

Annex to the summary record of the 2<sup>nd</sup> 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

**Conclusions<sup>1</sup> 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**

**Myanmar**

These conclusions are based on recent information such as NGO reports, a report by NEPCON for the European Timber Trade Federation, documentation collected in preparation of a multi-stakeholder meeting (MSG) in Myanmar in November 2019, and previous Expert group conclusions. They are thus based on the information and expertise currently available to the Competent authorities on the conditions of harvest of timber, in particular valuable hardwood like teak (*tectona grandis*), in Myanmar. The conclusions are intended to ensure a level playing field as regards the implementation of the European Timber Regulation (EUTR) in all States, in which it is applicable, and serve operators and inspectors to ensure the correct implementation of Articles 4 (2) and 6 of the EUTR with regards to timber from Myanmar. They should be read in conjunction with the country overview on Myanmar<sup>2</sup> and guidance on due diligence.<sup>3</sup>

**1. Access to information (Article 6(1)(a) of the EUTR)**

Access to information is the necessary basis of any due diligence system and of the exercise of due diligence. The applicable legislation within the meaning of Article 2 (h) of EUTR, the laws and bylaws covering the scope of this Article, need to be publically available before the harvest in order for the harvesting operators to be able to comply with them and EUTR operators to be able to exercise due diligence. Moreover, in applying their due diligence system operators shall be able to demonstrate how the information gathered was checked against the risk criteria provided for in Article 6(1)(b) of the EUTR. To this end they need to understand the applicable legislation and other relevant information

In 2018 the **Chain of Custody (CoC) dossier** was published by the Myanmar Ministry of Natural Resources and Environmental Conservation (MONREC) with the objective of providing information to overseas buyers of Myanmar timber about the legality and origin of the timber in question. The

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<sup>1</sup> 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, hereinafter referred to as the Expert Group) meets regularly 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.

<sup>2</sup> [https://ec.europa.eu/environment/forests/pdf/Country\\_overview\\_Myanmar\\_25\\_10\\_2018.pdf](https://ec.europa.eu/environment/forests/pdf/Country_overview_Myanmar_25_10_2018.pdf)

<sup>3</sup> [https://ec.europa.eu/environment/forests/pdf/28\\_02\\_2020\\_Guidance\\_on\\_Due\\_Diligence.pdf](https://ec.europa.eu/environment/forests/pdf/28_02_2020_Guidance_on_Due_Diligence.pdf); [https://ec.europa.eu/environment/forests/pdf/Guidance%20conflict%20timber\\_EG%20Agreed.pdf](https://ec.europa.eu/environment/forests/pdf/Guidance%20conflict%20timber_EG%20Agreed.pdf); <https://ec.europa.eu/environment/forests/pdf/Guidance%20-%20Risk%20mitigation%20measures.pdf>; and the Guidance Document for the EU Timber Regulation, adopted on 12 February 2016.

Dossier aims to do that by providing an overview of all legally required documents in a timber supply chain, from the assignment of the Annual Allowable Cut (AAC), to export.

Following the MSG meeting in November 2019, the Annual Allowable Cut (AAC) for the harvest 2019/ 2020 was made available online in English and Burmese. However, since the harvest starts in August, this publication came too late for the 2019 harvest.

However, **not all of the laws and by-laws including implementing decisions to which the CoC refers were actually made publically available.** A number of laws, implementing rules, Harvest Plans, etc. defining legality of extraction are unavailable so it is not possible for European operators to verify compliance<sup>4</sup> Or they are available only in Myanmar Language and operators have therefore not been able to demonstrate to their competent authorities in accordance with Article 5 (2) of the Commission Implementing Regulation (EU) no 607/2012<sup>5</sup> how the information gathered, including the applicable legislation, was checked against the risk criteria. E.g., the new Forest Law dating from 2018 and stipulating rules i.a. on teak ownership and harvest rights is only available in Myanmar language.<sup>6</sup> Its implementing regulations are unavailable. Likewise, the MTE Annual Harvesting Plans are not accessible<sup>7</sup> hindering operators to check the MTE's Permit to Enter the Forest for compliance with the former.<sup>8</sup>

Also as regards **royalties**, the determination of the rate of royalties by the Director-General of MONREC (Article 31 of the New Forest Law) and the fees actually collected are not public, making it impossible for operators to verify the correct imposition and payment of royalties by MTE.

