Global analysis of forest conversions by large investments in Gabonese Republic

Analyse globale des conversions des forêts par les grands investissements en République Gabonaise

Project: "Addressing the Challenges of the VPA: Illegal Exploitation and Change of Forest Cover in the Context of Non-Forest Investments" ---------- GLOBAL ANALYSIS OF FOREST CONVERSIONS BY MAJOR INVESTMENTS IN THE GABONESE REPUBLIC Conducted by Franck NDJIMBI May 2017

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i This study was conducted by the Non-Governmental Organization Brainforest, as part of the Project "Addressing the Challenges of the VPA: Illegal Exploitation and Change of Forest Cover in the Context of Non-Forest Investments." The Project is implemented by four organizations (Brainforest in Gabon, Center for Environment and Development in Cameroon, Congolese Observatory of Human Rights in Congo, House of the Child and Pygmy Woman in the Central African Republic), funded by the FAO FLEGT Program, aims to reduce the risks of illegal logging in the context of major investments (agro-industry, mining, infrastructure) by strengthening the efficiency of all parties involved in monitoring these investments. This document was prepared under the technical supervision of the Non-Governmental Organization Center for Environment and Development (CED) and Martial DJINANG, Program Coordinator of Brainforest. The opinions expressed here are those of the concerned organizations and cannot in any way be considered as reflecting the views of the donors.

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ii LIST OF ACRONYMS AND ABBREVIATIONS ACP: Africa-Caribbean-Pacific AGNU: Gabonese Association for the United Nations ANPN: National Agency for National Parks ANUTTC: National Agency for Urban Planning, Topographical Works and Cadastre VPA: Voluntary Partnership Agreement CDE: Departmental Exploitation Contract CED: Center for Environment and Development CFAD: Sustainable Management Forest Concession CTC: Technical Coordination Committee CPAET: Provisional Agreement for Management-Exploitation-Transformation DFPE: Permanent Forest Domain of the State DFR: Rural Forest Domain DME: Minimum Exploitation Diameter EIES: Environmental and Social Impact Study FAO: Food and Agriculture Organization of the United Nations FLEGT: Forest Law Enforcement Governance and Trade FSC: Forest Stewardship Council Graine: Gabonese Agricultural Achievements of Engaged Nationals Ohada: Organization for the Harmonization of Business Law in Africa OIF: Independent Forest Observation PA: Management Plan PEFC: Programme for Endorsement of Forest Certification PFA: Associated Forest Permit PGG: Permit by Agreement GDP: Gross Domestic Product PO: Operation Plan POS: Land Use Plan PSGE: Gabon Emerging Strategic Plan RBUE: Wood Regulation in the European Union Extractive Resources Monitoring: REM SNAT: National Land Use Planning Scheme Sotrader: Agricultural Transformation and Rural Development Company EU: European Union

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iii ANALYTICAL SUMMARY The Gabonese forest covers nearly 85% of the country's area (Richard and Léonard, 1993). Including various types of ecosystems, it features both mangroves and coastal forests, swamp forests, dense lowland and mountain forests, forest-savanna mosaics, savannas, rivers, deltas, and lagoons. The flora and fauna present a great richness with an exceptional rate of plant endemism. With over 6,000 species of trees, more than 10,000 species of higher plants, 130 species of mammals including 19 species of primates with significant

populations of great apes (gorillas and chimpanzees), an estimated elephant population of 60,000 individuals, and an avifauna of over 650 species of birds, this forest is of undeniable ecological and scientific interest. Throughout history, it has been the habitat of indigenous and village communities 1, who derive the necessary resources for their economic 2, cultural, and ritual activities. The Gabonese forest is thus a convergence point of multiple interests. First in the African ranking in terms of forest area per capita (22 hectares per capita), it also holds great economic and social importance. The exploitation of wood and associated industries contributes to 4% of the Gross Domestic Product (GDP) 3. The forestry sector is also the second largest employer in the country after the State 4. To date, forest permits occupy nearly 15,083,300 ha 5 while national parks and other protected areas cover 3,012,375 ha 6. While the Gabonese subsoil is known to be rich in minerals - the contribution of the mining sector to GDP was 6.5% in 2013 - the government intends to develop the agricultural sector. Specifically, it aims to increase the contribution of agriculture to GDP from 3.3% to 15% by 2020 7. To achieve this, it plans to allocate 18.1% of the land 8 to the agricultural sector. Agricultural development and the implementation of other space-consuming activities (mines, infrastructure, housing, etc.) should therefore lead to profound changes in the management of the Gabonese forest massif. All of this will necessarily require changes in the allocation of the considered zones. Generally irreversible, this "conversion" process always results in large-scale deforestation. It often facilitates the marketing of a volume of wood from activities other than logging. However, according to law 16/2001 on the Forest Code, still in force although under revision, the production of wood or non-timber forest products 9 is exclusive. In other words, it can only occur within the framework of logging, as a forest cannot provide products other than forest products 10. Therefore, there is a need, on the one hand, to determine and analyze the legal and regulatory framework that may govern these 1 Article 4, Law No. 16/2001 of December 31, 2001, on the Forest Code in the Gabonese Republic. 2 FAO, Prospective Study of the Forestry Sector in Africa (FOSA) Gabon, July 2001, p. 2. 3 Economic Perspectives in Africa, Gabon, OECD, UNDP, AfDB, 2014, p. 2 4 National Infrastructure Master Plan, 2012, p. 53. 5 Ghislain Moussavou and Emmanuel Mambela, Situation of Affected Lands – CNC/AGEOS/WRI (2016). 6 Interactive Forest Atlas of Gabon – WRI/ MEFEPA (2009). 7 At the UK/Gabon Investment Forum held in December 2012, Minister of Agriculture, Julien Nkoghe Bekale, highlighted Gabon's assets: "We have a large amount of available land [5 million hectares] and an attractive environment for investments" 8 Op. Cit., p. 2. 9 Article 148, Forest Code. 10 Article 4, law 16/2001: "all areas with vegetation cover capable of providing wood or plant products other than agricultural, sheltering wildlife and exerting a direct or indirect effect on soil, climate or water regime"

