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主旨：函轉歐盟公布反毀林規章(EUDR)之更新版指引事，惠請協助轉知，請查照。

說明：

- 一、依據本署115年7月29日林企字第1152219339號函及駐歐盟兼駐比利時代表處經濟組115年7月20日比貿字第1150000340號函辦理。
- 二、歐盟於2026年7月20日於歐盟公報公布反毀林規章(EUDR)之更新版指引(Guidance)，重點摘述如下：
 - (一)EUDR納管之市場行為：產品首次投入歐盟市場；或於歐盟市場中，用於商業活動之供應、配銷、使用或消費(不包含私人自用)；或自歐盟出口產品。
 - (二)經濟經營者(Operator)：EUDR規範四種經濟角色，包括經濟經營者、中小型初級經營者、下游經營者、貿易商，同一家公司對不同產品可能同時具有不同角色，至於是否屬於某一角色，須依個別產品判斷。
 - (三)EUDR實施時程及過渡期：
 - 1、EUDR於2023年6月29日生效。
 - 2、2023年6月29日以前生產之產品，不適用 EUDR。
 - 3、多數義務自2026年12月30日起適用。



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4、符合特定條件之微中小型經營者，自2027年6月30日開始履行EUDR主要義務。

5、過渡期間上市之產品(2023年6月29日至EUDR相關義務開始適用之前)，不適用EUDR規定。木材產品另有特殊過渡期規定，係因木材除EUDR外，尚須遵守木材規章(European Union Timber Regulation, EUTR)。

(四)經營者於產品上市或出口前，應進行盡職調查，包含：

- 1、蒐集資訊、文件及資料。
- 2、進行風險評估。
- 3、必要時採取降低風險措施，但若風險評估結果顯示無風險或風險可忽略(negligible risk)，則不需採取降低風險措施。

(五)風險評估考量因素可包括但不限於以下：

- 1、生產國風險等級。
- 2、森林覆蓋與森林退化情形。
- 3、產品本身風險。
- 4、是否涉及非法、森林伐採或森林退化。
- 5、第三方驗證資訊。
- 6、是否符合生產國法律。
- 7、是否存在貪腐、文件造假、執法不足、人權問題等情況。
- 8、是否能立即取得並驗證相關文件。
- 9、供應鏈複雜程度：供應鏈越長、加工者與中間廠商越多、來源地越多、產品加工越複雜，供應鏈複雜性越高，越可能提高不符合 EUDR 之風險；相反地，較短之供應鏈通常較容易追溯來源。

(六)產品上市或出口須同時符合三項規定：

- 1、符合EUDR之無毀林要求(Deforestation-free)。
- 2、符合生產國相關法律。
- 3、執行EUDR所要求之盡職調查聲明(Due Diligence Statement, DDS)。

三、檢送歐盟公報如附件，網址請見

<http://data.europa.eu/eli/C/2026/3896/oj>。

正本：中華林產事業協會、中華民國木材商業同業公會全國聯合會、臺灣區生態材料產業發展協會、臺灣區木材工業同業公會、臺灣區合板製造輸出同業公會、社團法人中華造林事業協會
副本：本署森林產業組

署長 林華慶

本案依照分層負責授權單位主管決行



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C/2026/3896

20.7.2026

COMMISSION NOTICE

Guidance document ⁽¹⁾ for Regulation (EU) 2023/1115 on deforestation-free products ⁽²⁾

(C/2026/3896)

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⁽¹⁾ Nothing in this guidance document either replaces or substitutes direct reference to the instruments described and the Commission does not accept any liability for any loss or damage caused by errors or statements made in it. Only the European Court of Justice can make final judgments on the Regulation's interpretation.

⁽²⁾ OJ L 150, 9.6.2023, p. 206, ELI: <http://data.europa.eu/eli/reg/2023/1115/oj>.

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INTRODUCTION

Article 15(5) of Regulation (EU) 2023/1115 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (hereinafter referred to as EUDR) sets out that the Commission may develop guidelines in order to facilitate harmonized implementation of the Regulation.

This guidance document's purpose is to provide information on certain aspects of the EUDR. It does not replace, add to or amend the provisions of the EUDR, which establishes the legal obligations. This guidance document should not be considered in isolation; it must be used in conjunction with the legislation and not as a 'stand-alone' reference.

This guidance document is, however, useful reference material for anyone who must comply with the EUDR as it further clarifies dedicated parts of the legislative text, meaning it can guide operators and traders. It can also guide national competent authorities and enforcement bodies as well as national courts in the process of implementing and enforcing the EUDR.

The issues addressed in this document were discussed and developed in cooperation with designated representatives of the Member States. Additional issues can be addressed once there is more experience in applying the EUDR, and in this case the guidance document would be revised accordingly.

For all issues addressed in this guidance document it should be noted that in accordance with Recital (43), the definitions of the Regulation build on the work of the Food and Agriculture Organization of the United Nations (FAO), the Intergovernmental Panel on Climate Change (IPCC), the United Nations Environment Programme (UNEP), and the International Union for the Conservation of Nature (IUCN).

The third edition of the guidance document improves clarity, including on application timelines, precision of the provisions for operators and traders, facilitating simple and efficient due diligence and traceability. It should be read in conjunction with Frequently Asked Questions which provide additional examples and clarifications addressing questions by a wide variety of stakeholders.

The principle of proportionality is one of the general principles of Union law which applies to the interpretation and enforcement of Union legislation^(*), which includes the enforcement of the provisions of Union acts by the Member States, taking also into account the relevant provisions of the Treaty.

1. DEFINITIONS OF 'PLACING ON THE MARKET', 'MAKING AVAILABLE ON THE MARKET' AND 'EXPORT'

Relevant legislation:

EUDR – Article 2 – Definitions; Article 4 – Obligations of operators; Article 4a – Simplified regime for micro or small primary operators; Article 5 – Obligations of downstream operators and traders

The obligations on operators that apply under Article 4 and 4a, and on downstream operators that apply under Article 5, come into play when relevant products are intended to be or are 'placed on the market' or 'exported'. The obligations on traders that apply under Article 5 come into play when relevant commodities or relevant products are intended to be or are 'made available on the market'.

An overview of scenarios, explaining the obligations which operators, downstream operators and traders are under when placing or making available on or exporting relevant products from the Union market is provided in the EUDR Supply Chain Infographics.

^(*) For further details related to the implementation, please refer also to the Frequently Asked Questions which are available here: Deforestation Regulation implementation – European Commission (europa.eu).

(a) **Placing on the market**

Under Article 2(16), a relevant commodity or relevant product is 'placed on the market' if it is made available on the Union market **for the first time**. Relevant commodities or relevant products that have already been placed on the Union market are not covered here. The concept of 'placing on the market' refers to each individual relevant commodity or product, not to a type of product, irrespective of whether it was manufactured as an individual unit or a series.

(b) **Making available on the market**

Under Article 2(18), a relevant product is 'made available on the market' if it is **supplied**:

- **on the Union market for distribution, consumption, or for use** – this means that the relevant product or commodity must be physically present in the EU, having been either harvested or produced in the EU, or imported into the EU and placed under the customs procedure 'release for free circulation'. As regards relevant products imported into the EU, they do not acquire the status of 'Union goods' before they have been brought into the customs territory of the Union and released for free circulation by customs. Relevant products placed under other customs procedures than the 'release for free circulation' (e.g. customs warehousing, inward processing, temporary admission, transit) are not considered to be placed on the market under the EUDR;

and

- **in the course of a commercial activity** – this means an activity taking place in a business-related context, as defined under Article 2(19). Commercial activities may be in return for payment or free of charge. Supply to non-commercial consumers and activities where there is no payment made in return are both within the scope of the EUDR (e.g. for donation or pro bono activities). The Regulation does not impose requirements on non-commercial consumers, as private use and consumption are outside of the scope of the EUDR.

'**Making available on the market**' should therefore be understood as occurring when a trader supplies relevant products on the Union market both (i) for distribution, consumption or for use and (ii) in the course of its commercial activity.

'**Placing on the market**' should therefore be understood as occurring when an operator makes a relevant product available on the Union market (i) for distribution, consumption or use, (ii) for the first time, and (iii) in the course of its commercial activity.

The combined definitions of 'operator', 'micro or small primary operator', 'downstream operator' (Article 2(15), (15a) and (15b) EUDR) and of 'in the course of a commercial activity' (Article 2(19) EUDR) imply that any person which places a relevant product on the market:

- (a) for distribution to commercial or non-commercial consumers, meaning for example for selling or free of charge,
- (b) for the purpose of processing, or
- (c) for use in its own business

will be subject to the EUDR.

'**Relevant products entering the market**' should therefore be understood as occurring when relevant products are simultaneously:

- declared to be placed under the customs procedure 'release for free circulation' which are intended to be placed on the Union market. Only products released for free circulation by customs are considered placed on the Union market. Other customs procedures than the 'release for free circulation' (e.g. customs warehousing, inward processing, temporary admission etc.) are not within the scope of the EUDR;

and

- are intended to be placed on the Union market, i.e. supplied 'in the course of a commercial activity' (B2B & B2C);

- Products intended directly for private use or consumption (C2C) within the customs territory of the Union (e.g. by individual bringing such products from a trip outside the EU for his private use or consumption) are not subject to the EUDR.

(c) **Export**

Under Article 2(37), 'export' refers to the customs export procedure as laid down in Article 269 of Regulation (EU) No 952/2013 ⁽⁴⁾ and refers to Union goods to be taken out of the customs territory of the Union.

Article 269 of Regulation (EU) No 952/2013 states that the export procedure shall not apply to: (a) goods placed under the outward processing procedure; (b) goods taken out of the customs territory of the Union after having been placed under the end-use procedure; (c) goods delivered, VAT or excise duty exempted, as aircraft or ship supplies, regardless of the destination of the aircraft or ship, for which a proof of such supply is required; (d) goods placed under the internal transit procedure; (e) goods moved temporarily out of the customs territory of the Union in accordance with Article 155 of Regulation (EU) No 952/2013.

Re-export as laid down in Article 270 of Regulation (EU) No 952/2013 is not within the scope of the EUDR. Re-export in this regard means, that the relevant commodity or relevant product has not acquired 'Union goods' status and is taken out of the customs territory of the Union after lodging e.g. re-export declaration.

'Relevant products leaving the market' should therefore be understood as occurring when relevant products are declared to be placed under the customs procedure 'export' in the course of a commercial activity.

2. DEFINITION OF 'OPERATOR', 'DOWNSTREAM OPERATOR', 'MICRO OR SMALL PRIMARY OPERATOR' AND 'TRADER'

Relevant legislation:

EUDR – Article 2 – Definitions; Article 7 – Placing on the market by operators that are established in third countries

The determination of whether a natural or legal person qualifies as an operator, downstream operator, or trader must be assessed for each relevant product. If that person places on the market, exports and/or makes available on the market multiple relevant products, they may hold multiple roles simultaneously, depending on their position in the supply chain of each product.

(a) **Operator**

Under Article 2(15), an **operator** is a natural or legal person:

- who places relevant products on the market or exports them;
- in the course of a commercial activity; and
- is not a downstream operator.

To make it possible to consistently identify operators, one can distinguish their roles according to how their relevant products are placed on the Union market, which varies depending on whether they are produced inside or outside the EU.