The **CoC dossier also does not cover all the steps of the DD(S).** In particular, it does not ensure complete **traceability**<sup>9</sup> as, e.g., the Certified Letter of Origin is not included in the list of documents.<sup>10</sup> **Information on the origin of timber and on the right to harvest stays insufficient and unverifiable**, e.g. due to the use of maps **lacking the necessary exactitude.**<sup>11</sup> Furthermore, the Dossier does not include documents that could be used to indicate compliance with implementation of legal requirements related to **third parties' rights**, or to specific **harvesting regulation** such as implementation of environmental requirements in the forest.<sup>12</sup>

#### *Conclusion on access to information:*

At present and for all harvests preceding this conclusion, an operator wishing to acquire timber or timber products made of timber harvested in Myanmar, cannot access all information necessary for establishing a due diligence system and carrying out due diligence fully compliant with Articles 4 (2) and 6 of the EUTR, because of the unavailability of certain legally required documents, laws and regulations, which is not fully remedied by the CoC dossier of 2018.

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<sup>4</sup> 23<sup>rd</sup> EG meeting p. 2;

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=34250>

<sup>5</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R0607>

<sup>6</sup> MM timber legality: state of play – living document, p. 6; <http://www.flegtmyanmar.org/wp-content/uploads/2020/01/20191023-MM-timber-legality-state-of-play-Living-doc-MSG-051119-English.pdf>

<sup>7</sup> 24<sup>th</sup> EG meeting p. 3;

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=34247>

<sup>8</sup> MM timber legality: state of play – living document, p. 7; <http://www.flegtmyanmar.org/wp-content/uploads/2020/01/20191023-MM-timber-legality-state-of-play-Living-doc-MSG-051119-English.pdf>

<sup>9</sup> MM timber legality: state of play – living document, p. 14; <http://www.flegtmyanmar.org/wp-content/uploads/2020/01/20191023-MM-timber-legality-state-of-play-Living-doc-MSG-051119-English.pdf>

<sup>10</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 47.

<sup>11</sup> MM timber legality: state of play – living document, p. 13; <http://www.flegtmyanmar.org/wp-content/uploads/2020/01/20191023-MM-timber-legality-state-of-play-Living-doc-MSG-051119-English.pdf>

<sup>12</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 59.

## 2. Risk assessment (Article 6(1)(b) of the EUTR)

### *Background:*

Myanmar has experienced one of the highest deforestation rates in the world.<sup>13</sup> The so-called 'Myanmar teak' or 'Burma teak', growing naturally only in Myanmar, is **considered the best true teak available on the planet** and has been for this reason heavily targeted by illegal logging, contributing a quarter of the teak logs harvested globally in recent years.<sup>14</sup> Teak harvesting has contributed significantly to Myanmar's forest loss and degradation; forest inventories indicate massive declines in tropical hardwoods in Myanmar since 1996, with teak one of the worst affected species.<sup>15</sup>

All land in Myanmar is by definition owned by the state, with only certain forest land management rights being granted to communities or private companies.<sup>16</sup> The forest law allows people to extract forest products from forest land on a non-commercial scale without a permit. Commercial extraction requires a permit. In practice, the Myanma Timber Enterprise (MTE), one of the governmental institutions under the MONREC responsible for harvesting, sawmilling, downstream processing and marketing of timber,<sup>17</sup> has the monopoly for commercial extraction.

In the preparatory phase towards Voluntary Partnership Agreement (VPA) negotiations it became clear that, for now, a VPA is not feasible in view of grave on-going internal conflicts. In 2019, the Commission formally informed Myanmar of this assessment and the preparations were halted.<sup>18</sup>

### *Risk of illegal harvest within the meaning of Article 2 (h) of the EUTR*

To correctly exercise its DD obligations, an operator needs to be able to demonstrate, how it determined the degree of risk (Article 5 (2) of the Commission Implementing Regulation No 607/2012).