iv operations, and on the other hand, to question the legality of wood resulting from the conversion of forests into lands for various uses. This study thus presents the legal framework that could legitimize deforestation operations in the coming years. Through this exercise, Brainforest and the Center for Environment and Development (CED) aim to provide information on the legality of wood resulting from mining, agro-industrial, and infrastructural investments in forest areas, thus contributing to this debate that could shape the coming years. In particular, this study should address certain specific questions, namely: Is spatial planning effective in Gabon? Here, it will be a matter of seeing how and with what tools the public authority organizes the coordination of different space-consuming projects. Can forest areas be allocated to something other than logging? This will involve analyzing forest tenure, that is, the system put in place to assert and organize ownership, enjoyment, and access, and to regulate the use and transfer of forest lands. Can forest areas be assigned for purposes other than logging? Can they be deforested? Here, it will be a matter of looking at the legal regime of the national forest domain, the different types of forest permits, and the mechanisms for marketing wood. Are

deforestation operations carried out within the framework of mining, agro-industrial, or infrastructural projects legal? This will involve analyzing the land allocation mechanism and comparing it to the requirements of forest law.

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1 1 IIN NT TR RO OD DU UC CT TIIO ON N 1 1..1 1 L The content of the environmental NGO Brainforest Gabon In its long-term strategic vision, the Gabonese government considers the acceleration of economic growth and the diversification of its sources as one of its three main challenges. The Gabon Emergent Strategic Plan (PSGE) identifies infrastructure as one of the foundations of development. To this end, massive investments are announced, particularly in transportation, energy, and digital technology. While the country has already expressed its intention to become the leading African producer of manganese, it also aims to become the top African producer of palm oil by the end of the current year. Additionally, there are plans to produce an extra 10,000 tons of soybeans per year during the same period. If all these operations will require deforestation activities, these are not accounted for in the forestry legislation. Therefore, it is necessary to analyze the laws related to land use planning, mining, agriculture, and forests. 1.1.1 Land Use Planning No text mentions the need for spatial planning across the entire territory of Gabon. Even though the PSGE elevates the formulation and adoption of a National Land Use Plan to the status of "national priority," the results of the work of the National Climate Council are not at all prospective. The National Land Use Plan made public essentially summarizes the state of land occupation. Despite its implementation, the

National Agency for Urban Planning, Topographic Work, and Cadastre (ANUTTC) struggles to cover the entire country. It focuses its activities on Libreville and its region. To date, land allocation is a shared competence among several administrations, each acting without considering the others. However, there are tools available to minimize the adverse effects of this situation. 1.1.1.1 Land Use Plans and Protected Agricultural Zones Established by Ordinance No. 6/2012 of February 13, 2012, which sets the general rules related to urban planning, ratified by Law No. 7-2012 of August 13, 2012, Land Use Plans (POS) pursue objectives of economic and social development. In particular, they aim to identify woods, forests, and parks to be preserved, protected, or created. Their delimitation and classification fall under a public body that has never been created to date but is supposed to work in concert with the relevant local communities. Is this the reason why no POS has been classified so far? In any case, this spatial planning tool can help compensate for certain shortcomings. 11 National Infrastructure Master Plan, 2012, p.50. available at: http://www.angt.ga/angt/portals/1/masterplan/fr.pdf 12 http://www.gabon-services.com/l-actualite/l-actualite/17318/le-gabon-ambitionne-de-devenir-le-premier-producteur-africain-d-huile, 13 Gabon Emergent Strategic Plan, p. 94. 14 Article 148 of the Forestry Code states: "Obtaining a forestry permit does not grant the right to exploit forest products other than wood." 15 Gabon Emergent Strategic Plan, Action 9. 16 In December 2009, a National Climate Council was established at the presidency of the Republic http:// conseilclimat.ga/fr-fr/Conseil-Climat/Pr%C3%A9sentation 17 Article 8, Ordinance No. 6/2012 of February 13, 2012, ratified by Law No. 7-2012 of August 13, 2012.

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Announced by Article 72 of Law No. 22/2008 on the Agricultural Code, protected agricultural zones can be classified by prefectural decision upon the proposal of the departmental council. However, nearly a decade after the promulgation of the relevant law, none of these zones have ever been identified or classified. 1.1.1.2 Mining As shown in the map XXX below, mining and forestry concessions often overlap. According to Articles 57 and 106 of Law No. 017/2014 of January 30, 2015, there are two types of mining titles: Authorizations: these concern sectoral or artisanal activities. Permits: these are intended for significant mining projects. Regardless of the nature of the title, prior authorization is required to start any mining activity. Applicants for mining titles are therefore required to justify their technical and financial capacities. Exploitation permits grant the right to "exploit mineral substances under mining regulations." Their issuance is subject to the completion of a feasibility study and an environmental impact study. The process of granting mining titles thus incorporates economic and environmental considerations. At no time are land aspects mentioned. Map: Land Allocation in Gabon in 2016 18 Mining concessions granted before the publication of Law No. 017/2014 of January 30, 2015, on the Mining Code are still subject to Law No. 05-2000 of October 12, 2000. 19 Article 9, Law No. 017/2014 of January 30, 2015, regulating the mining sector in the Gabonese Republic. 20 Article 147, Law No. 017/2014 of January 30, 2015, regulating the mining sector in the Gabonese Republic. 21 Article 151, Law No. 017/2014 of January 30, 2015, regulating the mining sector in the Gabonese Republic.

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1.1.1.3 Agro-industries: Leasing and Transfer of Lands The Agricultural Code establishes the departmental exploitation contract (CDE), "signed between the representative of the State and the agricultural operator [...] and accompanied by a specifications document relating to all aspects of the operation established for this purpose." However, Article 9 of Law 23/2008 on sustainable agricultural development policy requires the agricultural operator to declare an activity independent of the CDE. Moreover, Article 2 of Decree No. 01497/PR/MAEPDR regulating the CDE does not make it an obligation. As a result, the CDE cannot be equated with an

