The risks associated with conversion timber in the Republic of Congo
The EU Timber Regulation (‘EUTR’) prohibits the introduction of illegally harvested timber on the EU market and requires operators, those who place timber or timber products on the market for the first time, to exercise due diligence. Operators must, in particular, collect information on timber and timber products, as well as on their suppliers, in order to carry out an assessment of the risk of illegally harvested timber or timber products being placed on the market.

This document seeks to inform operators and other parties involved in implementing the EUTR (e.g. competent authorities, monitoring organisations or timber trade federations) on some of the risks of illegality associated with timber derived from forested lands that have been converted to other uses (‘conversion timber’) in the Republic of Congo. This document will analyse the risks of illegality associated with timber harvesting, and the points at which illegality can occur during the supply chain.

1 **Why focus on conversion timber coming from the Republic of Congo?**

In 2013, the Republic of Congo (‘Congo’) was the fourth largest African timber exporter and the eighth biggest global timber exporter to the EU. It is therefore an important market for the EU timber trade.

Until now, Congolese timber exports have largely come from selective logging which meets strict requirements, particularly in terms of access to forest resources, management plans, logging, timber processing and taxation.

However, conversion timber is projected to gain an increasingly significant market share in the years to come due to the expansion of agro-industrial activities. This expansion, in many cases, involves clearing forested land with a view to allocating it for other uses. Indeed, recent studies show a sharp increase in the number of agro-industrial projects covering large surface areas, including forests.

For example, Atama Plantations SARL has been granted a 180,000-hectare concession for palm oil production for a renewable period of 25 years. This concession is causing, and will continue to cause, land clearing.

Deforestation permits have been issued for this project as well as for other agricultural projects. Timber harvested with these permits is already on the national and international market.

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2 L’exploitation illégale des forêts en République du Congo, Chatham House Avril 2014, Sam Lawson.

3 It is estimated that, in the years to come, timber derived from land clearing caused by the Atama Plantations project could constitute three quarters of timber production in Congo. Consumer Goods and Deforestation, Forest Trends September 2014, Sam Lawson, page 81.
2 What are the potential risks of illegality associated with conversion timber?

When the Forestry Code in Congo was adopted, the large-scale clearing of forested land for other uses was rare. As a result, the legal system framing conversion timber and its sale is flawed. Certain legal loopholes pertaining to supply chain checks, and non-compliance with the legal provisions applicable to conversion timber, has led to an increased risk of illegality.

It is important to understand the potential for illegality to occur when harvesting conversion timber and when accessing forest lands, on one hand (2.1) and, on the other, the risks associated with the traceability of conversion timber throughout its supply chain (2.2).

2.1 Risks of illegalities associated with harvesting conversion timber and access to forest lands

2.1.1 Conversion timber harvesting rights

According to the EUTR, operators must exercise due diligence by collecting information on the exploitation of conversion timber, and whether or not it is in compliance with the applicable legislation.

Agro-industrial, mining, and civil engineering companies that intend to clear forested land in order to carry out their activities must first obtain a deforestation permit (called "autorisation de déboisement") from the Ministry of Water and Forests (now known as the Ministry of Forest Economy and Sustainable Development). As such, conversion timber is harvested through those deforestation permits.

The deforestation permit application is submitted by the company in question to the Departmental Directorate for Forest Economy (DDFE) in the region affected by the project. This application must be accompanied by the following information: (i) the company’s articles of association; (ii) the scope of the works; (iii) a map indicating the location of the area affected or an outline of the route to be opened; (iv) the work schedule; and, (v) the equipment used.

Within two months, the DDFE issues a report on the constitution and the state of the forest at stake, and on the regulatory provisions that govern it. This report is sent to the Director-General of Forest Economy along with the application.

The Minister of Forest Economy and Sustainable Development then gives application approval. The permit outlines the time frame by which deforestation work must be carried out as well as the amount of tax to be paid. The issuing of a deforestation permit is subject to the payment of this tax, named the deforestation tax.

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7 Article 6 (1.a) EUTR.
8 Art 31, Code forestier.
9 Art 42, Décret n° 2002-437 du 31 décembre 2002 fixant les conditions de gestion et d'utilisation des forêts.
10 For agricultural plantations of less than five hectares, the deforestation permit is issued by the Departmental Director of Water and Forests.
11 Art 32, Code forestier.
Finally, the Forestry Code outlines that an environmental impact study must be carried out at the site prior to projects involving deforestation. The study must include mitigation measures for large projects.