The applicable forest law and other known applicable legislation of Myanmar, is not complied with consistently by all entities involved in the supply chain, are often ignored, and are not enforced by relevant authorities.<sup>19</sup>

The Forest Department **lacks financial resources and local presence to ensure the necessary enforcement on the ground.**<sup>20</sup> Also the MTE does not consistently comply with Myanmar's forest management system (the Myanmar Selection System),<sup>21</sup> but no legal prosecution of this non-compliance has been reported. With regard to MTE, enforcement is further weakened by the inherent conflict of interest due to the fact that the enforcement body (MONREC), is at the same time the owner and the supervisory entity of the only institution, which may enter the forest for commercial extraction and auction it.

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<sup>13</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 29.

<sup>14</sup> FAO, Global Teak Trade in the Aftermath of Myanmar's Log Export Ban, Working Paper FP/49/E; Environmental Investigation Agency, State of Corruption. The top-level conspiracy behind the global trade in Myanmar's stolen teak February 2019, p. 6.

<sup>15</sup> Thorsten Treue, Oliver Springate-Baginski and Kyaw Htun, Legally and Illegally Logged Out: Extent and Drivers of Deforestation & Forest Degradation in Myanmar, 2016; Environmental Investigation Agency, State of Corruption The top-level conspiracy behind the global trade in Myanmar's stolen teak, February 2019, p. 6.

<sup>16</sup> Country Overview p. 1; [https://ec.europa.eu/environment/forests/pdf/Country\\_overview\\_Myanmar\\_25\\_10\\_2018.pdf](https://ec.europa.eu/environment/forests/pdf/Country_overview_Myanmar_25_10_2018.pdf)

<sup>17</sup> [MTE website](https://mte.com.mm/) (accessed 28/08/2020)

<sup>18</sup> <https://loggingoff.info/flegt-vpas/flegt-vpa-countries/myanmar/>

<sup>19</sup> NEPCON, Timber Legality Risk Assessment - Myanmar, p. 9.

<sup>20</sup> [https://myanmareiti.org/sites/myanmareiti.org/files/publication\\_docs/myanmar\\_forestry\\_eiti\\_report\\_2015-16\\_final\\_signed.pdf](https://myanmareiti.org/sites/myanmareiti.org/files/publication_docs/myanmar_forestry_eiti_report_2015-16_final_signed.pdf)

<sup>21</sup> [https://ec.europa.eu/environment/forests/pdf/Country\\_overview\\_Myanmar\\_25\\_10\\_2018.pdf](https://ec.europa.eu/environment/forests/pdf/Country_overview_Myanmar_25_10_2018.pdf); p.3

According to the **Corruption Perceptions Index 2019** from Transparency International, which measures perceived levels of public sector corruption in countries around the world using a score of 0–100 (where 0 is highly corrupt and 100 is completely clean) Myanmar is ranked 130th out of 180 countries assessed. It has scored a corruption index of 29, meaning it is perceived as highly corrupt, but with a positive trend.<sup>22</sup> Documentation describing the classification of grades, species and volumes are often falsified.<sup>23</sup> Documents for legal, low quality timber are used for illegal, high quality timber.<sup>24</sup>

**Seized timber from illegal logging**, which is subsequently auctioned by public authorities, can be owned legally. However, since its harvest remains illegal, it remains illegal within the meaning of the FLEGT action Plan and the EUTR and may thus not be placed on the EU market<sup>25</sup>. Moreover, it is prohibited under Myanmar law to export it and formally it is only marketed for domestic use. The amount of seized teak logs in recent years exceeds the amount of legally allocated according to the AAC by a significant amount, which indicates a **very significant scale of illegal activity**.<sup>26</sup>