- For relevant products produced according to Article 2(14) **within the EU**, the operator is usually the person that distributes them once they have been produced.

⁽⁴⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1, ELI: <http://data.europa.eu/eli/reg/2013/952/oj>).

- For relevant commodities or relevant products produced **outside the EU**:
 - the operator is, generally, the person acting as the importer when the relevant commodities or relevant products are declared to be placed under the customs procedure 'release for free circulation'. The importer is the person indicated in the relevant data element of the customs declaration, where applicable:
 - the 'importer' in data element 13 04 000 000 (Annex B of Delegated Regulation (EU) 2015/2446 ⁽³⁾);
 - data element DE 3/15 in a previous release of EU Customs Data Model (EUCDM);
 - the 'Consignee' in box 8 of the Single Administrative Document;
 - where the person acting as the importer when the relevant commodities or relevant products are declared to be placed under the customs procedure 'release for free circulation' is not established in the EU, the first natural or legal person established in the Union to make the relevant products available on the market is also deemed to be an operator, i.e. although it is not an operator pursuant to the definitions laid down in Article 2(15) or (15a), it is subject to the obligations of an operator pursuant to Article 7. This requirement comes on top of the obligation of the operator established outside the Union and aims at ensuring that there is always one responsible actor established in the EU;
 - where a relevant product is placed under the customs procedure 'release for free circulation' and is supplied directly to a final consumer (e.g., in case of online or distance sales), the consumer (i.e. a natural person who is acting for purposes which are outside his trade, business, craft or profession), is never an operator under the EUDR, even if they are declared as the 'importer' on the customs declaration. The operator is the person actually supplying the product in the course of a commercial activity in the sense of Article 2(18) and (19), e.g. manufacturer, seller, online retailer or fulfilment service provider. Additional information on the specificities of e-commerce is available in the Frequently Asked Questions.
- For relevant products **imported** into the EU, the definition of 'operator' is independent of the change of ownership of the product and of other contractual arrangements.
- In the case of a **domestic** product being placed on the market, the operator is normally the person that owns the commodity or product at the point of selling. However this may depend on the individual circumstances of the contractual agreement. In case a person concludes a contract by which it authorises the other party to the contract to produce a relevant commodity, the contracting party carrying out the production is considered the operator if it directly and automatically becomes the owner of the product by the mere act of production (e.g. by the harvesting of the trees or upon birth of the calf). This is not the case where the applicable national law or the contract foresee that the natural or legal person transfers, after production, the right of ownership to the other party of the contract (for reference see Judgment C-370/23 of 21 November 2024 ⁽⁴⁾).
- For relevant products **exported** from the Union, the operator is usually the person acting as the exporter when the relevant products are declared to be placed under the customs export procedure. The exporter is the person indicated in the relevant data element of the customs declaration, where applicable:
 - the 'exporter' in data element 13 01 000 000 (Annex B of Delegated Regulation (EU) 2015/2446);
 - Data element DE 3/1 in a previous release of EU Customs Data Model (EUCDM);
 - the 'Consignor/Exporter' in box 2 of the Single Administrative Document.

⁽³⁾ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1, ELI: http://data.europa.eu/eli/reg_del/2015/2446/oj).

⁽⁴⁾ ECLI:EU:C:2024:972.

Service providers, who offer logistical or technical support services, for instance freight forwarders, shipping agents or customs representatives, who do not possess ownership or similar rights over the products they handle, are neither 'operators' nor 'traders' for the purpose of the Regulation, if they do not place or make available products on the market or export.

The role and obligations of operators are further explained with the help of the scenarios contained in the EUDR Supply Chain Infographics and in the Frequently Asked Questions.

(b) **Micro or Small Primary Operator**

Under Article 2(15a), a **micro or small primary operator** is a natural person or a micro-undertaking or small undertaking within the meaning of Article 3(1) and (2), first subparagraph, respectively of Directive 2013/34/EU, irrespective of its legal form, established in a country classified as low risk in accordance with Article 29 of the EUDR:

- (i) who directly places on the market or exports relevant products;
- (ii) that this operator itself has grown, harvested, obtained from or raised on relevant plots of land, or, as regards cattle, on establishments located in that country;
- (iii) in the course of a commercial activity.

This includes operators who exceed the limits of at least two of the three criteria set out in Article 3(1) and (2), first subparagraph, of Directive 2013/34/EU but who can demonstrate that the parts of their balance sheet total, net turnover and average number of employees during the financial year, related to the relevant commodities and the relevant products, do not exceed the limits of at least two of three of those criteria.

The term 'micro or small primary operator' is a subset of the definition of 'operator' as set out in Article 2(15). For the purposes of this Guidance, unless specified otherwise, any reference to 'operator' should be understood to include 'micro or small primary operator'.

The role and obligations of micro or small primary operators are further explained with the help of the scenarios contained in the EUDR Supply Chain Infographics and the Frequently Asked Questions.

(c) **Downstream Operator**

Under Article 2(15b), a **downstream operator** is a natural or legal person:

- who places on the market or exports relevant products made using relevant products;
- all of which are covered by a due diligence statement or by a simplified declaration;
- in the course of a commercial activity.

A downstream operator is, therefore, someone who places on the market or exports a relevant product that is made using other relevant products all of which are covered by a due diligence statement or a simplified declaration. Typically, this would involve placing on the market a relevant product classified under a new HS code made using other relevant products (e.g. components or raw materials) that are already covered by a due diligence statement or a simplified declaration. In the case of exports, the role of the downstream operator is determined by exporting a relevant product previously covered by a due diligence statement or a simplified declaration or exporting a relevant product made using other relevant products (e.g. components or raw materials) previously covered by a due diligence statement or a simplified declaration.

For instance, a chocolate manufacturer buying cocoa beans (HS code 1801 00, included in the scope) within the Union market and then manufacturing chocolate bars (HS code 1806, included in the scope) and placing them on the Union market or exporting it would be considered a downstream operator.

The role and obligations of downstream operators are further explained with the help of the scenarios contained in the EUDR Supply Chain Infographics and the Frequently Asked Questions.

(d) **Trader**

- Under Article 2(17) a **trader** is any person in the supply chain other than the operator or downstream operator: who makes relevant products available on the market;
- in the course of a commercial activity.

A trader is therefore any legal entity that does not fall under the definitions of operator or downstream operator (see above) and does not place but simply makes a product available on the market, as defined in Article 2(18).

The role and obligations of traders are further explained with the help of the scenarios contained in the EUDR Supply Chain Infographics and the Frequently Asked Questions.

3. DATE OF EFFECT AND TIME-FRAME FOR APPLICATION

Relevant legislation:

EUDR – Article 1(2) Subject matter and scope; Article 37 – Repeal; Article 38 – Entry into force and date of application

The EUDR entered into force on 29 June 2023. Most obligations on operators, downstream operators and traders, as well as on competent authorities including those in Articles 3 to 13, Articles 16 to 24, Articles 26, 31, and 32, apply from **30 December 2026**, in accordance with Regulation (EU) 2025/2650 ⁽⁷⁾ amending the provisions of the EUDR relating to the date of application.

For operators that were established as **micro-undertakings or small undertakings** by 31 December 2024 (in accordance with Article 3(1) or (2), first subparagraph, of Directive 2013/34/EU, respectively) the obligations in Articles 3 to 13, Articles 16 to 24, Articles 26, 31 and 32, apply from **30 June 2027**, except as regards the products covered in the Annex of the Regulation (EU) No 995/2010 laying down the obligations of operators who place timber and timber products on the market ⁽⁸⁾ (EUTR). This means that there is a **transitional period** between the entry into force of the Regulation (29 June 2023) and the entry into application (30 December 2026, deferred to 30 June 2027 for small undertakings or micro-undertakings established by 31 December 2024) that exempts operators and traders placing or making available on or export from the Union market relevant commodities and products in the transitional period from the main obligations under the EUDR.

The following rules apply for all commodities and associated relevant products **with the exception of timber and timber products covered by the Annex of the EUTR** (detailed explanations are provided in the Frequently Asked Questions document, Section 9):

- if a relevant commodity or a relevant product is placed on the market during the transitional period applying to the respective operator, the obligations of the EUDR do not apply to the operator.
- Furthermore, any relevant product placed or made available on the market by downstream operators or traders after the entry into application that is made entirely from commodities or products placed on the market during the transitional period will not be subject to the obligations of the EUDR. This also means that the deferred entry into application for **small and micro enterprise operators** (30 June 2027) will, in cases of them placing on the market, also exempt downstream operators and traders further down the supply chain that are trading with these products or their derived products from the obligations of the EUDR.
- In the cases described above, the obligation of the operators will be limited to gathering adequately conclusive and verifiable evidence to prove that the relevant product was originally placed on the market before the (deferred) entry into application of the Regulation.
- For **parts of a relevant derived product** that have been produced with other relevant products placed on the market from 30 December 2026 (or from 30 June 2027 by a micro or small undertakings), the operators and downstream operators placing on the market and the traders will be subject to the standard obligations of the Regulation notwithstanding that some other parts may fall into the transitional period.

⁽⁷⁾ OJ L, 2025/2650, 23.12.2025, ELI: <http://data.europa.eu/eli/reg/2025/2650/oj>.

⁽⁸⁾ OJ L 295, 12.11.2010, p. 23, ELI: <http://data.europa.eu/eli/reg/2010/995/oj>.

According to **Article 1(2) EUDR**, the EUDR does not apply if relevant products were **produced** before 29 June 2023. The time and place of production refers to the production date and production place of the relevant commodity, this applies both for the commodities and the derived products. In most cases, the production date will be the time of harvest of the commodity, with the exception of **cattle products** in which case the relevant time of production is the date on which the cattle is born.

The table below demonstrates the applicable legislation to relevant products falling within scope of the Regulation (EU) 2023/1115, with the exception of timber and timber products covered by the Annex of the EUTR:

Relevant products	Date of production of relevant commodity	Date of placing relevant commodity or relevant product on the EU market	
		Before 30 December 2026, and before 30 June 2027 for micro- and small operators	From 30 December 2026 (inclusive) for large and medium enterprises, and from 30 June 2027 (inclusive) for micro- and small operators
Cattle, Cocoa, Coffee, Oil palm, Rubber and Soya products listed in Annex I of Regulation (EU) 2023/1115	Before 29 June 2023	Regulation (EU) 2023/1115 (EUDR) is not applicable	Regulation (EU) 2023/1115 (EUDR) is not applicable
	From 29 June 2023 (inclusive)	Regulation (EU) 2023/1115 (EUDR) is not applicable	Regulation (EU) 2023/1115 (EUDR) is applicable
Wood products listed in Annex I of Regulation (EU) 2023/1115 and not listed in the Annex of Regulation (EU) No 995/2010 (EUTR)	Before 29 June 2023	Regulation (EU) 2023/1115 (EUDR) is not applicable	Regulation (EU) 2023/1115 (EUDR) is not applicable
	From 29 June 2023 (inclusive)	Regulation (EU) 2023/1115 (EUDR) is not applicable	Regulation (EU) 2023/1115 (EUDR) is applicable

For **timber and timber products** covered by the Annex of the EUTR, special rules apply, pursuant to Article 37(3) of EUDR:

- For timber and timber products produced (harvested) before 29 June 2023 and:
 - placed on the market before 30 December 2026, such products and their derived products must comply with the rules of the EUTR; if the derived products are not covered by the Annex of the EUTR, those products would be exempted from EUTR and EUDR;
 - placed on the market from 30 December 2026 until 31 December 2029: the rules of EUTR continue to apply to the products if covered by the Annex of the EUTR (see above);
 - placed on the market from 31 December 2029, such products and their derived products shall comply with Article 3 of the EUDR.
- For timber and timber products produced from 29 June 2023 until 30 December 2026 and:
 - placed on the market before 30 December 2026, such products and their derived products must comply with the rules of the EUTR; if the derived products are not covered by the Annex of the EUTR, those products would be exempted from EUTR and EUDR;
 - placed on the market from 30 December 2026, such products and their derived products must comply with the rules of the EUDR.
- Timber and timber products produced (harvested) from 30 December 2026 must comply with the rules of the EUDR.

