the toll fee and local charges for the use of local public infrastructure (communal or forestry roads):

The risk of avoiding payment of these fees arises due to the administrative and ownership fragmentation of the national forest fund, i.e. the distribution and form of administration of forest roads. In many cases, the owner of the forest area from which the timber is harvested and the owner of the road used for the transport of harvested timber is not the same entity and therefore the related charges cannot be collected.





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Moreover, in terms of the road charges imposed by local authorities, there may be discriminatory situations in which they are applied in practice only for certain operators. A legislative clarification of how these local road charges can be imposed is necessary, but the non-payment of this tax until then is a breach of applicable timber harvesting legislation.

The current state of forest roads/lack of forest infrastructure is also due to the avoidance of payment of these taxes.

LOGGING ACTIVITIES

5. TIMBER HARVESTING REGULATIONS

With regard to the application of forest harvesting rules laid down by the Ministerial Order No. 1540/2011, most non-conformities were identified (e.g. audit reports on forest management certification (Buliga and Nichiforel, 2019; Halalisan, 2014)).



This proves that there are frequent violations of the legislation on the establishment of timber extraction /removal paths, the control of erosion of timber extraction /removal paths, the use of water streams as paths for extraction /removal, thus damaging the trees along such paths, or failure to comply with oil and fuel leakage requirements.

FUNCTIONAL SCALE: TOLL FEE

M:

- Identification of the owner of the access route and obtaining their consent for use;
- Consultation of local public administrations and identifying the necessary requirements for the toll and information of economic operators.

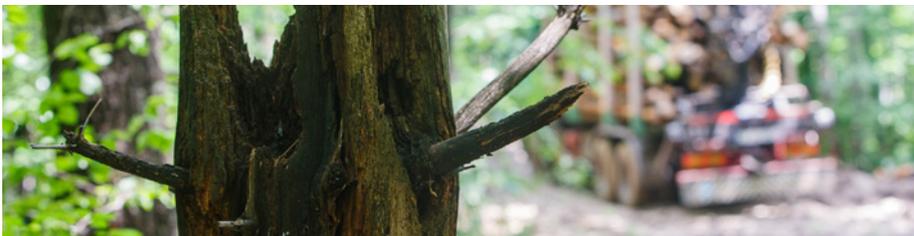
V:

- Written notice to the owner for obtaining the consent for use;
- Contract including this aspect;
- Local tax records according to local council decision



M:

- Additional verifications of harvesting sites to ensure compliance with:
 - » the provisions of the harvesting permit and the measures ordered by the control acts issued by the authorities;
 - » the time limits, arrangements and periods for the collection, removal and transport of timber;
- Additional training appropriate to staff responsibilities established by specific working procedures (for risk mitigation).



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Logging non-conformities are sanctioned by Law 171/2010, establishing and sanctioning violations of forestry laws.

In order to follow the method of solving forestry contraventions by the investigating agents, the central public authority responsible for forestry should ensure the implementation and functionality of the National System of Computerized Records of Forestry Contraventions, called SNEICS, within the SUMAL system, according to Law 171, Art. 43, para. 1. This system is currently not operational.

Although the process of monitoring compliance with timber regulations is systematically under supervision, non-conformities are frequent, especially due to poor forest infrastructure and low capacity of operators.

By the amendments brought by the Ministerial Order No. 485/2020 to the Regulation of 2018 on the organisation, operation and composition of the Commission certifying economic operators for the logging activity, as well as the logging certification criteria, violations of the forestry laws may be sanctioned by withdrawing the certification, including by prohibiting the renewal of certification for 3 years, with a possible deterrent effect, but the level of compliance cannot yet be assessed (in force since March, 2020).