Significant volumes of teak and other hardwoods have been stockpiled in the years prior to the reduction of the AAC in 2017<sup>27</sup> This **stockpiled timber** was thus **harvested in a period** before the CoC dossier was published and **for which this Expert Group confirmed the impossibility to come to a non-negligible risk assessment** because total exports surpassed by far the total AAC and the differentiation between legally and illegally harvested timber was made impossible by the practice of bundling timber by quality rather than origin. None of this timber may therefore be placed on the internal market (EU and EEA).<sup>28</sup> It is estimated, that 20,000 hoppus tons<sup>29</sup> of stockpiled timber harvested before 2015 are circulating and being auctioned off. In addition, it is estimated that the private sector could have an additional 100,000 hoppus tons of stockpiled timbers from that time.<sup>30</sup> This stockpiled material harvested prior to 2015, for which no due diligence was possible for lack of access to the relevant legislation, is now entering processing for export.<sup>31</sup> Also for the timber harvested after this period and until full access to the applicable legislation is ensured, it is not possible to mitigate the risk of illegal harvest to a negligible level. As a result, the **risk of mixing illegally and potentially legally harvested timber is increasing as the stockpiles of non-negligible risk timber grow**.

Additional risks relate to direct **illegal logging inside Reserved forest** as well as uncontrolled **logging in conflict areas outside the direct control of the Union Government**.<sup>32</sup>

The United Nations reported on the role of the Myanmar military in forestry and pointed to serious human right violations and crimes against humanity in relation to forest activities in the states of

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<sup>22</sup><https://www.transparency.org/en/countries/myanmar..>

<sup>23</sup> <https://www.nepcon.org/sourcinghub/timber/timber-myanmar>

<sup>24</sup> 25<sup>th</sup> EG meeting, p.3

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=37859>; Environmental Investigation Agency (EIA), State of Corruption, February 2019, <https://eia-international.org/wp-content/uploads/EIA-report-State-of-Corruption.pdf>, p.12.

<sup>25</sup> i.a. confirmed by Förvaltningsrätten i Jönköping, Dom 2018-05-18.

<sup>26</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 30.

<sup>27</sup> European Trade Timber Federation Newsletter, June 2017, p. 1 <https://www.aeim.org/wp-content/uploads/2017/06/ETTF-Newsletter-Myanmar-Special-Edition-June-2017.pdf>

<sup>28</sup> 19<sup>th</sup> EG meeting, p. 2

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=32789>; 24<sup>th</sup> EG meeting, p. 2 <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=34247> ; for the interpretation of Article 6(1)(c) of the EUTR also refer to [https://ec.europa.eu/environment/forests/pdf/28\\_02\\_2020\\_Guidance\\_on\\_Due\\_Diligence.pdf](https://ec.europa.eu/environment/forests/pdf/28_02_2020_Guidance_on_Due_Diligence.pdf)

<sup>29</sup> As hoppus ton equals 1.8027 cubic metres. It is the old UK-based unit for measuring wood volumes, i.e. mass.

<sup>30</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 31.

<sup>31</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 9.

<sup>32</sup> NEPCON, Timber Legality Risk Assessment - Myanmar, p. 13.

Kachin, Shan and Rakhine,<sup>33</sup> where **armed conflict** is ongoing. The MTE has ceased using “Modified Procedures” to gain access to ethnic states not controlled by the Myanmar government by way of using sub-contractors. Nonetheless, the government has apparently struck a **timber deal with the Kayah State outside the formal planning and approval** process allowing for the trade of 5.000 tons of hardwood. Even if they are not foreseen for export, already the presence of illegal timber in the country will make the mixing of illegally and legally harvested timber and trade therein more likely.<sup>34</sup>

There is also a high risk of non-compliance with regard to the payment of **royalties**, since royalties imposed and the method to calculate them are not publically accessible, and there is no incentive for MONREC to apply and enforce high royalties on its own institution, in particular since the royalties are not earmarked for law enforcement. In combination with bribery, wood and wood products get incorrectly classified to reduce the royalty.<sup>35</sup>

**Illegal trade** with neighbouring countries (in particular China, India) has a significant scale and is ongoing.<sup>36</sup> Thus, e.g. timber harvested and traded illegally with China does not enter the authorized trade route via the port of Yangon, but nonetheless regularly ends up in wood products being traded worldwide with fraudulent information about origin.<sup>37</sup>

#### *Conclusion on risk:*

The risk of illegal timber harvest in Myanmar is high, in particular with regard to the following factors increasing it:

- high value timber species, in particular teak;
- Lack of enforcement capacity;
- corruption;
- partly outdated, overlapping and non-transparent forest and land use legislation<sup>38</sup>, including as regards royalties;
- risk of mixing of potentially legally harvested timber with stockpiled illegally harvested and non-negligible risk timber;
- internal armed conflict in regions with sizable teak reserves and illegal timber harvest;
- illegal export to neighbouring countries (e.g. China, India) and re-export from there.