The table below demonstrates the applicable legislation to timber products covered by the Annex of Regulation (EU) No 995/2010:

Relevant products	Date of production	Date of placing relevant commodity or relevant product on the EU market		
		Before 30 December 2026	From 30 December 2026 (inclusive) to 30 December 2029 (inclusive)	From 31 December 2029 (inclusive)
Timber and timber products listed in the Annex of Regulation (EU) No 995/2010 (EUTR)	Before 29 June 2023	Regulation (EU) No 995/2010 (EUTR)	Regulation (EU) No 995/2010 (EUTR)	Regulation (EU) 2023/1115 (EUDR)
	From 29 June 2023 (inclusive)	Regulation (EU) No 995/2010 (EUTR)	Regulation (EU) 2023/1115 (EUDR)	Regulation (EU) 2023/1115 (EUDR)

Illustrative question and answer: Are paper products which are placed on the market from 30 December 2026 but that are manufactured from timber that was harvested and placed on the market between 29 June 2023 and 30 December 2026 required to have a due diligence statement or a simplified declaration?

In such cases, the harvested timber and the products manufactured from such timber must comply with the EUTR. They do not need a due diligence statement or a simplified declaration, as this requirement applies to products in scope of the EUDR.

4. DUE DILIGENCE

Relevant legislation:

EUDR – Article 2(26) – Definitions; Article 4, 4a and 5 – Obligations of operators, downstream operators and traders; Article 8 – Due diligence; Article 9 – Information requirements; Article 10 – Risk assessment

According to Article 4(1), **all** operators, including micro or small primary operators and operators benefitting from simplified due diligence in line with Article 13, shall exercise due diligence in accordance with Article 8 prior to placing relevant products on the market or exporting them in order to prove that the relevant products comply with Article 3. In order to do so, and in accordance with Article 12(1), operators shall establish and keep up to date a framework of procedures and measures – a 'due diligence system'.

The due diligence requirements set out in Article 8 require operators to:

- collect information, documents and, where relevant, data from each supplier about the relevant products which are subject to the EUDR (listed in Annex I) pursuant to Article 8 and 9,
- verify and analyse that information along with other contextual information and on that basis carry out a **risk assessment** pursuant to Article 10, and
- adopt **risk mitigation measures** pursuant to Article 11, unless the risk assessment carried out in accordance with Article 10 concludes that there is no or only negligible risk that the relevant products are non-compliant.

Operators are responsible for a thorough examination and analysis of their own business activities, which requires the collection of information, data and documents needed to fulfil the information requirements of Article 9, analysing it as part of the risk assessment (Article 10), and adopt risk mitigation measures (Article 11) as necessary, unless the risk of non-compliance is assessed as being negligible.

All operators, including micro or small primary operators and operators benefitting from simplified due diligence in line with Article 13, are obliged to fulfil the information requirements set out in Article 9.

Operators, including micro or small primary operators, placing on the market or exporting relevant products produced in low-risk countries benefitting from simplified due diligence in line with Article 13 are not required to fulfil the obligations under Article 10 and Article 11 in order to achieve a negligible risk, unless operators obtain or are made aware of information indicating that a relevant product that they intend to place on the market or export is at risk of not complying with the Regulation. See point (c) and (e) for more details.

(a) Risk assessment and risk mitigation (Article 10 and 11)

Operators that must exercise risk assessment and risk mitigation in line with Articles 10 and 11, must specify the risk assessment criteria in their due diligence system in accordance with Article 10(2), which they consider in relation to the relevant products they intend to place on or export from the Union market. Therefore, the risk assessment criteria must be tailored to the relevant products the operator intends to place on or export from the market.

The data collection, risk assessment and risk mitigation must be causally related, and must reflect the characteristics of the operator's business activities and of the supply chains of the relevant products.

Article 10(2) identifies the additional contextual information needed to assess the level of risk, such as the state of forests within the country of production.

If the products are made with commodities that are derived from several sources or geolocations, it is necessary to assess the risk for each source or geolocation.

On the basis of the data collected, precisely defined risk analysis tasks must be performed, and the risk categories must be determined, as well as the necessary risk mitigation measures related to them. The level of risk can only be assessed on a case-by-case basis by operators, as it depends on a number of factors.

There are various ways to conduct the risk assessment, but the operator must address the criteria listed in Article 10(2) for each relevant product. This should include addressing the following questions and considerations:

— *Where was the product produced?*

What is the assigned risk level of the country of production or parts thereof, in accordance with Article 29 ⁽⁹⁾? What is the rate of forest cover and what is the prevalence (rate) of forest degradation or deforestation in the country of production or parts thereof? How high is the prevalence (rate) of illegal production of the relevant commodity within the country/parts thereof?

— *What are the product-specific risks?*

There are considerable differences in how the various relevant products listed in EUDR Annex I are produced, which will impact the risk of non-compliance. For example, some products contain raw material produced in hundreds of separate geolocations or undergo substantial chemical or physical procedures during the manufacturing.

— *Is the supply chain complex?*

For clarification of the 'complexity of supply chain' concept, see Section 5.

— *Are there indications of a company in the supply chain being involved in practices related to illegality, deforestation or forest degradation?*

There is a higher risk that relevant commodities or products purchased from a company that has been associated with illegal practices, deforestation or forest degradation will be non-compliant. Have any substantiated concerns been submitted regarding companies in the supply chain pursuant to Article 31? Have any companies within the supply chain breached relevant laws ⁽¹⁰⁾ and been sanctioned by the state for the breach of such laws?

⁽⁹⁾ Note that if no specific risk level has been assigned, countries are considered standard risk.

⁽¹⁰⁾ Those related to illegality, deforestation, and forest degradation.

- *Is there any complementary information on EUDR compliance of companies within the supply chain available from certification or third-party verification schemes?*

For clarification of the role of third-party verification schemes, see Section 10.

- *Have the relevant products been produced in accordance with the relevant legislation of the country of production?*

The relevant legislation of the country of production is defined in Article 2(40). For further information about legality requirements please see Section 6.

- *Is there concern in relation to the country of production and origin or parts thereof, such as level of corruption, prevalence of document and data falsification, lack of law enforcement, violations of international human rights, armed conflict or prevalence of sanctions imposed by the UN Security Council or the Council of the European Union?*

These concerns might undermine the reliability of some documents showing compliance with applicable legislation. Therefore, the country's corruption level, business risk indices, and other relevant indicators should be considered.

- *Are all documents showing compliance with applicable legislation made available by the supplier, and are they verifiable immediately?*

If all relevant documents are ready and available upon operators' request, then it is more likely that the supply chain is well established, and the supplier is aware of the EUDR requirements.

(b) Negligible risk

The concept of negligible risk should be understood in accordance with Article 2(26) which means that on the basis of a full assessment of product-specific and general information pursuant to Article 10, and, where necessary, of the application of the appropriate mitigation measures pursuant to Article 11, the commodities or products show *no cause for concern* as being not in compliance with Article 3(a) (deforestation-free) or (b) (produced legally, in accordance with the applicable legislation in the country of production).

The list of risk assessment criteria in Article 10(2) is not exhaustive; operators may choose to apply further criteria if these would help determine the likelihood that a relevant commodity or product had been illegally produced or was not deforestation-free, or if it would help prove legal or deforestation-free production.

In case the risk assessment and risk mitigation exercise concludes that any of the risk criteria reveal a non-negligible level of risk, then the product should be deemed as carrying a non-negligible risk, therefore the operator shall not place it on or export it from the Union market.

(c) Obligations for micro or small primary operators

Micro or small primary operators are operators that are subject to a simplified regime of obligations as set out in Article 4a.

Instead of the obligation to submit a due diligence statement, they are only required to submit a one-time simplified declaration in the information system (Article 4a(2)). They also may use postal address instead of geolocation required by Article 9(1)(h) provided that it clearly corresponds to the geographic location of the plots of land or, in the case of cattle, establishment concerned.

Micro or small primary operators are obliged to exercise due diligence in line with Article 8 and to establish and keep up to date a framework of procedures and measures to ensure that the relevant products they place on the market or export comply with Article 3, as required by Article 12(1).

However, as micro or small primary operators are by definition sourcing entirely from a low-risk country, they are not required to carry out risk assessment and risk mitigation required by Articles 10 and 11, unless they obtain or are made aware of any relevant information pointing to a non-negligible risk that the relevant products are non-compliant (Article 4(4)(b) and Article 13(2)).

This means that, generally, their due diligence system would consist of information collection in line with Article 9.

(d) Obligations for downstream operators and traders

For **downstream operators and traders**, the applicable obligations are set out in Article 5 of the Regulation. Downstream operators and traders must place or make available on the market or export relevant products only if they are in possession of the information required under Article 5(3), essentially the identity of their suppliers and their corporate clients and, in case of downstream operators or traders whose supplier is an operator, the reference numbers of due diligence statements or the declaration identifier associated to the products. This follows from Article 4(7) requiring operators to communicate to downstream operators and traders the reference numbers of the due diligence statements or, if applicable, the declaration identifiers associated with those relevant products.

In summary, downstream operators and traders are not required to exercise due diligence themselves, do not need to submit due diligence statements, nor do they need to ascertain that due diligence was exercised upstream. They must, however, collect and keep information referred to in Article 5(3) and provide it to competent authorities upon request.

In addition, downstream operators and traders that are non-SMEs shall register in the information system referred to in Article 33 prior to placing or making available on the market or exporting relevant products (Article 5(2)).

In case of awareness of relevant new information, including substantiated concerns, Article 5(5) obliges downstream operators and traders to immediately inform the competent authorities of the Member States in which they placed or made available on the market the relevant product as well as further downstream operators and traders to whom they supplied the relevant product. In the case of exports, downstream operators shall inform the competent authority of the country of production.

Additionally, downstream operators and traders that are non-SMEs are under the obligation to verify that due diligence was exercised and that no or only a negligible risk was found in case of substantiated concerns (Article 5(6)). Unless the verification demonstrates no or only a negligible risk of non-compliance, they shall not place or make available on the market or export relevant products.

(e) Simplified due diligence, i.e. sourcing from low-risk countries

Operators sourcing from low-risk countries are required to exercise due diligence in line with Article 8, fulfil information requirements of Article 9 and establish a due diligence system in line with Article 12.

However, in accordance with Article 13, they are **not** required to fulfil the obligations under Article 10 and Article 11 where, after having assessed:

- (i) the complexity of the relevant supply chain; and
- (ii) the risk of circumvention or mixing with products of unknown origin, or origin in high-risk or standard-risk countries or parts thereof,

they have ascertained that all relevant commodities and products they place on the market or export have been produced exclusively in such countries or parts thereof that were classified as low risk in accordance with Article 29 ⁽¹⁾.