agricultural exploitation permit. In the absence of specific provisions for the agricultural sector, the domain and land regime remains in effect for the development of agro-industries. Implemented under Law No. 14-63 of May 8, 1963, establishing the domain regime, Decree No. 257/2012 PR-MECIT of June 19, 2012, regulates the transfer and leasing of lands. However, the domain law specifies that "wood and state forests cannot be alienated except by virtue of a law" and that "the technical conditions of state forestry leases are set by the director of Water and Forests or the minister of forest production." It follows that Decree No. 257/2012 does not apply to the forestry domain. However, no law allows for the alienation of all or part of the forestry domain. Therefore, only leasing can be considered. Depending on the nature of the project, it can last for a period of three years or less, or be subject to a emphyteutic lease that cannot exceed 50 years. Emphyteutic leases are governed by Ordinance No. 50-70 PR/MFB/DE of September 30, 1970. While they do not allow for a permanent transfer of ownership, they grant enjoyment of the land and confer a real right, a right of superficies, which can be mortgaged. Granted for a fee, their duration is generally set based on the importance and amount of the investment. Failure to comply with the specifications document may lead to the termination of the lease. Box 1: Objectives of Sustainable Agricultural Development in Gabon (Law 23/2008) The establishment of rural populations, particularly youth, in agricultural activities to stabilize these populations and ensure the sustainability of agricultural operations and the development of employment in agriculture, whose family character must be preserved in all provinces according to their specificities; The optimization of production conditions, income, and the standard of living of farmers, as well as the establishment of social protection, in order to reduce the incidence of poverty in rural areas; The guarantee of a minimum pension for farmers and breeders, in accordance with the social regime to which they are attached; The production of quality and diversified agricultural, food, and non-food goods, meeting the needs of national, community, and international markets, satisfying security conditions.

sanitary, as well as the needs of industries and agri-food activities and to expectations of consumers and contribute o the safety and to food self-sufficiency; the diversification of activities to increase the contribution of agriculture and livestock o gross domestic product and to play the complementarities; the strengthening of agricultural and agri-food export capacity towards solvent markets by relying on dynamic enterprises; the organization of marketing circuits, producers, and sectors, with a view to an equitable distribution of the added value of food products among breeders, farmers, processors, and marketing companies; the enhancement of products for energy or non-food purposes in order to diversify the country's energy resources and outlets for agricultural production; the valorization of local areas through production systems adapted to their potential; the establishment of favorable conditions for agricultural and livestock activities in areas with permanent constraints; the preservation of natural resources, biodiversity, and the maintenance of rural space, with the economic balance of farms not being jeopardized by the obligations arising from it, particularly in terms of wildlife preservation, without resulting in additional burdens for the state; the continuation of actions of general interest for all users of the rural space; the promotion of a policy of identification and quality of agricultural and food products; the creation of favorable conditions for the availability and accessibility of sufficient, healthy, and balanced food; the creation of favorable conditions for financing agriculture, livestock, and access to land ownership; the professionalization of actors in the different sectors: the increase of food and nutritional security; the strengthening of agronomic and veterinary research; the organization of a balanced coexistence in the rural world between farmers and other rural workers, respecting fair competition between the different economic sectors; the prevention and management of risks and natural disasters. Source: Gabon Legal Review – National interpretation of principles and criteria for the sustainable production of palm oil – WWF June

2012 Table . Main legislative texts related to the development of agro-industry Sector Nature, number and date Subject Investments Law 15/98 of July 23, 1998 Growth, diversification of the economy and development of the private sector

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Investments in agriculture Law 022/2008 of December 10, 2008 Development of the rural agricultural sector Sustainable agricultural development Law 023/2008 of December 10, 2008 Promotion of income-generating activities in the rural world Water and Forests Law 16/01 of December 31, 2001 Sustainable management of the Water and Forests sector Fishing and aquaculture Law 15/05 of August 8, 2005 Sustainable management of fishery resources Environment Law 16/93 of August 26, 1993 Protection and improvement of the environment Territorial administration Law 15/96 of June 6, 1996 Rules relating to the creation, organization, attributions and functioning of local authorities; Transfer of competencies; Resources, tax bases, management and supervision of local authorities Land Law 14/63 of May 8, 1963 Composition of the state domain and rules that determine the modes of management and alienation Land ownership Law 15/63 of May 8, 1963 Registration and publicity of real estate rights Management of the private domain of the state Ordinance 50/70 of September 30, 1970 Regulation of emphyteutic leases, Table . Main regulatory texts related to the development of agro-industry Sector Nature, number and date Subject Investments in agriculture Decree n°0935/PR/MAEPDR december 30, 2009 Creation, attributions, organization and functioning of the Commission of delivery of the technical approval of agricultural operators Investments in agriculture Decree n°01495/PR/MAEPD R of December 6, 2011 Legal status of the agricultural operator and agricultural operation in the Gabonese Republic Sustainable agricultural development Decree n°01016/PR/MAEPD R of August 24, 2011 Compensation scale to be paid in case of deliberate destruction of crops, livestock, of livestock buildings, fish ponds or fishery resources Sustainable agricultural development Decree n°0936/PR/MAEPDR december 30, 2009 Attributions and functioning of a biovigilance committee Agricultural development Decree n°01497/PR/MAEPD Regulation of the departmental contract of sustainable exploitation R of December 29, 2011 Water and Forests Decree n° 689/PR/MEFEPEPN december 24, 2004 Technical standards for the management and sustainable management of registered productive state forests Water and Forests Decree n° 000692/PR/PEFEPEP N of August 24, 2004 Conditions of exercise of customary usage rights in terms of forest, wildlife, hunting and fishing Environment Decree n°000539/PR/MEFEP EPN of July 15, 2005 Environmental impact studies Environment Decree n°000541 of July 15, 2005 Waste disposal Environment Decree n°000542 of July 15, 2005 Discharge of certain products into surface, groundwater and marine waters Environment Decree n°000545 of July 15, 2005 Recovery of used oils Land ownership Decree n°01399/PR/MAEPD R of December 6, 2011 Composition and the functioning of the departmental land development commission Land ownership Decree n° 77/PR/MF.DE of February 6, 1967 Granting of concessions and rentals of state lands Sustainable agricultural development Order n°2149/PM/MAEDRD HM of November 30, 2004 Creation of a Committee of homologation of pesticides Fishing and aquaculture Order n° 0001407/MEFEPN/S G/DGPA of January 29, 2007 Institution of a biological rest period in certain fishing zones Water and Forests Order n° 000491/MEFPTE/SG/ DGEF/DFC of August 14, 1995 Determination of the opening and closing dates of hunting Environment Order n°00329/PM of April 27, 2010 Creation, attributions and organization of the National Committee for the implementation of the Rotterdam Convention Fishing and aquaculture Decision 00004 /MEFEPN/SG/DGPA of January 26, 2003 Institution of a fishing closure period for sardines 1.1.2 Forest governance The PSGE makes sustainable development a pillar of its strategy. It announces the will to make Gabon a "world leader in the certification of tropical wood forests."