### **3. Risk mitigation (Article 6(1)(c) of the EUTR):**

Operator shall take adequate risk mitigation measures before placing timber on the market, i.e. measures that are apt to reduce the risk of placing on the internal market illegally harvested timber or timber products containing such timber. The operator shall demonstrate and document how a decision on risk mitigation measures was taken, i.e. how it was determined that a specific risk mitigation measure was adequate within the meaning of Article 6 (1)(c) of the EUTR (Article 5 of the

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<sup>33</sup> UN, Human Rights Council Forty-second session 9–27 September 2019 Agenda item 4: The economic interests of the Myanmar military.

<sup>34</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 30.

<sup>35</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 78.

<sup>36</sup> [https://ec.europa.eu/environment/forests/pdf/Country\\_overview\\_Myanmar\\_25\\_10\\_2018.pdf](https://ec.europa.eu/environment/forests/pdf/Country_overview_Myanmar_25_10_2018.pdf): p. 3

<sup>37</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 9; Environmental Investigation Agency, State of Corruption The top-level conspiracy behind the global trade in Myanmar’s stolen teak February 2019, p. 30-36.

<sup>38</sup> <https://www.nepcon.org/sourcinghub/timber/timber-myanmar>

Implementing Regulation No 607/2012). If the risk cannot be mitigated to a negligible level the operator should not place the timber on the EU market.<sup>39</sup>

The Expert Group emphasises that adequate mitigation measures are currently made impossible already due to insufficient accessibility of the applicable legislation. Since laws and bylaws need to be publically available from governmental sources before harvest, and since this was not the case in the past in Myanmar and up to now, the Expert Group's finding<sup>40</sup> continue to apply. Despite the publication of the AAC in 2019, a significant part of crucial legislation still remains unavailable (see above access to information). Already for that reason, for timber harvested during the past harvesting periods operators will, therefore, not be able to come to a negligible risk of illegality assessment and place it on the market (see above access to information).

#### *Mitigation measures in case full access to the applicable legislation were possible*

In view of the high level of **corruption** and the risk of being presented with falsified or otherwise unreliable documents, risk mitigation in Myanmar needs to go beyond the consultation of official documentation. The operator has to be **able to actually trace back the entire supply chain independent of documents**, including by checking or having checked the legality of the harvest by truly independent third parties in the forest,<sup>41</sup> not by entities depending on the government or on government or timber trade dependent entities.

Recent political and legislative actions have been taken by the government of Myanmar to mitigate some of the above mentioned risks. In 2017, the Myanmar Government took a number of actions to improve forest governance and passed the new Forest Law and, i.a., reduced the AAC to less than half of the pre-2016 amount.<sup>42</sup> This, together with the reduction of the territory covered by the AAC to government controlled areas, could mitigate the risk of not being able to enforce supervision on the ground. However, the **risk of mixing potentially legally harvested timber into stockpiles of illegal pre-2017 timber and post 2017 timber, for which a negligible risk of illegal harvest cannot be ascertained, is not effectively mitigated on the ground** (e.g. through strict separation), making it impossible to tell them apart.<sup>43</sup>

Timber for export may only be sold in Yangon by auctions as "Lots" allocated by quality, so that operators were not able to trace back timber to a harvesting site, for which illegal timber harvest could be excluded. This has process allowed **timber from areas harvested in ethnic areas, and conversion of natural forest to be auctioned, although they should be excluded from export**.<sup>44</sup> Since the buyer cannot possibly verify the legality of the harvest of the entire lot, it is not possible to verify ex ante (i.e. before acquisition for export) compliance with regard to the timber for which it will actually win the tender.<sup>45</sup> The buyer thus has **no means to adequately mitigate the risk to inadvertently buy illegally harvested timber**.