For simplified due diligence under Article 13, no further steps of assessing the information or mitigating risk are required unless, in the course of information collection or in the course of the assessment required by Article 13 itself, operators are made aware of relevant new information indicating that a relevant product that they intend to place on the market or export is at risk of not complying with the Regulation.

Micro or small primary operators are, generally, not required to carry out risk assessment and risk mitigation as they are by definition an operator sourcing from low-risk country, unless they obtain or are made aware of any relevant information pointing to a non-negligible risk that the relevant products are non-compliant.

⁽¹⁾ According to Article 29(2), the Commission will present a list of countries or parts thereof, that present a low or high risk by means of implementing acts. Latest iteration of the list of countries is provided for in the Commission Implementing Regulation (EU) 2025/1093.

(f) **Interplay with Corporate Sustainability Due Diligence Directive and the Forced Labour Regulation**

The Directive (EU) 2024/1760 on corporate sustainability due diligence⁽¹²⁾ (CSDDD) establishes a general horizontal framework for sustainability due diligence for very large EU and non-EU companies. The EUDR provides a sectoral framework for deforestation regarding certain aspects of due diligence for certain products. The CSDDD and EUDR have different scopes: whereas EUDR is linked to entities placing relevant products on the EU market or exporting them, CSDDD applies to large EU and non-EU companies above certain size of turnover and employee number.

Where the specific due diligence rules under the EUDR conflict with the general rules of the CSDDD, the EUDR's provisions, being *lex specialis*, prevail over the general rules of the CSDDD (*lex generalis*) to the extent of the conflict, insofar as they provide for more extensive or more specific obligations pursuing the same objectives. This rule is set out in Article 1(3) CSDDD and it follows the principles of EU law, which give precedence to *lex specialis* over *lex generalis* in such cases. General due diligence guidelines for companies under CSDDD will be published by 26 July 2027. The application date for CSDDD is 26 July 2029.

The Regulation on prohibiting products made with forced labour on the Union market (FLR)⁽¹³⁾ prohibits economic operators from placing and making available on the Union market or exporting from the Union market products made with forced labour. As it applies to all economic operators, it also applies to economic operators in scope of the EUDR. While the FLR does not impose due diligence obligations on economic operators, due diligence processes required under other EU legislation, such as CSDDD or EUDR, can help to identify, prevent, mitigate, bring to an end or remediate forced labour risks in economic operators' operations and supply chains. To facilitate compliance with the FLR, the Commission will issue guidance on due diligence to address forced labour risks in supply chains.

5. CLARIFICATION OF 'COMPLEXITY OF THE SUPPLY CHAIN'

Relevant legislation:

EUDR – Article 8 – Due diligence; Article 9 – Information requirements; Article 10 – Risk assessment; Article 11 – Risk mitigation

'Complexity of the relevant supply chain' is explicitly listed as a risk assessment criterion in Article 10(2)(i) of the EUDR and is therefore relevant to the risk assessment and risk mitigation part of the due diligence exercise. It is one of several criteria of the risk assessment and risk mitigation part of the due diligence exercise set out in Article 10 and 11.

The rationale underpinning this criterion is that tracing relevant products back to the country of production and plots of land where the relevant commodities were produced may be more difficult if the supply chain is complex, and this is a factor which is associated with a greater risk of non-compliance. Inconsistency of the relevant information and data and problems obtaining the necessary information at any point in the supply chain can increase the risk of non-compliant commodities or products entering the supply chain. The main consideration is the extent to which it is possible to trace the relevant commodities found in a relevant product back to the plots of land where they were produced.

The risk of non-compliance will increase if the complexity of the supply chain makes it difficult to identify the information required under Article 9(1) and Article 10(2) of the EUDR. The existence of unidentified steps in the supply chain or any other finding indicating non-compliance can lead to the conclusion that the risk is non-negligible.

⁽¹²⁾ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (OJ L, 2024/1760, 5.7.2024, ELI: <http://data.europa.eu/eli/dir/2024/1760/oj>), as amended by the Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence requirements (OJ L, 2026/470, 26.2.2026, ELI: <http://data.europa.eu/eli/dir/2026/470/oj>).

⁽¹³⁾ Regulation (EU) 2024/3015 on prohibiting products made with forced labour on the Union market (OJ L, 2024/3015, 12.12.2024, ELI: <http://data.europa.eu/eli/reg/2024/3015/oj>).

The complexity of the supply chain increases with the number of processors and intermediaries between the plots of land in the country of production and the operator. Complexity may also increase when more than one relevant product is used to manufacture a new relevant product, or if relevant commodities are sourced from multiple countries of production. On the other hand, the due diligence exercise is likely to be simpler in short supply chains, and a short supply chain may, particularly in the case of simplified due diligence under Article 13, be one factor that helps to demonstrate that there is a negligible risk of circumvention of the Regulation.

In order to assess the complexity of the supply chain, operators may use the following (non-exhaustive) list of questions for relevant products to be placed on, or made available on, or exported from the Union market:

- Were there several processors and/or steps in the supply chain before a particular relevant product was placed on, or made available on, or exported from the Union market?
- Does the relevant product contain relevant commodities sourced from several plots and/or countries of production?
- Is the relevant product a highly processed product (which may itself contain multiple other relevant products)?
- For timber:
 - does the relevant product consist of more than one tree species?
 - have the timber and/or timber products been traded in more than one country?
 - were any relevant processed products processed or manufactured in third countries before they were placed on, or made available on or exported from the Union market?

6. LEGALITY

Relevant legislation:

EUDR – Article 2(40) – Definitions and Article 3(b) – Prohibition

According to Article 3 of the EUDR, relevant commodities and relevant products shall not be placed or made available on the market or exported, unless **all** the following conditions are fulfilled:

- (a) they are deforestation-free;
- (b) **they have been produced in accordance with the relevant legislation of the country of production;** and
- (c) they are covered by a due diligence statement or a simplified declaration.

Relevant products must **meet all three criteria separately and individually**; otherwise, operators shall refrain from placing on the market or exporting them.

(a) Relevant legislation of the country of production

The basis for determining whether a relevant commodity or relevant product has been produced in accordance with the relevant legislation of the country of production is the legislation of the country in which the commodity, or in the case of a product, the commodity contained in a relevant product was grown, harvested, obtained from or raised on relevant plots of land or, as regards cattle, in establishments.

The EUDR takes a flexible approach by listing a number of areas of law without specifying particular laws, as these differ from country to country and may be subject to amendments. However, only the applicable laws **concerning the legal status of the area of production** constitute relevant legislation pursuant to Article 2(40) of the EUDR. This means that, generally, the relevance of laws for the legality requirement in Article 3(b) of the EUDR is not determined by the fact that they may apply generally during the production process of commodities or apply to the supply chains of relevant products and relevant commodities, but by the fact that these laws specifically impact or influence the legal status of the area in which the commodities were produced.

Additionally, Article 2(40) of the EUDR must be read in the light of the objectives of the EUDR as laid down in Article 1(1)(a) and (b), meaning that legislation is also relevant if its contents can be directly linked to halting deforestation and forest degradation in the context of the Union's commitment to address climate change and biodiversity loss.

Points (a) to (h) of Article 2(40) further specify this relevant legislation. The following list gives some concrete examples which are for illustration purposes only and cannot be considered exhaustive:

- *Land use rights*, including laws on harvesting and producing on the land or on the management of the land; such as:
 - legislation on land transfer in particular for agricultural land or forests,
 - legislation on land lease transaction.
- *Environmental protection*. A link to the objective of halting deforestation and forest degradation, the reduction of greenhouse gas emissions or the protection of biodiversity exists, for example, in:
 - legislation on protected areas,
 - legislation on nature protection and nature restoration,
 - legislation on the protection and conservation of wildlife and biodiversity,
 - legislation on endangered species,
 - legislation on land development.
- *Forest-related rules*, including forest management and biodiversity conservation, where directly related to wood harvesting, such as:
 - legislation on the protection and conservation of forests, and sustainable forest management,
 - anti-deforestation legislation,
 - rights to harvest timber within the legally gazetted boundaries.
- *Third parties' rights*, including rights to use and tenure affected by producing the relevant commodities and products, and traditional land use rights of indigenous peoples and local communities; this may include e.g. rights to land charge or usufructuary rights.
- *Labour rights and human rights protected under international law*, applying either to people being present in the area of production of relevant commodities to the extent relevant to the EUDR taking into account its objectives as enshrined in Article 1(1) of the EUDR, or to people with rights to the area of production of relevant commodities or products, including indigenous peoples' and local communities' rights, if they are applicable or reflected in the respective national legislation; for example rights to land, territories and resources, property rights, rights in relation to treaties, agreements and other constructive arrangements between indigenous peoples and States.
- *The principle of free, prior and informed consent (FPIC)*, including as set out in the UN Declaration on the Rights of Indigenous Peoples. Further guidance as to the application of the FPIC principle can e.g. be found through the UN Office of the High Commissioner for Human Rights where it is noted that States must have consent as the objective of consultation before any of the following actions are taken:
 - the undertaking of projects that affect indigenous peoples' rights to land, territory and resources, including mining and other utilization or exploitation of resources,
 - the relocation of indigenous peoples from their land or territories,
 - restitution or other appropriate redressing if lands have been confiscated, taken, occupied or damaged without the free, prior and informed consent of indigenous people who possessed it.

- Tax, anti-corruption, trade and customs regulations.
- Applicable laws concerning the relevant supply chains entering the Union market, or leaving it, if they have a specific link to the objectives of the Regulation, or, in the case of trade and customs laws, if they specifically concern the relevant sectors of agricultural or timber production.

The Commission plans to establish by December 2026 a repository of relevant legislation allowing countries of production to provide a list of relevant legislation as per Article 2(40). Operators may use the repository to assist in meeting the information requirements under Article 9(1)(h).

(b) Due diligence regarding legality

Operators must be aware of what legislation exists in each of the countries they are sourcing from as to the legal status of the area of production. The relevant legislation can, among others, consist of:

- national and regional laws, including relevant secondary legislation, and
- international law, including multi- and bilateral treaties and agreements, as applicable in domestic law by codifying and implementing them, respectively.

Under Article 9(1)(h) of the EUDR, information, including documents and data showing compliance with applicable legislation in the country of production, must be collected as part of the due diligence obligation. Paragraph 1(h) further specifies that such information must be adequately conclusive and verifiable.

In this context, the nature and extent of the information to be collected depends on the specific supply chain, production area and country of production. Operators may use, as listed below, a broad range of credible information sources that, taken as a whole, allow a reasoned conclusion that the relevant commodities have been produced in accordance with the relevant legislation of the country of production. In line with Article 9(2), operators must make available to the competent authorities upon request the information, documents and data collected under this point. To facilitate enforcement, operators should be able to explain the presence of certain documents and the absence of others.

In-depth evidence collection should be prioritised for supply chains, production areas and countries of production where an initial examination of the information available to the operator indicates a higher risk of non-compliance with Article 3(b). By contrast, for supply chains, production areas and countries of production where the initial examination of available information indicates a negligible risk of non-compliance with Article 3(b), operators should not be required to carry out an in-depth data collection. For instance, they should not be required to systematically collect comprehensive legal documentation for each individual plot of land, to obtain specific types of documents such as individual land titles, or to compile an exhaustive list of all potentially relevant laws, legal documents or data.