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Thus, without taking into account the ongoing revision process of the forest law, a law on sustainable development has been enacted. It introduces the idea of ecological compensation in the management of the Gabonese forest massif. From then on, planning and coordination efforts must be made. 1.1.2.1 Sustainable management policy Concerned with complying with its international commitments, Gabon promotes a policy for the management of its forest massif. Based on the results of biological prospecting and socio-economic surveys, a redistribution of spaces should normally be defined through a participatory process. In principle, no forest title can be issued without a field visit and without taking into account ecological, economic, sociological, and environmental issues. Law 16/01 on the Forest Code states that any state forest, whether granted or not, must be subject to a management plan integrating the previously identified sustainable management objectives. In case of non-compliance with legal provisions, permits can be revoked and the areas concerned returned to the public authority. Of the 22 million hectares of forests, approximately 20 million hectares are considered productive forests, granted under two types of permits: sustainable management forest concessions (CFAD) and associated forest permits (PFA). In 2013, it was estimated that 15,083,300 hectares of forest had already been granted. Map: Forest domain allocated in 2015 to Gabon 25 Ongoing since 2011, this process has undergone many twists and turns. After the intervention of the private sector and the national civil society supported by the World Wildlife Fund (WWF), an acceptable draft was introduced into the legislative circuit. It is currently under review by the Council of State. 26 Referenced as law n° 002/2014 of August 1, 2014 on the orientation of sustainable development in the Gabonese Republic, this text aims to promote the legal integration of economic, environmental, and social concerns while ensuring coherence between public policies and standards. 27 Article 20 of law 16/01 on the Forest Code 28 Article 3 of the law on the Forest Code enumerates, among other things, the protection of ecosystems and the conservation of biodiversity, the valorization of resources and ecosystems, sustainability and productivity of production, continuous inventory of resources, and the management of natural resources

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: Source: World Wildlife Fund 1.1.2.2 The division of the national forest domain According to the forest law, the forest domain is divided into two blocks: the Permanent State Forest Domain (DFPE) and the Rural Forest Domain (DFR). The DFPE consists of classified state forests that are of interest for preservation and registered productive state forests (allocated forests and production forest reserves). The DFR consists of lands and forests whose enjoyment is reserved for village communities. Law 16/01 also establishes the existence of private agreements (PGG), located in the DFR and based on wood volumes. Personal and non-transferable, PGGs cannot exceed 50 tree trunks in previously identified and delimited perimeters by the administration. Although the law provides for cases where bidding is required, CFADs and PFAs are systematically awarded by private agreement, subject to compliance with the procedures set out in decree n° 689/PR/MEFEPEPN establishing the technical standards for the management and sustainable management of registered productive state forests. Table 4: Typology of forest permits Type of permit Sustainable forest concession (CFAD) Associated forest permit (PFA) Private agreement permit (PGG) Objectives Industrialization Industrialization Transformation

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Beneficiaries All Nationals Nationals Area Between 50 000 et 200 000 ha (per UFA). The total allocated to a single concessionaire cannot exceed 600 000 ha Between 15 000 ha (when integrated into a CFAD) and 50 000 ha (outside CFAD) Maximum of 50 trees Ownership domain DFPE DFPE DFR Duration of the concession Rotation (at least 20 years and generally 25 to 30 years) Rotation (at least 20 years and generally 25 to 30 years) Source: Adapted from the Report

on the analysis of the legal and regulatory framework of the forestry sector in Gabon Map: Forest management in Gabon in 2015 Source: World Wildlife Fund 1 1..2 2.. E Ex xe em mp plle es s d d”iin nv ve es sttiis ss se em me en ntts s n no on n ffo orre es sttiie errs s e en n c co ou urrs ss a au u G Ga ab bo on n In recent years, new operators have emerged in the Gabonese forest massif. Even if most of them claim a certain environmental sensitivity, the projects they carry pose a heavy mortgage on the integrity of forest areas and the maintenance of ecological processes occurring there. Acting, most often, with the blessing of public authorities, they invest in mining, infrastructure, and especially agro-industry. However, given a long tradition of mining exploitation and the weakness of investments in infrastructure, agro-industrial projects represent the main threat. 1.2.1 The actors Claiming to align their activities with the implementation of the PSGE, the companies operating in the Gabonese forest massif are generally multinationals. They all assert that they draw inspiration from the principles outlined by various certification references. 1.2.1.1 Olam Present in Gabon since 1999, Olam has progressively diversified its investments. Having recently inaugurated a palm oil mill located in the Ngounié province in the center-south of the country, this company also manages oil palm and rubber plantations as well as the special economic zone of Nkok located 27km from Libreville. Since December 2014, Olam has been conducting, through an entity called the Agricultural Transformation and Rural Development Company (Sotrader), a program called Gabonese Agricultural Achievements of Engaged Nationals (Graine). Presented as an initiative to support farmers, Graine includes four components: administrative assistance to cooperatives and individual farmers, land management, increasing arable land, and marketing. 1.2.1.2 SFM Africa Limited Incorporated in Mauritius, this company signed an agreement with the Gabonese state on April 20, 2011. Under this agreement, SFM must invest in wood production, agriculture, fishing, tourism, renewable energies, and infrastructure. Based on a Development Plan for Greater Mayumba, it is authorized to manage forestry concessions and wood processing units, develop an ecotourism circuit, launch a sugarcane plantation accompanied by a mill for processing, produce energy from biomass and hydroelectricity, support the marketing of fish products, and construct infrastructure (port, road, and airport). 1.2.2 The areas concerned by ongoing projects Until 2014, Olam's activities were mainly concentrated between Awala in the Kango region (Estuaire province), along the Fougamou-Mouila axis (Woleu-Ntem province), and in the Bitam-Minvoul area (Woleu-Ntem province). With the implementation of the Graine program, the Singaporean multinational announced its intention to expand its activities throughout the country. Consequently, all natural regions and ecosystems could be affected, whereas until then only the coastal sedimentary basin, the plains of Ngounié, and the northern and northeastern plateaus were under threat from its activities. As shown by Buursink's work in annex XXX, the agro-food giant operates in forests, coastal forests, swamp forests, as well as grassy or shrubby savannas. For its part, SFM has mainly conducted its studies in the peripheral areas of the Mayumba and Loango national parks. These are mainly coastal, maritime,