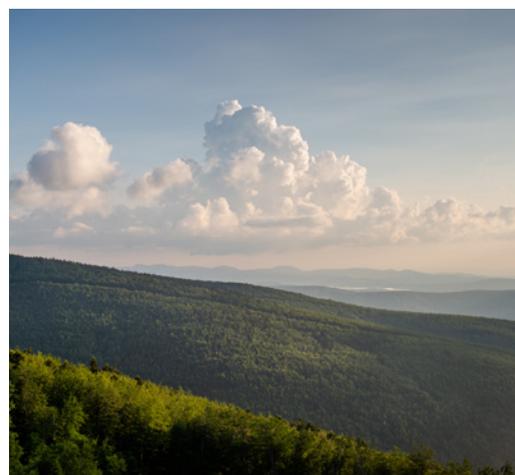
- Agreeing with the owner/manager of the best technical solution for harvesting (e.g. timber extraction / removal paths, locations and the way of crossing the water streams, etc.)
- In the event of unavoidable harvesting damages, practical solutions for timber harvesting will be found, which take into account the mitigation of the risk of violations of forest harvesting rules.
- Provision of environmental-friendly harvesting technologies / use of animal-drawn means;
- Establishment of an internal programme to verify compliance with forest harvesting rules, while prioritisation of controls follows a risk-based approach.
- Sources for prioritising verifications (the list is not exhaustive):
- Map of risk areas for illegal logging: <https://lemncontrolat.ro/harti-interactive/harta-zonelor-de-risc-privind-recoltarea-ilegala-a-lemnului/>
- News on this subject in the media;
- Harvesting agent's complaint register;
- Harvesting agent's technical register;
- Reports of controls issued by the relevant forest authority (e.g. Forest Guard, forest

6. PROTECTED SITES AND SPECIES

A report on the status of natural protected areas and approved management plans is available at http://ananp.gov.ro/wp-content/uploads/inventar_arii_PM_site.pdf

According to the information available on the National Agency for Protected Natural Areas (ANANP) website, only 313 natural protected areas have approved management plans, which means that many protected areas do not have an approved management plan (<http://ananp.gov.ro/pm-aprobate-tabel-sinoptic/>)

For approved management plans, in many cases there is a deficiency in detailing the requirements for identifying specific measures at the





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level of the landscaping unit, which makes it difficult to transpose into practice the legislative requirements for adapting the forest management plan to the management plan.

Consultations with stakeholders during the development of management plans for protected areas are insufficient, which may affect the quality of management plans;

Insufficient integration of the provisions of protected areas management plans into forest management plan which can lead to the use of wrong harvesting techniques. Deficiencies in the transfer of information between the administration of protected areas and forestry administrations result in the lack of concrete information on the measures needed to be taken in natural protected areas. These issues were brought to the attention of the authorities in the Letter of Formal Notice No 2020/2033 issued by the European Commission.

In many cases, due to the lack of capacity in terms of management of protected areas at national level, the administrators of protected areas do not transmit the environmental conditions prior to the preparation of each APV.

Nor is there a coherent system for monitoring compliance with these environmental conditions (if they are issued) by the Environmental Guards (checking compliance with these requirements is not the task of Forest Guards, which also do not have the necessary capacity).

7. ENVIRONMENTAL REQUIREMENTS

The indicator refers to compliance with environmental requirements in general, not limited to the requirements imposed by MO 1540/2011 (indicator 5) or by the management plans for protected areas (indicator 6).

Public reports (e.g. analysis of non-conformities identified in forest management certification audits (Buliga and Nichiforel, 2019)) reveal that there are frequent violations of environmental legislation in the forest harvesting process falling under the competence of the Environmental Protection Agency/ Environmental Guards. These include fuel and oil management, watercourse protection or waste management.

M:

- Verification of the opinion issued by the Competent Authority (ANANP) in relation to the authorisation of drafting the APV, in accordance with the requirements imposed in natural protected areas;
- Integration of conditions imposed by the administrator of the protected area in the harvesting permit
- In forests included in the “Pin-Matra/2001/018” study or for which substantiation studies are submitted in accordance with legal procedures, operations will only be conducted on the basis of the favourable opinion of the regional structure of the central authority responsible for forestry, certifying that those forests do not meet the criteria and indicators approved by MO 3397/2012;
- Trainings will be carried out in order to comply with environmental conditions and other measures stipulated in the harvesting permit, according to the law;
- Additional checks will be conducted to monitor compliance with environmental conditions and other measures stipulated in the harvesting permit, according to the law.