The initial information available to the operator can include publicly available information and other information related to the area of production or the relevant supply chain that the operator is aware of prior to exercising due diligence. In this step, the operator may, in particular, take into consideration the country risk classification pursuant to Article 29 of the EUDR, as well as, where relevant, information published by international organisations, such as the World Bank's Worldwide Governance Indicators, and public reports on the country or area of production or the relevant supply chains related to the production of relevant commodities.

The obligation to collect documents or other information depends on the different regulatory regimes of countries. Therefore, the obligation should be understood as including, where applicable:

- Official documents issued by countries' authorities, such as e.g. administrative permits, for example from official registries and platforms established and managed by countries' authorities,
- Documents showing contractual obligations, including contracts and agreements with indigenous peoples or local communities,
- Complementary information issued by public and private certification or other third-party verified schemes,

- Judicial decisions,
- Impact assessments, management plans, environmental audit reports.

This includes information related to any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity. Whether a land title or other documentation of an arrangement is needed is dependent on the national legislation. If possession of a land title is not required under domestic law to produce and commercialise agricultural products, it is not required under the EUDR.

The following additional documents can be also useful:

- Documents showing company policies and codes of conduct,
- Voluntary self-declaration of producers of relevant commodities in which a producer declares that the product was produced in compliance with the legislation of the country of production,
- Social responsibility agreements between private actors and third right holders,
- Specific reports on tenure and rights claims and conflicts.

Information, including documents and data, may be collected in hard copy or in electronic form.

It is important to note that the information, including documents and data, must be collected under Article 9(1)(h) of the EUDR also for the purposes of the risk assessment (Article 10 of the EUDR) and should not be viewed as an independent requirement, unless the product is sourced entirely from low-risk countries or parts thereof. In the case of sourcing entirely from low-risk countries or parts thereof, according to Article 13 of the EUDR, operators must only carry out the following steps describing the risk assessment if the operators obtain or are made aware of information pointing to a risk of non-compliance or circumvention.

According to Article 10(1) of the EUDR, the information collected must be assessed as a whole to ensure traceability and compliance throughout the supply chain. All information must be analysed and verified, meaning operators must be able to evaluate the content and reliability of the documents they collect and to understand the links between the different information in different documents. Usually, the operator should check as part of the assessment:

- Whether the different documents are in line with each other and with other information available,
- What exactly each document proves,
- On which system (e.g. control by authorities, independent audit, etc.) the document is based,
- The reliability and validity of each document, meaning the likelihood of it being falsified or issued unlawfully.

Operators should take reasonable measures to satisfy themselves that such documents are genuine, depending on their assessment of the general situation in the country of production. In this regard, the operator should also take into account the risk of corruption (e.g. bribery, collusion, or fraud). Various sources provide generally available information about the level of corruption in a country or subnational region, for example Transparency International's Corruption Perceptions Index, or other similar recognised international indices or relevant information ⁽¹⁴⁾.

In cases where the level of corruption is considered high there might be an implication that documents cannot be considered reliable, and further verification may be required. In the occurrence of such cases special care is necessary when checking the documents as there might be reason to doubt their credibility.

Apart from relying on recognised international indices, operators could check lists of conditions and vulnerabilities, including previous evidence of corrupt practice, that point to a greater risk – and thus demand a higher level of scrutiny. Examples of such additional evidence may include third-party-verified schemes (see Section 10 of this guidance), independent or self-conducted audits, or the use of technologies/forensic methods tracking the relevant products which can help to reveal indications of corruption or irregularities.

⁽¹⁴⁾ For the use of such indices see also Chapter 4 of Commission Notice of 12.2.2016, C(2016) 755 final (Guidance Document for the EU Timber Regulation).

Operators' exercise of due diligence as well as enforcement activities of competent authorities may be supported by data analytics and AI-based tools for prioritisation, checking consistency of documents and highlighting possible anomalies. However, the final responsibility of compliance remains with the operators and competent authorities regardless of the use of such digital tools.

7. PRODUCT SCOPE

(a) Clarification – Packing and packaging materials

Relevant legislation:

EUDR – Article 2 – Definitions; Annex I to the EUDR

Annex I of the EUDR sets out the list of relevant commodities and relevant products as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 ⁽¹³⁾.

HS Code 4819 covers: *'Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like'*.

- If any of the above articles are placed on the market or exported as products in their own right, rather than as packing for another product, they are covered by the Regulation and therefore the obligations set out in EUDR apply.
- If packing material or packing containers, as classified under HS code 4819, is used to 'support, protect or carry' another product, it is not covered by the Regulation.

HS Code 4415 covers: *'Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood'*.

- If any of the above articles are placed on the market or exported as products in their own right, they are covered by the Regulation and therefore the obligations set out in EUDR apply.
- Articles under 4415 used exclusively as packing material or packing containers to support, protect or carry another product placed on the market are not covered by EUDR.

The same considerations as regards packing materials apply to HS code 4401, 4405, 4416.

Within these categories, there is a further distinction between 'single use' packing material and packing containers on the one hand, and packing material and packing containers clearly suitable for repetitive use on the other hand:

- Single use packing material and containers used exclusively to support, protect or carry another product made available on the market or exported and presented with that product are not covered by the EUDR when they are used for that purpose.
- Packing material and packing containers clearly suitable for repetitive use used exclusively to support, protect or carry another product made available on the market or exported and presented with that product are not covered by the EUDR from the moment they are used for such purpose and onwards. For example, pallets would not be covered by the EUDR if they are made available again on the market or exported after been used to support, protect, or carry another product).

⁽¹³⁾ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1, ELI: <http://data.europa.eu/eli/reg/1987/2658/oj>).

A further distinction needs to be made between packing that is considered to give a product its 'essential character' and packing which is shaped and fitted to a specific product but is not an integral part of the product itself. General rule 5 on interpreting the Combined Nomenclature ⁽¹⁶⁾ of Regulation (EEC) No 2658/87 clarifies these differences, and examples are presented below. Containers with an 'essential character' are assigned their own HS code and are classified independently from the product they contain and are in scope of the Regulation, while containers specially shaped or fitted to contain specific articles are assigned the HS Code of the product they contain, if these containers are suitable for long-term use, presented with the articles for which they are intended and when of a kind normally sold therewith are not in scope of the Regulation (General Rule 5a). Ordinary packaging, such as packaging materials and packaging containers ⁽⁷⁾ presented with the goods therein shall be classified with the goods if they are of a kind normally used for packaging such goods, meaning they are not in scope of the Regulation (General Rule 5b). Paper or other materials for wrapping should be considered an integral part of a product if its purpose is to protect, carry or transport it.

However, these additional distinctions are only likely to be relevant to a small proportion of goods subject to the Regulation.

In summary, the following is subject to the Regulation:

- Packing material or packing containers placed or made available on the market or exported as products in their own right;
- Containers which give a product its essential character.

The following is not subject to the Regulation:

- Single use packing material and packing containers presented with goods and used exclusively to support, protect or carry another product;
- Packing materials and packing containers clearly suitable for repetitive use presented with goods and used exclusively to support, protect or carry another product, from the moment they are used for such purpose and onwards.

(b) Clarification – Waste and recovered and recycled products

Relevant legislation:

EUDR – Recital (40); Annex I to the EUDR; Directive 2008/98/EC – Article 3(1)

Operators, downstream operators and traders may handle during their economic activities used products that have completed their lifecycle, and which would otherwise be disposed of as waste. Waste means a substance or object which the holder discards or intends or is required to discard (Directive 2008/98/EC, Article 3(1)). Such products are excluded from the scope of the EUDR. This means that such operators, downstream operators and traders are exempted from the obligations of the EUDR in these cases.

This exemption applies to goods that have been produced entirely from a material that has completed its lifecycle and would otherwise have been discarded as waste (e.g. timber retrieved from dismantled buildings, or goods made from coffee chaff).

This exemption **does not** apply to by-products of a manufacturing process that involves material that is not waste in the sense of being a substance or object which the holder discards or intends or is required to discard.

The following questions and answers clarify practical use cases:

Q1: Are wood chips and sawdust produced as by-products of sawmilling subject to the Regulation?

Yes, these are in scope under HS code 4401 which is subject to the EUDR. This is because wood chips and sawdust may be used as fuelwood and therefore have not completed their lifecycle. An exception would be wood chips/sawdust used exclusively as packing material to support, protect or carry another product.

⁽¹⁶⁾ Explanatory notes to the Combined Nomenclature of the European Union (OJ C 119, 29.3.2019, p. 1).

Q2: Is furniture made from timber recovered after the demolition of a house subject to the Regulation?

No, if these products are made entirely from material that has completed its lifecycle and would otherwise have been discarded as waste, they are not subject to the Regulation. However, if the products contain any amount of non-recycled material, that part would be subject to the Regulation.

Q3: Are products made from recycled or recovered material subject to the Regulation?

No, if the relevant products are made entirely from recycled material, they are not subject to the EUDR. However, if the relevant products contain any amount of non-recycled or non-recovered material, that amount would be subject to the Regulation, such as virgin pulp use in paper production, and timber used to repair pallets.

Q4: Are fuel pellets made from empty fruit bunches or palm kernel shells subject to the Regulation?

Yes, where empty fruit bunches and palm kernel shells, even in pellet form, are classified as solid residue by-products of the palm oil extraction process, fuel pellets made from them are covered under HS code 2306 60 in Annex I of the EUDR. Fuel pellets are not subject to the Regulation if they are made entirely from materials classified as waste.

Q5: Are used coffee grounds, for use in toiletries or fertiliser, subject to the Regulation?

No, if the grounds are waste from a café, for example, and would otherwise have been discarded.

Q6: Are tyres casings or carcasses of retreaded tyres subject to the Regulation?

Used tyre casings and carcasses, generally used for retreading tyres, are out of the scope of the Regulation, whereas retreaded tyres are in the scope only as regards the new rubber tread applied to the carcasses and casings.

Q7: Are relevant products covered by the EUDR in case they are produced from non-relevant commodities?

The Regulation does not apply to products which are made of non-relevant commodities, even if those products present the same Combined Nomenclature as the relevant products made of relevant commodities. The Regulation only applies to relevant products made of relevant commodities.

That is the case for example:

- (i) cattle of the genus *Bos* and its sub-generas: *Bos*, *Bibos*, *Novibos*, and *Poephagus* falling under HS subheadings 0102 21 and 0102 29 is in the scope of the EUDR, while *buffalo* (*Syncerus* genus) or *bison* (*Bison* genus) or any other live bovine animals are not in the scope of the EUDR;
- (ii) palm oil from oil palm species of *Elaeis* spp. (including *Elaeis guineensis*) is in the scope of the EUDR, however babassu oil from genus *Attalea* spp. (including *Attalea speciosa*) and other vegetable oils from other palm tree species are not in the scope of the EUDR;
- (iii) rubber from *Hevea brasiliensis* is in the scope, but balata, gutta-percha, guayule, chicle and similar natural gums produced with other species are not in the scope of the EUDR, neither are synthetic rubber products;
- (iv) products of wood are in the scope, but the products made from rattan, bamboo, and other materials of woody nature are not in the scope of the EUDR.