and alluvial plains that are concerned by its projects. These areas are coastal forests and swamp forests, mangroves, grassy savannas, or shrubby savannas. 2 2 T THE HE R RE EG GIIM ME E J JU UR RIID DIIQ QU UE E D DE E L LA A C CO ON NV VE ER RS SIIO ON N D DE E T TE ER RR RE ES S Attached to integral domain, the Gabonese state has established state ownership as a common law regime over the land: the DFPE and the DFR are the exclusive property of the State. Having never been subject to any legal provision or fieldwork, the boundaries of these domains are unknown. To date, nothing allows one to establish a priori the domain to which a forest is attached. In practice, the DFPE is constituted over time through the allocation of forest titles or the classification of protected areas. Hence the continuous shrinking of the DFR, much to the detriment of rural populations. Moreover, decree n°1478-MEFEDD of June 15, 2010 creates a "private forest domain of the State" covering 888,730 ha of forest. However, unlike the law on

national parks, the forestry law does not include the typology of the domain regime. Even if it is empirically estimated that the registered productive state forests and the DFR fall under the private domain of the State, the notions of "private domain" and "public domain" cannot be applied to forests. It is also noted that under the law, the transfer of forests must be subject to a legislative measure. However, this provision has never been applied so far. In other words, numerous legal gaps considerably complicate the management of spaces, opening the way to land conversions at the whim of public power interests but without any legal basis. And yet, given the definitions in force, only activities related to forestry exploitation or biodiversity conservation are authorized in the DFPE while the DRF is dedicated to the activities of populations (small agriculture, hunting, gathering, cults...) Nevertheless, as seen in the box XXX below, a procedure for converting forest land has been established by the public administration. According to national legislation, these conversions may give rise to compensations since the orientation law on sustainable development creates a biodiversity market while inducing a reorganization of space. Box 2: Current land conversion procedure Issuance of the necessary permits for the exercise of the concerned activity; Issuance of an exploration permit allowing the company to begin site evaluation work; Issuance of a provisional convention for development-exploitation-transformation (CPAET), as a provisional title for the realization of developments and the preparation of all technical and administrative documents, including development plans, industrialization plans, and environmental and social impact studies; Issuance of a long-term lease on the same portion of territory concerned by the CPAET; Issuance of a "corrective of the provisional CPAET convention" based on the limits of the zone, copies of the decrees, and payment of taxes. 2 2..1 1 A Affffe ec ctta attiio on n d de es s e es sp pa ac ce es s d da an ns s lle e D DF FP PE E According to the forestry law, registered productive state forests include: o the allocated forests, i.e., forests subject to a forest permit; and o the production forest reserves, i.e., forests never allocated but likely to be subject to a forest permit. For their part, classified state forests are composed of: o the protection forests; o the recreational forests; o the botanical and zoological gardens; o the arboretums; o the protected areas; o the integral nature reserves; o the zoological gardens; o the sanctuaries for animal and plant species; o the wildlife reserves; o the national parks; o the hunting domains; o the biosphere reserves; o the world heritage sites; o the forests for educational and scientific use; o the reforestation perimeters; and o the particularly sensitive productive forests or those

bordering rural forest domains. 2.1.1 The procedure for classifying classified state forests Decree n°1032-PE-MEFEPEPN of December 1, 2004 sets the modalities for classifying and declassifying forests and protected areas, with the notable exception of national parks, which are subject to specific legislation. Article 7 of the forestry law specifies that classified state forests present a preservation interest. Moreover, Article 149 of the same law prohibits the granting of forest permits within classified state forests. However, while national parks are deemed inalienable and non-transferable due to their attachment to the public domain,

of the State and while the conditions for their declassification are clearly established 38, this is not the case for other protected areas. According to Article 3 of Decree No. 1032-PE-MEFEPEPN of December 1, 2004, they can be declassified following a "project developed by the Water and Forests administration".

2.1.2 Management in classified state forests Article 3 of Law No. 03/2007 emphasizes the necessity of formulating a management plan for each national park. This document is supposed to present the measures envisaged to ensure the conservation of the site, in accordance with the guidelines provided by Article 21 of the same law.

2.1.3 The classification procedure for registered productive state forests Article 10 of the forestry law defines registered productive state forests as "natural productive forests of the permanent

state forest domain other than [classified state forests]"39. However, the law does not define the notion of "natural forest". More importantly, the conditions for classification and declassification are unknown. As a result, the granting of a forestry permit can be considered a form of classification 40. Registered productive state forests cannot therefore change their designation since, before being allocated, they are supposed to belong to the DFR, meaning "left for the enjoyment of the populations".

2.1.4 Management in registered productive state forests The PFA that the CFAD are subject to management plans 41. In reality, the PA aims for selective logging, meaning sustainable management of the resource. There is no question of deforestation. It is noted that non-compliance with management rules subjects the concessionaire to the realization of reforestation and rehabilitation works 42, in accordance with the terms43 of Decree No. 1030-PR-MEFEPEPN of December 1, 2004, setting the modalities for the realization of regeneration and rehabilitation works of degraded sites. As codified in Gabon, logging cannot therefore accommodate deforestation.

2.2.2 DFR Defined as the set "of lands and forests whose enjoyment is reserved for village communities according to the modalities determined by regulatory means", the DFR is difficult to pinpoint. Empirically, it is considered as the set of forests that do not belong to the DFPE. By deduction, as long as a forest is not allocated, it is deemed to be part of the DFR. Unless it is attached to the DFPE, a forest in the DFR cannot therefore change its designation.

2.2.1 Deforestation in the DFR The operational plans of the PGG Subject to an obligation to mark available trees, the PGG have operational plans (PO) determining the modalities for resource extraction 44. The PO aims to ensure compliance with legal provisions. This includes, in particular, excluding from logging prohibited species or trees that have not reached the minimum exploitable diameter (DME).