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<sup>40</sup> 26<sup>th</sup> EG meeting, p. 8;

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=39135>

24<sup>th</sup> EG meeting, p. 3;

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=34247>

18<sup>th</sup> EG meeting, p. 1;

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=32788>

<sup>41</sup> 19<sup>th</sup> meeting, p. 7;

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=32789>

<sup>42</sup> [https://ec.europa.eu/environment/forests/pdf/Country\\_overview\\_Myanmar\\_25\\_10\\_2018.pdf](https://ec.europa.eu/environment/forests/pdf/Country_overview_Myanmar_25_10_2018.pdf), p. 4

<sup>43</sup> MM timber legality: state of play – living document, p. 11; <http://www.flegtmyanmar.org/wp-content/uploads/2020/01/20191023-MM-timber-legality-state-of-play-Living-doc-MSG-051119-English.pdf>

<sup>44</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 9.

<sup>45</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 46.

Nonetheless, as recently as November 2019, **consultants** have been offering to operators in Myanmar and in the EU “**traceability docket**” and “**independent third party verification**” for containers with teak harvested before November 2019<sup>46</sup>, claiming that they could guarantee a negligible risk of illegal harvest, although this is presently impossible for the above reasons. These consultants do not provide sufficient information on origin and reference to the legal framework in Myanmar<sup>47</sup> and do not cover the entire supply chain.<sup>48</sup> Such services are thus also **not adequate mitigation measures**.

Four companies (Double Helix, United Forestry Services, Nature Watch Co., Ltd. Myanmar Forest Association) are recognised as competent in the field of forestry and are recognised **as independent verification bodies by the Myanmar Forest Certification Committee (MFCC)**.<sup>49</sup> The accreditation of independent verification bodies by the government of Myanmar or MFCC/PEFC is unlikely to guarantee independent verifiability of the legality of the harvest and the traceability throughout the supply chain, due to a **systemic shortcoming in the recognition process**. In a phase 1 of the recognition process MFCC already granted the candidates the **status of a verification body, even though they have not yet achieved ISO accreditation**<sup>50</sup>, i.e. have not been internationally recognised, which is supposed to follow only in a phase 2. The accreditation is further discredited by the recognition of one of the consultants, who sell unreliable verification services (see above). Using the services of a company recognised by the MFCC as verification body is therefore also not an adequate mitigation measure.

Also **on-site verification**<sup>51</sup> **by an operator** cannot be an adequate mitigation measure, since it will not be able to verify compliance with all legal requirements. Even with the AAC accessible at the time of harvest and all relevant laws and by-laws publically available, there is **no practical way to check volume data at a post-harvest stage of the supply chain**<sup>52</sup> and **to verify it against actual harvest at compartment level**<sup>53</sup>, since there is **no actual volume data available**.<sup>54</sup> Likewise, there is no way to verify if the conditions of a permit to harvest have been met also due to a lack of information on origin.<sup>55</sup> In general, to check compliance, availability of forestry, trade and export data in Myanmar and English language needs to be improved. This information has to be organised by country and type of timber.<sup>56</sup> In any case, the access to the forest is only possible accompanied by the Forest Department and or officials from MTE.<sup>57</sup>

The **so-called Myanmar timber legality assurance system** does not reference up-to-date legislation nor does it cover all relevant legal requirements and its standards are not formulated as normatively auditable categories.<sup>58</sup> There are also gaps regarding independent monitoring.<sup>59</sup>

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<sup>46</sup> 26<sup>th</sup> EG meeting, p. 7;

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=39135>

<sup>47</sup> 15<sup>th</sup> EG meeting, p. 1;

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=39219&no=13>

<sup>48</sup> Country Overview p. 4; [https://ec.europa.eu/environment/forests/pdf/Country\\_overview\\_Myanmar\\_25\\_10\\_2018.pdf](https://ec.europa.eu/environment/forests/pdf/Country_overview_Myanmar_25_10_2018.pdf)

<sup>49</sup> Assessed as competent by the MFCC based upon the minimum requirements set out in MFCC's *Policy 5 Certification Body Requirements*, <https://myanmarforestcertification.org/certification/>

<sup>50</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 40.

<sup>51</sup> As proposed by NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 59.

<sup>52</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 44.

<sup>53</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 59.