V:

- ANANP notification to obtain environmental conditions;
- Harvesting permit including specific conditions for carrying out logging activities.





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Due to the high frequency of non-compliance with environmental requirements, checks will be carried out systematically through harvesting controls.

8. HEALTH AND SAFETY

Occupational safety and health (OHS) in logging activities is monitored by the Labour Inspectorate. The OSH legal framework establishes the requirements for the works carried out by employees, the rights and obligations of employers and employees in achieving and ensuring an adequate work environment, organisation of occupational safety and health in enterprises and at state level, procedure for emergencies, and liability for breach of requirements for safety and health at work.

Despite the presence of this robust regulatory framework, which in theory should protect workers, most OSH procedures are essentially theoretical and not properly implemented. This is confirmed by various public reports (e.g. non-conformities identified in the forest management audit process (Buliga and Nichiforel, 2019; Halalişan, 2014)).

In some cases employers do not make mandatory equipment available to workers, and when available, it is not used consistently. Frequently, the recommended duration of use by manufacturers of machinery used in the forestry sector is exceeded. Some of these problems also relate to the authorisation of economic operators for which there is only a scriptural verification of technical facilities.



M:

- Existence of risk assessments related to occupational safety and health, specific to each position;
- The existence of protective equipment at work, in accordance with risk mitigation measures in the area of OSH;
- Carrying out specific trainings;
- Checks in the field to comply with OSH measures (interviews with employees);

V:

- Risk assessments;
- Invoice of protective equipment;
- Training /Briefing minutes;
- Equipment handover protocol;
- Harvesting control report



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9. LEGAL EMPLOYMENT

Despite the presence of a sound regulatory framework, which should in theory protect workers, undeclared employment and hiring improperly qualified staff are widespread practices at national level. As a result of a number of factors, including short harvesting period, small areas of harvesting, fees and taxes, the duration of employment is very short in this sector. To avoid complications, many employers prefer not to employ workers with a contract of employment.



PURCHASE, TRADE AND TRANSPORT

10. DETERMINATION OF SPECIES, QUANTITIES AND QUALITIES

11. TRADE AND TRANSPORT

Note:

Indicator 10 and 11 are interlinked and addressed simultaneously

Indicators linked to: 3. Harvesting permits

The conclusions of the debates on the differences between the volume of wood determined as harvest by the NFI and that resulting from the statistical reports of the National Institute of Statistics showed that although the figures circulated do not have the necessary statistical coverage, there is a significant amount of wood that enters the market unjustifiably. Part of this quantity is justified by the coverage of the demand for illegally harvested firewood.

M:

- Compliance will be monitored taking into account the conditions of attestation of operators for logging activities;
- Carrying out the activity of personnel specialised in harvesting activities in accordance with the legal conditions of accreditation;
- Qualification of personnel employed in accordance with applicable law (diplomas, certificates, authorisations);
- Adequate training of personnel in accordance with the role and responsibilities established;
- Employment in accordance with legal procedures (REVISAL).

V:

- REVISAL register;
- Register of day labourers;
- Diplomas, certificates, authorisations;
- Training / Briefing minutes;





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Certain risks may arise in the case of selling standing timber, from the differences between the estimated standing volume of trees and more precise measurements from the primary platform, in the case of timber logs. Any underestimations in diameter or height measured in the field may be transmitted through the chain of custody, especially if the WOOD Tracking system is not properly applied. Also, there is no cross-check of assortments in the SUMAL system, which can lead to overestimated volumes of industrial wood, which is also affected by the overestimation of conversion factors.

Since it is not possible to compare the volumes of assortments in APV with the volumes in the harvesting results, there is a risk that firewood harvested from a particular harvesting site is sold on the local market (with short transport distances and low risk of being identified by transport control) and instead the industrial wood would be introduced into the chain of custody. This wood is very likely to come from underestimations of material measurements both in terms of standing timber and primary platform.