The simple management plans for community forests Community forests are governed by Articles 156 and following of the forestry code, Decree No. 001028-PR-MEFEPEPN of December 1, 2004, setting the conditions for the creation of community forests, as well as Order No. 018-MEF-SG-DGF-DFC of January 31, 2013, setting the procedures for the allocation and management of community forests in Gabon. According to the legal and regulatory provisions, these spaces are managed in accordance with the recommendations of a "simple management plan" 45, the objective being to achieve sustainable management of the resource. Deforestation is not among the activities planned in a simple management plan.

3.3 The VPA negotiations Initiated in September 2010, negotiations between Gabon and the European Union for the signing of a Voluntary Partnership Agreement (VPA) on timber trade are at a standstill. Finalized in July 2016 by the Technical Coordination Committee (CTC), the legality grid for timber has never been validated by the authorities. It is, therefore, difficult, to this day, to assess the legality of forest products based on the Flegt regime. Any exercise of this type can only be based on the draft legality grid in circulation.

3.3.1 The attribution of DFR Despite the development of large agro-industrial projects, the issue of converting forests into land for various uses is not taken into account in the VPA negotiations in Gabon. The draft legality grid finalized by the CTC contains provisions concerning the obligation for the company to have both the necessary titles for the exploitation of forest resources and the regulatory authorizations related to the exercise of its activities. Upon analysis, these criteria seem insufficient. Especially since, in terms of indicators, the draft legality grid states the obligation for the company to respect the successive steps of obtaining a title.

44 Article 18, Order No. 136-MEF of October 10, 2011, setting the modalities for the allocation and management of the Permit of gré-à-gré. 45 The simple management plan indicates at a

minimum, (1) the name of the concerned community, (2) the location and description of the considered area, and (3) the priority uses and the action program.

3.3.2 The obligation for annual cutting authorization The draft legality grid states the obligation for the company to hold an annual cutting authorization issued by the forestry administration. This indicator only concerns forestry companies. However, since the adoption, in October 2010, of the measure prohibiting the export of logs, forestry operators and wood industries have merged. Here too, it would be appropriate to broaden the reflection, particularly regarding deforestation authorizations.

3.3.3 The priority of state timber Principle 5 of the draft legality grid concerns compliance with forestry legislation. However, the forestry law clearly establishes that "any forest (...) constitutes the exclusive property of the State" 46. Moreover, the same law specifies that "abandoned wood", regardless of the place and reason, becomes the property of the State 47. It therefore seems evident that conversion wood is the property of the State.

3.3.4 The commercialization of conversion timber The general exploitation clauses contained in Law 16/01 require companies to mark the "trees to be exploited and (...) to preserve" 48 as well as "any tree felled in forestry permits"49. In the same vein, principles 8 and 11 of the draft legality grid concern compliance, on the one hand, with "regulatory provisions on transport and trade" and, on the other hand, "administrative export formalities". The marking of logs, stumps, and wood logs is among the criteria mentioned for this purpose. The Customs administration, which is responsible for controlling and examining export formalities, makes the international marketing of conversion wood nearly impossible, except in collusion with a forestry operator or public authority. Especially in a context where, before exporting their production, forestry operators are required to undergo initial processing.

Moreover, the indicators being relatively weak regarding transport rules50, the national marketing of conversion wood remains possible, even with great ease. Thus, the governmental decision to prohibit the export of logs takes on another meaning. For greater effectiveness, the reflection on the legality grid must therefore extend to forest products that have undergone initial processing.

In general, and beyond the implementation of a possible VPA, conversion wood cannot be marketed under current legislation 51. However, even if the purchase and sale of wood are subject to the presentation of a specification sheet 52, a common practice allows the State to proceed with the auction of seized or abandoned wood. It is therefore sufficient to declare it seized or abandoned 46 Article 13 of Law No. 14-63 of May 8, 1963, setting the composition of the State Domain. 47 Article 134 and 286 of Law No. 14-63 of May 8, 1963, setting the composition of the State Domain. 48 Article 122 of Law 16/01 on the Forestry Code. 49 Article 128 of Law 16/01 on the Forestry Code. 50 Trucks must be insured, registered, and licensed; cargo must be accompanied by the necessary documents; and drivers must hold the appropriate category driving licenses. 51 Article 235 of Law No. 16/2001 on the Forestry Code enumerates the following conditions: prior authorization to exploit, prior aggregation of logs, verification of the operator's material, communication of statistics to the administrations, and payment of taxes and fees. 52 Article 138 of Law 16/01 on the Forestry Code.

to be recognized as state property and marketable through public sale at auctions, according to a random and adaptable procedure depending on the circumstances53 . 4 4 L LE ES S P PR RO OC CE ES SS SU US S E EN N C CO OU UR RS S F FA AC CE E A A L LA A L LE EG GA AL LIIT TE E Following the emergence of international agro-industrial operators, Gabon has evolved its legislation. Now, the development of agricultural activities is subject to obtaining the status of agricultural operator, in accordance with decree n°01495/PR/MAEPDR of December 29, 2011.