8. REGULAR MAINTENANCE OF A DUE DILIGENCE SYSTEM

Relevant legislation:

EUDR – Article 12 – Establishment and maintenance of due diligence systems, reporting and record keeping

To exercise due diligence in accordance with Article 8, operators, including micro or small primary operators, must establish and keep up to date a framework of documenting, analysing, verifying and reporting procedures and measures ('due diligence system'). The aim of due diligence under the EUDR is to achieve a required outcome by evidencing consistent processes in businesses operations. It is important that in accordance with Article 12(2) an operator shall **review its due diligence system at least once a year** to ensure that those responsible are following the procedures that apply to them, the processes in place are effective and the required outcome is being achieved. Operators should also update the due diligence system if during the review or at any other point they become aware of new developments which could influence the aims of the due diligence system, such as the effectiveness and comprehensiveness of steps or procedures within the system. Any updates to the due diligence system must be recorded and records kept for 5 years.

The review can be carried out by someone within the organisation of the operator (should be independent from those carrying out the procedures) or by an external body. It should identify any weaknesses and failures and the operator's management should set deadlines for addressing them.

In the case of a relevant product due diligence system, the review should for example check if there are documented procedures:

- For collecting and recording the information, data and documents necessary to demonstrate compliance.
- For assessing the risk of the relevant product or any component of the relevant product containing relevant products or relevant commodities that are not deforestation-free or have not been produced in accordance with the relevant legislation of the country of production.
- Describing proposed actions to take according to the level of risk.

The review should also check if those who are responsible for carrying out each step in the procedures both understand and are implementing each step, and that there are adequate controls to ensure that the procedures are effective in practice (i.e. that they identify and result in the exclusion of relevant product that pose a non-negligible risk of non-compliance). Good practice suggests that to evidence the review, the steps followed in, and outcomes of, the review are documented.

9. COMPOSITE PRODUCTS

Relevant legislation:

EUDR – Article 4 – Obligations of operators; Article 9 – Information requirements; Article 33 – Information system

Operators, downstream operators and traders may deal with relevant products, as listed in Annex I of the EUDR, that contain or are made partly from other relevant products or relevant commodities. In practice these are sometimes referred to as 'composite products' although this is not a legal term used in the EUDR.

The EUDR sets out rules to ensure that the relevant commodities and relevant products that are contained in relevant products, or from which relevant products are made, are properly identified in the course of the operator's due diligence pursuant to Article 8. This is necessary to ensure that all relevant products are in compliance with the Regulation.

Operators need to meet the information requirements listed under Article 9 as part of their due diligence for the relevant products they are placing on or exporting from the market. In some cases, it may be complex to identify the species, origin and geolocations of relevant commodities contained in relevant products, particularly for reconstituted products (such as paper, fibreboard and particleboard), or highly processed products (such as food preparations containing cocoa), but this information is required for the products to be placed on the market or exported. For further reference please see the EUDR Supply Chain Infographics.

In addition, when placing on the Union market or exporting relevant products, if these contain or are made from other relevant products (as listed in Annex I of the EUDR) that had not been subject to due diligence before, then the operator must conduct due diligence on those parts of the relevant product.

Composite products may contain multiple relevant products under different commodities. For instance, a chocolate bar [HS 1806] may comprise derived products of cocoa (cocoa powder [HS 1805] and cocoa butter [HS 1804]) and oil palm (palm oil [HS 1511]). In such cases, the operator placing the product on the EU market or exporting from it will only be required to conduct due diligence on the relevant products listed under the commodity deemed relevant in Annex I of the EUDR. For instance, for chocolate bars [HS 1806], the relevant commodity linked to it is cocoa. This means that the due diligence obligation and information requirements extend only to relevant products listed in the right column of Annex I under the relevant commodity which the chocolate bar contains or has been made using, which in this case is the cocoa powder and cocoa butter under the commodity cocoa.

Information requirements

As part of their due diligence pursuant to Article 8, operators, when describing their relevant products, in accordance with the information requirements under Article 9, need to include the relevant commodities or relevant products that their relevant products contain or that are used to make those products.

This means that operators need to collect information about the presence of the relevant commodity within the relevant products that they are placing on the market or exporting. This information includes the geolocation of the plots of land, or, where applicable in case of micro or small primary operators, the postal address corresponding to the geographic location of the plots of land or establishment concerned, where the relevant commodity contained in the relevant products, or used to make the relevant products was produced, along with further information in Article 9(1). Under Article 9, to meet the geolocation information requirements for their relevant products, operators shall include:

- the geolocation (or, where applicable in case of micro or small primary operators, the postal address) of all plots of land where the relevant commodity that the relevant products contain, or have been made using, were produced, and
- the date or time range of production.

Where a relevant product contains or has been made with a relevant commodity produced on different plots of land, the geolocation or, where applicable in case of micro or small primary operators, the postal address of all the different plots of land needs to be provided. For relevant products that consist of or have been made from cattle, according to Article 2(29) the geolocation or, where applicable in case of micro or small primary operators, the postal address refers to all premises or structures associated with raising the cattle, encompassing the birthplace, and, where relevant, farms where they were kept – in case of open-air farming, any environment or place, where livestock are kept on a temporary or permanent basis –, until the time of slaughtering.

If there is any deforestation or forest degradation on any of the plots of land that are identified for any of the relevant products within a relevant product that is a 'composite product', then that product cannot be placed or made available on the market or exported (Article 9(1)(d)).

In addition, Article 9 requires the common name and full scientific name of all species, for relevant products that contain or have been made using wood. This provision refers to all relevant products that are listed under commodity 'wood' in Annex I. It may in some cases be complex to identify all the species within each relevant component for highly processed composite products, such as particle boards or paper. However, if the species of e.g. wood used to produce the product varies, the operator will have to provide a list of each species of wood that may have been used to produce the wood product. The species should be listed in accordance with internationally accepted timber nomenclature (e.g. DIN EN 13556 of 1 October 2003 on 'Nomenclature of timbers used in Europe').

10. THE ROLE OF CERTIFICATIONS AND THIRD-PARTY VERIFICATION SCHEMES IN RISK ASSESSMENT AND RISK MITIGATION

Relevant legislation:

EUDR – Recital (52); Article 10(2)(n) – Risk assessment

Certification and third-party verified schemes are often used to meet specific customer requirements for relevant commodities and relevant products. This may include a standard that describes practices that must be implemented during production of the certified commodities, comprising principles, criteria and indicators; requirements for checking compliance with the standard and awarding certificates; and separate chain-of-custody certification to provide assurance along the supply chain that a product contains only (or in some cases a specified percentage of) certified or third-party verified material from identified and certified or third-party verified producers.

The EUDR acknowledges that certification and other third-party verified schemes may provide useful information on compliance with the Regulation in the risk assessment further to Article 10 by supporting evidence that products are legal and deforestation-free. This is subject to the condition that this information meets the relevant requirements set out in Article 9, as stipulated in Article 10(2)(n).

Indeed, certifications and third-party verified schemes are operated by an organisation that is not a participant in the production or the supply chain of the relevant commodity. Furthermore, some of these schemes are often used to verify that certain standards or rules are being followed, but do not necessarily go as far as certifying the product itself.

This guidance is directed primarily to stakeholders considering making use of certification or third-party verified schemes given their potential added value in providing complementary information, such as on geolocation coordinates and supporting the operators' risk assessment undertaken as part of their due diligence exercise that relevant products are legal and deforestation-free. The EUDR does not oblige: (1) operators to make use of such schemes, (2) producers to sign up to them, nor (3) producer countries to develop such schemes. Making use of third-party verification schemes is not a legal requirement, but a voluntary decision of the operator. If operators decide to make use of these schemes, this guidance is designed to help them assess the degree to which these schemes can support to meet the requirements of the EUDR.

Certification and third-party verified schemes can play an important role in promoting sustainable agricultural and forestry practices and responsible sourcing, in fostering supply chain transparency and in facilitating compliance. To note that self-declaration schemes that do not rely on third party attestation procedures are outside of the scope of this guidance and are, by definition, less robust because of the lack of independence and impartiality.

This guidance is also relevant for national competent authorities by underlining that while such schemes can be used in the risk assessment procedure under Article 10, they cannot substitute the operator's responsibility as regards due diligence further to Article 8. This means that the use of such schemes does not imply a 'green lane', since the operator is still required to exercise due diligence and is held liable if it fails to comply with the due diligence requirements of the EUDR.

There is a great diversity of schemes in terms of their scope, their objectives, their structure and their operating methods. One important distinction is (1) whether or not they rely on a third-party attestation procedure, thereby grouping them into certification and third-party verified schemes on the one hand and (2) self-declaration schemes on the other. The latter are outside of the scope of this guidance document and are, by definition, less robust because of the lack of independence and impartiality.

(a) The role of certifications and third-party verification schemes

In considering whether to make use of information supplied by a certification scheme or third-party verified scheme in the risk assessment procedure under Article 10 as supporting evidence that the product is legal and deforestation-free, an operator should, as a first step, determine whether the scheme's standards are in accordance with relevant provisions of the EUDR. In this regard, it should be pointed out that operators may also use third party verification schemes or certification schemes for compliance with only certain requirements of the Regulation.

Certification and third-party verification schemes generally require third-party organisations to be able to demonstrate their qualifications to perform assessments through a process of accreditation that sets standards for the skills of auditors and the systems that the certification organisations must adhere to. Certified or verified products generally carry a label with the certification or verification organisation's name and type as well as the requirements for the auditing process. The scheme may also require that partners have this information included in the formal documents accompanying the shipment. These organisations will normally be able to provide information on coverage of the certification and how it was applied in the country of production of the relevant products, including details about the nature and frequency of field audits.

Certification and third-party verification schemes can be assessed according to three main elements: (1) 'the relevant standards', i.e. operating requirement, scope, procedures, policies for companies adhering to these schemes, (2) 'the implementation by the schemes', i.e. the extent to which the standards are implemented, including by deploying the necessary measures to ensure compliance also via audits and (3) 'governance features'/credibility assessment of the schemes such as transparency, assurance processes, oversight etc. Such information should be regularly reassessed by the operator, especially in relation to the requirements of the EUDR.

Regarding EUDR requirements, insofar as this is relevant to the information provided by the certification or third-party verification scheme, operators should scrutinise the following aspects of the certification or third-party verification schemes under (1) 'the relevant standards':

- validity, authenticity, and relevance of the scope of the certification or third-party verification (e.g. whether it covers the relevant commodities and products regulated under the EUDR),
- inclusion and compliance with relevant legal requirements, such as the alignment with the definition of deforestation-free and the cut-off date of 31 December 2020, as stipulated in Articles 2 and 3 of the EUDR,
- assessment of the risk of non-compliance regarding legality and the deforestation-free requirements of the relevant product,
- traceability of the relevant products, including via geolocation back to the plot of land,
- possibility to mix known origin and unknown origin material within the chain of custody (CoC) model (which is not acceptable under the EUDR) ⁽¹⁷⁾. A relevant product with CoC certification may also contain a mix of certified and non-certified material from a variety of sources, for which information about whether checks on the non-certified portion have been performed and whether those checks provide adequate evidence of compliance with the EUDR requirements must be obtained. The due diligence procedure must therefore be completed for the relevant product in entirety,
- possibility to use mass balance where compliant products are mixed with products of unknown origin (which is not acceptable under the EUDR) ⁽¹⁸⁾,
- ability of the scheme to provide required information accompanied by evidence that is 'adequately conclusive and verifiable', as set out in Article 9.