The main risk associated with the transport of timber arises due to errors in the registration or fraudulent declaration of the quantities of timber shipped that may result from harvesting, favoured by deficiencies in the control system and the permissive legislation (i.e. the reduced level of penalties for these non conformities – see correlation with indicator 12— Legislation establishing due diligence/due care procedures (DDS). The main modus operandi for placing undeclared wood on the market are (i) multiple transports carried out under the same delivery document /code issued in SUMAL, (ii) overloading of transport, (iii) transports without papers, especially over short distances.

Only about 1 % of timber transports from the harvesting site to the first unloading point (circulating on the basis of primary delivery documents) are checked by the personnel in charge of control using the special IWoodtracking platform. And when irregularities are identified, operators who carry out multiple transports or load a larger volume than the one referred to in the documents, can only be fined with a symbolic amount.

In addition, in terms of transport conditions, non-compliance with tonnage restrictions on timber transport is considered as a specified risk.

M:

- The level of implementation of additional risk mitigation measures will be pursued by the operator both through internal monitoring and the follow-up of official control reports;
- Verification of delivery documents and unique registration codes for legal origin and destination (provided through the WoodTracking system). The delivery documents will confirm the date/time and place of harvest and destination;
- Photographic documentation of the transport upon departure and destination, including mileage (digital fingerprint of wood transport). In order to verify traceability, this information should be recorded in an online database;
- Affixing plates with a unique identification number to the logs during transport;
- Additional verifications by physical checks that the timber corresponds to the invoice documents and the delivery notes;
- The resulting additional volumes will be separated and the competent Territorial Forest Guard will be notified;
- Adequate training of workers in relation to: legal provisions, cubing methodologies, use of WoodTracking & SUMAL programmes.

V:

- Timber material input-output register;
- Training /Briefing minutes;

M:

- Verification as appropriate of compliance with the legal rights of third parties regarding the use of their property in the timber harvesting process
- Verification of the volume indicated in the opinion and assessment of compliance with tonnage restrictions
- Restricting the maximum volume that can be loaded to comply with tonnage restrictions.

V:

- Written agreement of road owners/administrators and, where appropriate, compliance with agreements between the parties
- Primary delivery documents in which the quantities of wood transported and the type of means of transport are recorded – correlated to the maximum permissible loads.



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DUE DILIGENCE / DUE CARE

12. LEGISLATION ESTABLISHING DUE DILIGENCE/DUE CARE PROCEDURES (DDS)

Although Romania has a sound legislative framework for the implementation of the European Timber Regulation 995/2010 (EUTR), the list of verifiers according to the Methodology for the exercise of control powers (approved by MO 819/2015) is not sufficiently clear/specific for the timber harvested in Romania and is therefore not applied adequately and uniformly. There are also a number of shortcomings in the sanctions regime, which are not proportionate and dissuasive. These issues were also raised by the European Commission in the letter of formal notice – Case No 20202033

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Any fraud in declaring the quantities of timber transported constitutes illegal harvesting! Exceeding reasonable tolerances must be sanctioned as forestry offence and/or, where appropriate, with the suspension of the operating licence.

The current amount of fines (e.g. RON 1,000-5,000 for overloading up to 10 m³/transport) is not a proportional and especially not a dissuasive sanction.

Harvesting activities are conditioned by the existence of due diligence systems, but in many cases these systems are not compliant or are not properly used.

Lack of resources and EUTR-specific training leads to a low ability of the competent authority to check compliance with EUTR requirements. Control plans do not follow an appropriate risk approach based on objective and transparent criterias.

The map of risk areas for illegal harvesting is not updated by the competent forestry authority in accordance with the legal provisions (MO 819/2015).

There is no prioritisation of controls based on an updated analysis of risk factors and modus operandi.

In practice, there are cases where control personnel advise operators (mostly through intermediates) in implementing DDS systems, which generates a situation of conflict of interest. Under such circumstances, the credibility of the exercise of controls (e.g. objectivity of controls or discretionary control orientation) is reduced.

Moreover, the degree of transparency regarding the results of controls is also low, with no data on their results, publicly available in accordance with Article 11 of the EUTR.

M:

- Monitoring of the due diligence system by notifying independent monitoring bodies
- Verification of compliance with the due diligence system established by:
- Internal monitoring;
- Verification of compliance with any compliance measures required by the control acts of the competent authorities.