Agricultural exploitation can take the form of a family agricultural operation (EAF), an individual agricultural enterprise (EAI), or a limited liability agricultural company (EARL) 54 . However, the status of agricultural operator does not constitute an authorization for exploitation. SFM has, moreover, faced this reality: despite the agreement made with the Gabonese government, the Mauritian company struggles to obtain land. Undoubtedly, due to political influence struggles or potential competition with Olam? In any case, it is still waiting for the promised emphyteutic leases. Thus, to date, the actual land conversion operations mainly concern Olam and its Graine program. 4 4..1 1 L L”iillllé ég ga alliitté é d du u b bo oiis s d de e c co on nv ve errs siio on n iis ss su u d du u p prro og grra am mm me e G Grra aiin ne e e ett d de es s a au uttrre es s iin nv ve es sttiis ss se em me en ntts s d d”O Olla am m Claiming a state commitment to provide 300,000 ha of land, Olam is regularly accused of not respecting the law. At the end of 2014, the Singaporean giant announced it would have to plant 100,000 ha by 2019 55 , claiming to have already reached 12,710 ha of oil palms. Promoter of Sotrader and the Graine program, it aims to cover more than 200,000 ha of food crops throughout the country by 2020 56 . According to its promoters, this program offers Gabonese farmers "a framework for support and monitoring for the implementation and development of an industrial agricultural cultivation activity within agricultural cooperatives"57 . According to their statements, by July 2015, 105 cooperatives had already received their approvals while 13 land titles had been issued 58 . Are these land title issuance operations legal? Article 68 of law n°14/63 of May 8, 1963, which sets the composition of the state property and the rules that determine its management and alienation modes, states that "except for the effect of special laws that provide otherwise, the alienation of a property of the private domain of the state occurs through public auction". At the same time, decree n°257 PR-MECIT of June 19, 2012, regulating the transfers and leases of state lands, provides that "the transfer of full ownership for a fee of the requested land is granted amicably when the requested land is not subject to concurrent requests". 53 While the OHADA legal regime enshrines the principle of auction sales, no national legal provision determines its scope of application and the modalities for implementation. However, through note n°.0503/MFEPRN/CAB/CJ, the Ministry of Forests has recently recorded a related procedure. 54 The family agricultural operation (EAF) is a unit of agricultural production organized on a family basis. It consists of one or more members. The individual agricultural enterprise (EAI) is a unit of agricultural production operated by an individual and exclusively using paid labor. The limited liability agricultural company (EARL) is a civil society composed of one or more persons. 55 Olam, Response from Olam to Rainforest Foundation UK statements for report on industrial palm oil in Congo basin. 56 http://www.presidentalibongo.com/presse/communiques/lancement-du-programme-graine-pour-l-entreprenariat-agricole?page=4 57 GRAINE, website: http://graine-gabon.com/faq/ 58 http://graine-gabon.com.

In light of the hierarchy of legal norms, legal provisions take precedence over regulatory provisions. Therefore, the transfer of land from the private domain of the state can only occur through auction. Those carried out under the Graine project are thus illegal. The same applies to the land titles issued in this context. As a result, the deforestation activities carried out on these sites are also illegal. Moreover, the wood resulting from these illegal conversions cannot be marketed as it is also illegal. To prevent any criticism related to the marketing of conversion wood, Olam has entered into an agreement with the Forest Administration. Under this agreement, the wood resulting from deforestation operations is transferred to the administration and then sold at public auctions. The proceeds from these sales are distributed as follows: 40% to the public administration and 60% to fund a social fund for the benefit of rural populations. Despite this, the wood produced by Olam following the deforestation of forests remains illegal. The only way to make it legal and marketable would therefore be to proceed with

ecological compensations, in accordance with the provisions of the sustainable development orientation law. 5 5 A AD DA AP PA AT TIIO ON N D DU U P PR RO OC CE ES SS SU US S D DE E D DE EV VE EL LO OP PP PE EM ME EN NT T D DE ES S P PL LA AN NT TA AT TIIO ON NS S A AG GR RO O--IIN ND DU US ST TR RIIE EL LL LE ES S A A L LA A T TE EN NU UR RE E F FO OR RE ES ST TIIE ER RE E The main challenge today is adapting the development process of agro-industrial plantations to the imperatives of sustainable forest resource management. 5 5..1 1 C Ca ad drre e tth hé éo orriiq qu ue e d de e ll”a ad da ap ptta attiio on n 5.1.1 Texts and international treaties As shown in tables XX and XX below, Gabon is a signatory to numerous binding and non-binding international legal instruments concerning the management of natural resources, particularly forest resources. In the context of negotiations aimed at signing an APV and thus better traceability of wood, the main international instrument remains the Cotonou Agreement. 5.1.1.1 The Cotonou Agreement Signed on June 23, 2000, in the economic capital of Benin, it was to last for 20 years. Revised every five years, it includes the 79 states of the Africa-Caribbean-Pacific (ACP) group and the 27 EU members. This agreement focuses on five axes: the liberalization of trade, the subordination of multilateral aid to sectoral performance; the fight against poverty; participation in public life; and governance. It is within the framework of implementing this agreement that the Flegt process was initiated.

Table International legal texts concerning forest resources, haliotic and environmental, ratified by Gabon Nature Domain Place and date of signature Date of ratification by Gabon SDN Convention Whaling Geneva, September 24, 1931 April 15, 1935 Convention Wildlife and flora Africa London, November 8, 1933 May 31, 1938 Reciprocity Agreement Fishing: with Congo Libreville, June 26, 1971 September 24, 1972 Convention Forests: African wood organization Libreville, June 2, 1976 August 9, 1976 Reciprocity Agreement Fishing: with Cameroon Franceville, August 9, 1974 October 3, 1977 Convention on the prevention of pollution of the seas resulting from the immersion of waste Environment, immersion waste London, November 13, 1972 June 2, 1980 International Agreement Forests: tropical wood Geneva, June 18, 1983 Law 0019/87 of July 29, 1987 Africa Convention Environment: nature and natural resources Algiers, September 15, 196 8 July 29, 1987. CITES Convention Wildlife and flora Washington, March 3, 1973 July 29, 1987 Protocol Fishing: protection of Atlantic tunas Paris, July 10, 1984 Law 13/88 of December 13, 1988 Sub-regional cooperation agreement Wildlife, conservation Libreville, April 16, 1983 December 30, 1988 Convention Fishing: development of fisheries in the Gulf of Guinea Libreville, June 21, 1984 December 29, 1989 UN Convention Biodiversity Rio, June 5, 1992 June 28, 1996 UN Framework Agreement Environment: Climate Change New York, May 9, 1992 June 1996 Convention on the biodiversity (CDB) Flora and fauna March 11, 1997 Framework Convention on climate change (CCCC) Environment: Climate Change Kyoto, December 11, 1997 January 21, 1998 UN Convention on Desertification Paris, February 26, 1998

Nature Domain Place and date of signature Date of ratification by Gabon fight against desertification (UNCCCCD) June 17, 1994 UN Convention on the Law of the Sea Montego Bay, December 10, 1982 February 26, 1998 Convention relative to wetlands of international importance dubbed RAMSAR Environment: Flora, fauna, ecosystems Gabon is said to have joined in 1986, but the law authorizing this membership seems untraceable! International Convention for the regulation of whale hunting Fauna Not ratified Table International legal texts not binding concerning forest resources, halieutic and environmental signed by Gabon Dates Titles June 1, 1972 Stockholm Declaration on the environment and development May 31, 1989 Dakar Declaration on sustainable development for French-speaking countries May 31, 1990 Brazzaville Declaration on the conservation and rational use of forest ecosystems in

Central Africa April 23, 1991 Tunis Declaration on the environment for French-speaking countries September 1, 1991 Isiolo Declaration defining Africa's perspectives on environment and development May 29, 1992 Curitiba Commitment to sustainable development June 1, 1992 Rio Declaration on environment and development February 9, 1994 Vienna Convention for the protection of the ozone layer April 28, 1995 Agenda 21 on sustainable development 5.1.2 Implementation tools Independent forest monitoring Independent forest monitoring (IFM) aims to promote sustainable management of forest resources and combat their illegal exploitation. To this end, it primarily aims for better application of laws and regulations. IFM is generally undertaken by civil society with the agreement of public authorities. Based on observations made on the ground, the independent observer makes recommendations aimed at strengthening transparency in the management of forest resources.