Secondly, under (2) 'the implementation by schemes', operators should consider:

- accessibility of information regarding the scheme governance, engagement of stakeholders with the scheme, and summaries of audits,

⁽¹⁷⁾ Some schemes allow certification when a specified percentage of the relevant product, usually stated on the label, has met the full certification standard. In such cases, it is important that the operator obtains information about whether checks on the non-certified portion have been performed and whether they provide adequate evidence of compliance with the geolocation and the deforestation-free element for the non-certified portion as well.

⁽¹⁸⁾ Some schemes allow certification when mass balance chains of custody are used. Such mixed products are, however, not compliant with the EUDR. Only products fully compliant with the elements mentioned above are allowed under the EUDR, excluding mixed products based on certain percentages or mass balance chains of custody.

- free and publicly accessible database about certification holders, their scope of coverage, validity, date of suspending or terminating certification status and related audit reports,
- transparent periodic, random and independent checks (including through audits) on compliance of the certification or third-party verification scheme with their own standards, rules and procedures,
- control of quantity and origin of certified materials across the supply chain, including for example use of anatomical, chemical or DNA analysis to verify information on product or supply chain traceability,
- effective controls for verification of volumes across supply chains ⁽¹⁹⁾,
- use of similar stamps/claims referring to different types of schemes,
- existing substantiated reports about possible shortcomings or problems of the certification or third-party verified scheme concerned in the countries from which the relevant commodities or products originate,
- existing substantiated reports concerning a given producer or trader using the certification or third-party verified scheme concerned.

Under (3) 'on the governance of schemes', operators should consider the following elements:

- potential conflicts of interests,
- extent and findings of controls on fraud and corruption,
- compliance of the certification or third-party verification scheme with international or European standards (e.g., the relevant ISO-guides),
- consequences and sanctioning in case of infractions as well as corrective actions, also in terms of suspension of certification until corrective measures are taking place, taking also into account the speed of procedure to revoke and restore authorization to issue certification for products,
- inclusion of provisions about stakeholder engagement, also enabling and promoting the participation of smallholders (if relevant) in the scheme,
- information about the independence of third-party organisations that deliver the relevant certification or verification services as accredited organisations. Assurances or representations from the scheme, scheme-affiliated auditors or third-party auditors engaged by the scheme to perform its assurance procedures should not be relied upon in isolation or taken as conclusive. The views of other relevant stakeholders, including scheme participants, labour unions, workers' and smallholders' associations, civil society and non-governmental organisations, and third-party auditing and assurance organisations, should be considered if they are reasonably available.

(b) Background information

Certification and third-party verified schemes are either public or private, depending on their governance model, whether government-run or not. They can be mandatory or voluntary, depending on whether they are legally-binding. Private schemes are voluntarily used by the operator, while public ones are often (though not necessarily) mandatory and established by the countries from which products are sourced. Both public and private certification and third-party verification schemes aim to recognise good environmental standards through certification, and as such many of them have made important contributions to raising the sustainability of agricultural production worldwide.

⁽¹⁹⁾ Chain-of-custody certification may be used as evidence that no unknown or non-permitted commodity enters a supply chain. These are generally based on ensuring that only permitted commodities and products are allowed to enter the supply chain at 'critical control points', and a product can be traced to its previous custodian (who must also hold chain-of-custody certification) rather than back to the place of origin. A product with chain-of-custody certification may contain a mix of certified and other permitted material from a variety of sources. When using chain-of-custody certification, an operator should ensure that all materials comply with the requirements of the EUDR and that controls are sufficient to exclude non-compliant material.

Nonetheless, the impact assessment preceding the EUDR, building on other relevant studies, also identified a number of concerns regarding such schemes, including that they have varying levels of transparency and different rules, procedures, and quality assurance systems in place, as well as related to monitoring, disclosure and enforcement. Over the years of their operation, concerns have also been raised over the efficiency and integrity of chain-of-custody (CoC) systems and their vulnerability to fraud. In addition, the lack of independent audits is a weakness of certain private schemes. A specific study commissioned by the Commission on Certification and Verification Schemes in the Forest Sector and for Wood-based Products made similar findings, pointing to a lack of transparency and the risk of partial or even misleading information ⁽²⁰⁾.

Mandatory public verification schemes with binding measures can include high standards, both in terms of coverage and implementation. It is key that they cover all economic operators in a country (including both placing on the market and exports) to avoid loopholes and leakage that may be caused by presence of economic operators not covered by the scheme. They can also ensure better smallholder integration by providing the necessary support to overcome the problem of costs, often perceived as significant, as economies of scale have SMEs at a disadvantage in achieving certification in comparison to larger operators.

As regards reliability and relevance of both private and public schemes, all applicable elements of their standards should be in line with (either at the same level, or higher than) the EUDR, in particular regarding the deforestation-free definition, geolocation requirements and transparency and the legality of production.

In this context it is important to note that not all schemes include standards and assessments relating to the legality of production of the relevant commodity, and it may therefore be relevant to check what legality requirements are covered by the schemes, both in terms of the laws they cover, and the criteria or indicators relied on to assess compliance. For example, schemes may differ in their definitions of what is to be considered a relevant 'law' or 'legal' in the country of production or the indicators that must be considered to assess the risks of illegality.

Internal decision-making and governance, including the direct participation of supply chain actors that seek and hold certification or acquire and use certified products to meet customer demands, are also elements which have implications for the implementation, enforcement and credibility of any relevant scheme.

To further facilitate trade and compliance with the EUDR, a repository of certification schemes to provide transparent information on the scope of the existing schemes will be set up to which economic operators may refer when carrying out their due diligence for placing and making available products on the EU market, and competent authorities when performing the relevant checks.

To consider further relevant elements of all forms of certification and third-party verification, consult the Commission's Impact Assessment ⁽²¹⁾, the EU best practice guidelines for voluntary certification schemes for agricultural products and foodstuffs ⁽²²⁾, and the findings of the Commission's Study on Certification and Verification Schemes in the Forest Sector and for Wood-based Products ⁽²³⁾.

11. AGRICULTURAL USE

1. Introduction

Article 3(a) of the EUDR prohibits placing and making available on or exporting from the Union market relevant commodities and relevant products unless they are deforestation-free. Article 2(13)(a) defines 'deforestation-free' as the relevant products containing, having been fed with, or having been made using relevant commodities that were produced on land that has not been subject to deforestation after 31 December 2020 ⁽²⁴⁾. According to Article 2(3) 'deforestation' means the conversion of forest to agricultural use, whether human-induced or not.

⁽²⁰⁾ European Commission, Report: Study on Certification and Verification Schemes in the Forest Sector and for Wood-based Products, Publications Office of the EU, 2021.

⁽²¹⁾ European Commission, SWD(2021) 326 final.

⁽²²⁾ OJ C 341, 16.12.2010, p. 5.

⁽²³⁾ European Commission, Report: Study on Certification and Verification Schemes in the Forest Sector and for Wood-based Products, Publications Office of the EU, 2021.

⁽²⁴⁾ The other element of 'deforestation-free' in Article 2(13)(b), which stipulates that relevant products containing or having been made using wood have been harvested without inducing forest degradation is outside the scope of this chapter which deals specifically with the definition of agricultural use.

Recital (36) of the EUDR explains that the Commission should develop guidelines in order to clarify the interpretation of the definition 'agricultural use', in particular in relation to the conversion of forest to land, the purpose of which is not agricultural use. Recital 31 of the Regulation on Nature Restoration ⁽²⁵⁾ also refers to such guidelines.

The main objectives of this Chapter are therefore the following:

- to clarify the definition of forest, measurement of the technical parameters used to define 'forest' under the EUDR in terms of area, average height and canopy cover, particularly in cases where trees are bordering or overlapping with agricultural areas (Section 3);
- to clarify the meaning of 'set aside agricultural areas' and 'agricultural plantations' referred to in Article 2(5) of the EUDR, in particular the conditions under which agricultural areas, which have been e.g. set-aside, or are lying fallow or are used for certain nurseries remain under 'agricultural use' for the purposes of Article 2 irrespective of the land characteristics, in order and to clarify the conditions for conversion of forest to agricultural area (Sections 3 and 4);
- to provide guidance about the circumstances, in which in spite of an observed tree cover after 31 December 2020 (the cut-off date laid down in Article 2(13) of the EUDR), the area should be considered under 'agricultural use' (Section 4);
- to clarify situations where an area falling under the definition of 'forest' should not be considered as converted to 'agricultural use' but to other land uses, in particular:
 - to other land use to prevent, minimise, mitigate or reverse the adverse impact on biodiversity of the introduction and spread of invasive alien species, or
 - to semi-natural habitats that are extensively managed (e.g. by conservation grazing) as required by a conservation or restoration plan implementing obligations stemming from international conventions on nature and biodiversity protection and restoration, or
 - for forest fire prevention or for deployment of renewable energy (Sections 2 and 4.a);
- to provide interpretation of 'agricultural use' under the EUDR, taking into account definitions laid down in applicable EU legislations and explanatory notes that are agreed on international level (Sections 4, 4.c and 4.d);
- to clarify the combined and synergetic uses of areas with tree cover that fall under the definitions in the EUDR, such as agroforestry, agrosilvicultural, silvopastoral and agrosilvopastoral systems (Section 4.d);
- to clarify different land use types in the same area and the use of cadastral maps and land registers (Section 5).

2. Clarification of conversion of forest to land the purpose of which is not agricultural use

Relevant legislation:

EUDR – Recital (36), Article 2(3), (5), (13) – Definitions, Article 3(a) – Prohibition

According to Article 2(3) of EUDR 'deforestation' means conversion of forest to agricultural use and should be understood as a change in the use of the land from 'forest' as defined in Article 2(4) of EUDR (discussed in detail in Section 3) to 'agricultural use' as defined in Article 2(5) of EUDR (discussed in detail in Sections 4, 4.c and 4.d). In this regard, the extent of the conversion to agricultural use is irrelevant, and such conversion renders the commodity in scope produced on such land non-compliant if the deforestation occurred after 31 December 2020.

The classification of an area as 'deforested' is based on the objective criterion whether the forest has been converted for a specific use and purpose, which is independent from the legally registered use and geographical boundaries of the plot of land or from the question of who or what is at the origin of the deforestation.

⁽²⁵⁾ OJ L, 2024/1991, 29.7.2024, ELI: <http://data.europa.eu/eli/reg/2024/1991/oj>.

For the purpose of this Regulation, conversion of forest into other land uses which do not fall under the definition of 'agricultural use' means that this conversion does not fall under the definition of 'deforestation' (please see detailed information about 'Agricultural use' in Section 4). This includes conversion of forest into areas of urban infrastructure such as electricity lines, roads, cities and settlements, for non-agricultural industrial sites, or for renewable energy deployment.

Conversion of forest land also does not fall under the EUDR definition of 'deforestation' if the primary purpose of the conversion and its subsequent land use is not agricultural use, but e.g. renewable energy deployment, industrial use, restoration of biodiversity, forest fire prevention, animal welfare in extreme climatic conditions, or management of invasive alien species. Ancillary agricultural activities may take place where essential to support the primary purpose of conversion and of the land use after the conversion (see section 4.a), or where the agricultural activity does not change the predominant use of forest (see section 4.b).