<sup>54</sup> Revised Combined Workshop Outcomes, p. 6

<sup>55</sup> EIA, Overdue diligence: Teak exports from Myanmar in breach of European Union rules, 2016, p. 2, 4.

<sup>56</sup> Revised Combined Workshop Outcomes, p. 6

<sup>57</sup> See, e.g., <https://www.doublehelixtracking.com/blogs/2019/2/21/update-on-doublehelix-and-partner-activities-in-myanmar>: “Visits into the forest like this require government approval and accompaniment of Forest Department/MTE officials, and may take multiple days to complete due to remote location and lack of vehicle access.”

<sup>58</sup> NEPCON, Evaluation of the Myanmar CoC Dossier and MTLAS, 19 February 2020, p. 59.

<sup>59</sup> [https://ec.europa.eu/environment/forests/pdf/Country\\_overview\\_Myanmar\\_25\\_10\\_2018.pdf](https://ec.europa.eu/environment/forests/pdf/Country_overview_Myanmar_25_10_2018.pdf), p. 4

**Full reliable, secure and independent traceability covering the entire harvest from the stump to the acquisition** could be an adequate measure to reassure the purchaser that the risk of acquiring illegally harvested timber is negligible.

However, also for post 2019 timber, adequate risk mitigation measures covering the entire harvest are presently not available in this respect, as **efforts to ensure tracking from the stump to the purchaser through reliable and secure tracking tools** (e.g. by using QR codes and GPS based locating techniques) are still in the **pilot state and their reliability and security could not be verified** by independent experts, yet.<sup>60</sup>

Nonetheless, Double Helix, **claims that it can reliably identify the exact place of harvest of timber by using DNA analysis**. However, neither this nor other methodologies used to identify the region in which timber was harvested, can reliably exclude that the timber tested was harvested from within or outside specific forest harvesting or conflict areas, as **the possibility of attribution is limited to the country and some areas could not be sampled**<sup>61</sup>. This method can therefore not help exclude that timber comes from a conflict area or was harvested in another district than foreseen.

*Conclusion regarding mitigation:*

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In view of the high level of corruption in Myanmar and due to the lack of access to laws, regulations and reliable factual information and truly independent verification, there are no measures at hand to adequately mitigate the high risk of illegally harvested entering the supply chain and being mixed indistinguishably with legally harvested timber. In this situation, and in combination with the lack of free access to the harvest areas and the extreme difficulty to ensure reliable secure and independently verifiable tracking throughout the supply chain, documentation and random physical verification by entities guided by government officials are not adequate measures to mitigate this risk, either.

#### **4. Overall conclusions:**

**Since the entry into application of the EUTR in 2013 and up to now, operators cannot fully access all applicable legislation and other relevant documents and information (1<sup>st</sup> step of a due diligence system and due diligence exercise) needed to carry out a full risk assessment or to effectively mitigate the non-negligible risk of acquiring illegally harvested timber. This lack of accessibility of the applicable legislation cannot be remedied ex post, for all timber harvested since then and until now. Therefore, due diligence cannot be fully carried out.**

**For the above mentioned reasons, for all timber from Myanmar the risk that it was illegally harvested is non-negligible and operators cannot take adequate mitigation measures within the meaning of Article 6 (1) (c) of the EUTR with regard to all of the underlying risk factors, in particular due to the lack of factual traceability and the way the forest governance system under a State monopoly is set up, in combination with widespread corruption. As long as the situation as regards the proven problematic issues remains, the present conclusions on the impossibility of carrying out full DD and taking adequate mitigation measures remain valid. Operators should therefore refrain from placing on the EU market for the first time all timber harvested in Myanmar and timber products derived therefrom.**

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<sup>60</sup> <https://www.youtube.com/watch?v=DXIrjijRRIs>

<sup>61</sup> <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=39135>, <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=39147> p.6; slides 13, 15, 17, 18.



**Competent Authorities are open to assess new elements operators bring forward before acquisition of timber for import to demonstrate that they could carry out full DD and come to a negligible risk. Competent authorities may submit these elements to the other Competent Authorities, in compliance with the applicable data protection legislation, for a joint assessment, which may lead to an update of the present conclusions.**