In Gabon, the OIF has never been effective. Yet, between 2008 and 2010, a training was organized for the local civil society by Extractive Resources Monitoring (Rem). Four trainers from Brainforest, AGNU, and Conservation Justice were trained. Since then, all attempts to establish an independent observation mechanism have invariably encountered government reluctance. Due diligence Due diligence aims to minimize the risks of marketing illegal timber or derived products. This mechanism is based on three pillars: - information: the operator must have access to information regarding timber and derived products (country, species, quantity, supplier coordinates, legal provisions); - risk assessment: based on an analysis of the EU Timber Regulation (EUTR), the operator must assess the risks of placing illegal timber on the market; - risk mitigation: based on the results of the risk assessment, the operator must take and suggest corrective measures. Each operator can design their due diligence system or use a system developed by a monitoring organization. In Gabon, many companies are certified by the Forest Stewardship Council (FSC) or the Programme for Endorsement of Forest Certification (PEFC). Although these certifications do not constitute proof of legality, the associated standards are excellent tools for risk assessment and mitigation. They can therefore contribute to the development of a due diligence mechanism. 5.2.1 Adaptation of the legality grid The legality grid must correspond to Gabon's reality. It must take into account, on one hand, the development of agro-industries and thus large-scale deforestation operations, and on the other hand, the measure prohibiting the export of logs. RECOMMENDATION 1: Adapt the legality grid To do this, it will be necessary to: - Include the principle of free access to public information, so that administrations are obliged to provide written responses to questions addressed to them and to justify their positions; - Include a principle requiring companies to assess the risks of placing illegal timber on the market and to suggest preventive measures; - Include the control of registers provided for in Article 228 of Law 16/01 on the Forestry Code in the indicators of compliance with legislation; - Include the presentation of the specification sheet provided for in Article 138 of Law 16/01 on the Forestry Code in the indicators of compliance with legislation; - Include the presentation of the roadmap provided for in Article 135 of the Forestry Code in the indicators of compliance with legislation; - Include the control of marking in the indicators of compliance with regulations on processing. 5.2.2 Adaptation of the forestry law RECOMMENDATION 2: Adapt Law 16/01 to the requirements of the sustainable development orientation law, to the domain and land regime, to the competition regime provided for in Law 14/98 of July 23, 1998, as well as to the realities induced by the prohibition of exporting logs and the development of agro-industries. Specifically, the new law should: - Introduce new concepts, including "damage," "repair," "regeneration," "reforestation," and "natural capital"; - Introduce an administrative police regime allowing the administration to assess damages, initiate evaluations, and contribute to the development of a restoration strategy; - Clarify the procedure for selling abandoned or seized timber; - Introduce a mechanism allowing deforestation; - Eliminate

CPAETs; - Transform PGGs into forest-use occupancy permits; - Transform PFAs and CFADs into emphyteutic leases for forestry purposes.

6 The absence of spatial planning across the territory does not facilitate the understanding of land distribution in Gabon. Undoubtedly due to a lack of coherent and coordinated policy but also to a legal framework that makes the State the exclusive manager of land, overlaps of uses are frequent while legal dualism and legal insecurity prevail. Covered 85% by a forest known for its rich biological diversity, Gabon's territorial space is primarily considered a forest massif. Forests belonging to the Permanent Forest Domain of the State (DFPE) can only be legally allocated to activities related to forestry exploitation or the protection of biological diversity. Those of the Rural Forest Domain (DFR) are reserved for the traditional activities of the populations. The classification/declassification procedures being unknown, the forests in these two domains cannot, consequently, be subject to either declassification or change of use. With the notable exception of protected areas, they cannot be subject to conversion. Mining, agricultural, or infrastructure projects carried out in Gabon are done in violation of forestry law. Especially since sectoral laws (forests, agriculture, mines, etc.) are not always consistent with the domain and land regime nor with each other. In many respects, they contain huge gaps or contradictory provisions or those never applied. Numerous references to regulatory pathways have never even been the subject of text. To this reality, it is necessary to add the recent adoption of a law on the orientation of sustainable development, the enactment of a measure prohibiting the export of logs, and an administrative practice not always based on texts. In this context, the legality grid must make the best use of the possibilities offered by the existing legislation, particularly the forestry law. There is therefore a need to complete the legality grid, particularly on the indicators of compliance with industrialization standards. The control of log marking and the various documents indicating the origin of the timber must be strengthened and made mandatory within processing units. Beyond that, one dares to believe that the forestry law currently under examination by the Council of State will facilitate the articulation of the various laws. Specifically, it is hoped that it will indicate how the provisions of the forestry law can coexist with those of other laws to better secure the forest capital of the interests of stakeholders. If the process of its formulation has been critical and tumultuous, the version retained aimed to anticipate the survival of previous general legislation. More than its predecessor, the new law should consider the application of existing sectoral legislation in the national forestry domain. How to transpose the management rules of the State domain into the national forestry domain? How to reconcile biodiversity protection and large-scale industrial agriculture? What to do if the Ministry of Agriculture decides to support the identification and classification of protected agricultural areas? How to recognize customary ownership in a context of complete domain and in the absence of property law? Although deforestation is not provided for in Gabonese legislation, ongoing conversions can now give rise to compensations, in accordance with the orientation law on sustainable development. This can certainly help address the issue of the legality of conversion timber. Here too, it appears essential to evolve the legality grid to integrate the issue of ecological compensations. In this sense, it is important that the rules governing the land allocation procedure are reflected in an updated grid.