However, in a report published in September 2014 by the VPA FLEGT Independent Monitor regarding three deforestation permits signed in June 2013, several breaches of the legal provisions were observed:

- No report was issued on the constitution and state of the forest in question
- Failure to carry out an environmental impact study
- The deforestation tax was not paid upon issuance of the deforestation permit

Naturally, the Independent Monitor concluded that these non-compliant permits affect the legality of the felled timber.

During its investigation, the Independent Monitor also observed that deforestation activities had been carried out in an area where the previously issued deforestation permit had expired, and an environmental impact study had not been carried out.

The observations made by the Independent Monitor demonstrate that conversion timber has been, and is likely to continue to be, harvested without respecting the applicable law in Congo. As such, operators who place timber derived from a deforestation permit on the market must therefore be in a position to verify the compliance of the deforestation permit, the payment of taxes, and compliance with environmental obligations.

### 2.1.2 Rights of access to forestlands and third party legal rights

When exercising due diligence, operators must also be in a position to collect the information pertaining to compliance in other areas of the law such as:

- rights to harvest timber within legally gazetted boundaries
- third parties’ legal rights concerning use and tenure that are affected by timber harvesting

In Congo, the deforestation permit can only be allocated on non-classified forests. As such, if plans exist to clear all or part of a classified forest, in order to ensure legality the land in question must be ‘declassified’ before any further action is taken. Consequently, the title providing access to land for the development of an agricultural project that leads to deforestation must not be allocated on classified forests (e.g. production forest, protected forests), as it risks being illegal.

Further, the risk of land conflicts on forest lands in Congo is very real. In the past, mining and oil permits have overlapped with forest concessions (4.5 million hectares of forest concessions are

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10 Art 45, Décret n° 2002-437.
11 Décret n°2009-415 fixant le champ d’application, le contenu et les procédures de l’étude et de la notice d’impact environnemental et social.
12 Independent Monitor in Congo has been created in 2007; Congolese government put in place an Independent Monitor for the implementation of the forest legislation. Rapport n°01/CAGDF, mission du 6 au 23 avril 2014 (page 10 et 11).
13 Page 27-29 ibid.
14 Article 6 (2,h) EUTR.
15 Art 31 § 2, Code forestier.
subject to potential land-use conflicts), and with protected areas (786,773 ha of conservation areas are subject to potential land-use conflicts)\textsuperscript{16}.

Consequently, operators must pay particular attention to the land title or logging permit in order to ensure that it does not overlap with another title or permit. In order to assess the risk of illegality of the timber placed on the market, operators must also check that the land title and logging permit complies with the declassification procedure.

### 2.2 Risks of illegalities associated with the traceability of conversion timber

Under the EUTR due diligence system, the complexity of the supply chain is part of the risk assessment criteria\textsuperscript{17}, and must therefore be taken into account when conducting risk assessments and risk mitigation.

The complexity of the supply chain, from the place of exploitation to the consumer, makes it difficult to trace conversion timber.

The various stages at which timber should be traced generally include:

- Harvesting timber (e.g. felling, cross-cutting, preparation of logs)
- Marking logs which may indicate the company’s acronym, the pricing zone and the sequence number
- Storing logs at various production facilities
- Transporting products and logs to processing plants
- Local processing of logs
- Exporting products from export ports

In order to check that each stage has been complied with, several documents can be provided. This includes, but is not limited to, the site logbook, the road map or the timber logbook filled in at processing factories.

In Congo, the rules framing the traceability of timber are outlined for all timber logging titles but not for deforestation permits. For these permits there is a legal loophole in terms of traceability. Indeed, even if some provisions like the ones on transport seem to apply to all forest products, there are no expressly applicable standards for marking, storing, processing and exporting conversion timber.

Moreover, the stumps of trees cut down on land converted to another use are usually removed in the process, making it almost impossible to determine, and thus trace, the origin of the timber.

The supply chain therefore inevitably becomes complex as it is very difficult to follow the different stages outlined above. This complex supply chain creates, in our opinion, a heightened risk of illegality if the operator is unable to trace the logged timber to the port of export.

\textsuperscript{16} Atlas Forestier Interactif du Congo - Version 3.0.
\textsuperscript{17} Article 6 (1.b) EUTR.
3 Conclusion

Conversion timber coming from Congo could represent a significant volume of the timber sold in the European Union in the months and years to come. The examples given above of current and past violations of the rules on harvesting conversion timber suggest the need for rigorous assessment and analysis of documents collected by operators in the EU during due diligence processes.

Moreover, there is a need for legislative reforms to be carried out in Congo in order to clarify the traceability rules applicable to conversion timber. Due to major complexities in the supply chain, we recommend preventing conversion timber from entering the EU market without sufficient and comprehensive information about its origin being obtained.
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