The responsibility for the enforcement of the provisions lies with the Member States. When applying these guidelines to individual cases, the Member States should ensure that the specific circumstances of each case are duly taken into account, considering also the relevant provisions of the Treaty. In cases where the activities are negligible, given all circumstances at stake, the principle of proportionality should be respected.

3. Definition of 'Forest'

Relevant legislation:

EUDR – Article 2(4) – Definitions

According to Article 2(4) of the EUDR an area is considered 'forest' if the following characteristics apply:

- **Land spanning more than 0,5 hectares** – This means that the area of trees described by the perimeter of canopy cover reaches 0,5 hectare or beyond.
- **Trees higher than 5 metres** – this means that the top of the trees reaches the average height of 5 metres or more.
- **Canopy cover of more than 10 %** – This means that the ratio of the canopy cover of the trees forming the tree stand to the area occupied by the tree stand is more than 10 %.
- **Trees able to reach those thresholds in situ** – This means areas with young trees that have not yet reached but expected to reach canopy cover 10 % and tree height of 5 metres. It includes in particular areas that are temporarily unstocked due to clear-cutting as part of a forest management practice or natural disasters, and which are expected to be regenerated.
- **Excluding land that is predominantly under agricultural or urban land use** – This means that the forest is determined both by the presence of trees and the absence of other predominant land use (see below and also Section 4).

The land spanning, the average height, and the canopy cover characteristics must be present or able to reach these thresholds in-situ simultaneously.

In the context of EUDR, '**urban land use**' should be considered predominant for example in case of parks and gardens in urban areas, irrespective of reaching the thresholds of forest definition. For more information about predominant '**agricultural use**' see Section 4.

Provided that the characteristics in the definition are met, the area of 'forest' includes but is not limited to:

- areas surrounded by forests or strictly connected to it used for forestry, such as forest roads, fire breaks, and other small open areas, unless they are established on their own individual real-estate property;

- land abandoned generally for more than 10 years with a regeneration of trees that have reached the criteria of 'forest' (please see in connection with 'set-aside land and land under temporary fallow' in Section 4);
- mangroves in tidal zones, regardless of whether this area is classified as land area or not;
- nurseries of forest species grown within forest area to fulfil the forest owners' own needs;
- areas outside the legally designated forest land which meet the criteria of the definition of 'forest'.

The definition of 'forest' excludes tree stands in agricultural production systems. For further information, please see Sections 4.c and 4.d.

4. Definition of 'Agricultural use' and exceptions

Relevant legislation:

EUDR – Article 2(5) – Definitions

According to Article 2 (5) of the EUDR an area is considered under 'agricultural use' if the purpose of the land use is agriculture.

(a) Clarification of the purpose of agriculture

According to Article 2(5) the land is used for the purposes of agriculture (among others) in the following list of cases:

- *agricultural plantations* defined in Article 2(6) of the EUDR. For a more detailed guidance on 'agricultural plantations', please see Section 4.c.
- *set-aside agricultural areas* – Set-aside agricultural areas should be considered in combination with 'land under temporary fallow' as discussed below in this section.
- *rearing of livestock* – This includes areas of temporary or permanent pastures, and farm buildings for rearing and housing animals.

It should be noted that the categories of 'agricultural plantation', 'set-aside agricultural area', and area 'for rearing livestock' are a non-exhaustive list of examples for 'agricultural use'.

For the purpose of this Regulation, land used for agriculture should be understood as covering the following land use categories:

- *Land under temporary crops* which means all land used for crops with a usually less than one-year growing cycle, including multi-annual temporary crops.
- *Land under temporary meadows and pastures* which means land cultivated with herbaceous forage crops, or grasses for mowing or pasture for a period of less than five years in a row.
- *Set-aside land, or land under temporary fallow* which means agricultural land at prolonged rest before re-cultivation, pastoral use or use for other agricultural activities. This may be part of the agricultural holdings' crop rotation system or because of legitimate reasons or exceptional circumstances such as armed conflict, flood damage, lack of water, unavailability of inputs, including economic, social (illness, succession problems) or legal reasons (litigation, etc.). NB: Land set-aside or remaining fallow should be considered as remaining under 'agricultural use' generally for [ten] years. However, the area can be considered as remaining under 'agricultural use' for longer than this period if it is demonstrated that the agricultural activities could not be resumed because of one of the above-mentioned reasons. The reason given must cover the whole period in which the land was set-aside or under temporary fallow. If such demonstration is made, the land should be continuously considered to be under agricultural use, unless it is officially designated as forest by national law.

- *Land under permanent crops* which means land cultivated with long-term crops which do not have to be replanted for several years, usually for five years or more. Land under permanent crops also includes land used for growing permanent crops under protective cover, which is described in Section 4.b.
- *Land under permanent meadows and pastures* which means land used for five years and more in a row for grazing animals or to grow forage crops, through cultivation or naturally.
- *Land under farm buildings and farmyards* which means surfaces occupied by operating farm buildings (hangars, barns, cellars, silos), buildings for animal production (stables, cow sheds, sheep pens, poultry yards) and farmyards.
- Where it can be demonstrated by adequately conclusive evidence that both (i) a plot of land was under 'agricultural use' as described above before 31 December 2020, and (ii) where a producer decided to plant short rotation coppice or commit the land to temporary afforestation before that date or after that date and that land does not fall under the scope of a forest management plan or legislation requiring forest management or protection of forest on that plot of land, such plot of land is deemed to remain in agricultural use for the purposes of the EUDR and the producer may continue agricultural activity on that plot of land.
- The above-mentioned agricultural land use categories can cover also surfaces occupied by landscape elements, which are encouraged for biodiversity or environmental reasons.

Restoration, management of invasive species, forest fire prevention, animal welfare, renewable energy deployment

Land which has undergone conversion for one or several of the primary purposes listed below should **not** be understood as converted to agricultural use if the conversion has been undertaken to:

- prevent, minimise, mitigate or reverse the adverse impact on biodiversity of the introduction and spread of invasive alien species, if limited to what is strictly necessary and supported by prevention plans, management plans, or official mandates, or
- prevent, or minimise and mitigate the risk of forest fires, if limited to what is strictly necessary and supported by fire prevention plans, forest management plans, or official mandates, or
- ensure compliance with animal welfare laws where the erection of structures (permanent and non-permanent) to house animals is necessary for the purpose of ensuring their welfare and limited to the minimum necessary area for the construction, and where this activity does not impact on the categorisation of the surrounding areas as forest, or
- ensure the restoration and subsequent conservation management of ecosystems of high biodiversity value (such as for example certain types of heathlands, wetland or grassland) if required by a conservation or restoration plan (for example a management plan of a protected area or a national or regional nature restoration plan) implementing obligations stemming from global multilateral agreements on nature and biodiversity protection and restoration such as the Convention on Biological Diversity and the Kunming-Montreal Global Biodiversity Framework, or
- deploy renewable energy (e.g. through establishment of wind farms, photovoltaics),

even if ancillary agricultural activities may take place where essential to support the primary purpose of conversion and the land use after the conversion.

(b) *Clarification of the predominant land use*

According to Article 2(4), in case the predominant land use is agriculture then the land does not fall under the 'forest' definition.

In the context of EUDR, for the purposes of the exclusions referred to in the definition of 'forest' in Article 2(4), '**agricultural use**' should be considered predominant in the following non-exhaustive list of cases:

- Seasonal (e.g. summer grazing) or temporary silvopastoral grazing in tree covered areas which do not fall into the category of primary forests (e.g. in semi-natural pastures or in natural pastures with changing tree cover).

- If due to climatic conditions (e.g. temporary snow cover) silvopastoral or agrisilvicultural practices are limited to a certain period of the year, they can be considered the predominant use.
- Establishing protective groups of trees for various environmental or biodiversity purposes on a predominantly agricultural use (e.g. grazing) area, even if the area reaches the thresholds of the 'forest' definition.

These cases are different from ancillary agricultural activities in the context of conversion for the purpose of restoration or management of invasive alien species, which do not fall under 'agricultural use', see above.

In contrast, for the purposes of EUDR, '**agricultural use**' should **not** be considered **predominant** for example in case of small-scale production of side products (e.g. coffee), and occasional extensive or occasionally small-scale grazing in forests as long as the production and related activities do not have detrimental effect on the habitat of the forest.

(c) *Definition of 'Agricultural plantation'*

Relevant legislation:

EUDR – Article 2(6) – Definitions

'Agricultural plantations' are included in the definition of 'agricultural use' set out in Article 2(5) EUDR.

The definition of Article 2(6) of the EUDR 'agricultural plantation' refers firstly to 'land with tree stands in agricultural production systems, such as fruit tree plantations, oil palm plantations, olive orchards' which makes reference to cropland including permanent crops as described in Section 4.

Secondly, that definition refers to 'agroforestry systems where crops are grown under tree cover', which is explained in Section 4.d and must be read together with the exception where predominant land use does not change. Article 2(6) EUDR further clarifies that all plantations of relevant commodities other than wood are encompassed under the terms 'agricultural plantation', therefore these plantations fall under the definition of 'agricultural use'.

Finally, Article 2(6) EUDR lays down that agricultural plantations are excluded from the definition of 'forest'. This means that the areas fulfilling the criteria of agricultural plantation do not fall under the definition of forest, even where they include trees such as rubber or oil palm.

(d) *Clarification of 'Agroforestry system'*

Relevant legislation:

EUDR – Recital (37) and Article 2(6) – Definitions

According to FAO documents ⁽²⁶⁾ 'agroforestry' is a collective name for land use systems and technologies where woody perennials (trees, shrubs, palms, bamboos, etc.) are deliberately used on the same land management unit as agricultural crops and/or animals, in some form of spatial arrangement or temporal sequence. In agroforestry systems there are both ecological and economic interactions between the different components. There are two basic agroforestry systems: simultaneous and sequential. Simultaneous systems have trees and crops or animals growing together on the same piece of land, while in sequential systems crops and trees take turns in occupying most of the same space, minimising their competition.

⁽²⁶⁾ FAO 2003. Multilingual Thesaurus on Land Tenure. Chapter 7. Land in an agricultural, pastoral and forestry context.

Agroforestry can also refer to specific forestry practices that complement agricultural activities, such as by improving soil fertility, reducing soil erosion, improving watershed management, or providing shade and food for livestock ⁽²⁷⁾.

Recital (37) recalls that FAO definitions do not consider agroforestry systems as forests, but agricultural use and that they encompass various situations such as those where crops are grown under tree cover, as well as agrisilvicultural, silvopastoral and agrosilvopastoral systems.

Since the definition of 'forest' in Article 2(4) of the EUDR excludes land that is predominantly under 'agricultural use', it can be inferred that if a land is predominantly used under 'agroforestry systems' for the purposes spelled out by Recital (37), it cannot be considered as 'forest'. In this case and for the purpose of the Regulation, this land must be considered as being under 'agricultural use'. Regarding ancillary agricultural activities, including agroforestry activities in the context of restoration please see Section 2.

5. Clarification of land use in case of multiple land use types in the same area and the use of land registries and cadastral maps

In case a plot of land contains both an area falling under the definition of 'forest' and an area which is 'agricultural use', the two areas are to be considered separately. The area fulfilling the criteria of the definition of 'forest' falls under the scope of the Regulation, while the area fulfilling the criteria of 'agricultural use', does not fall under the scope of the Regulation in terms of conversion.

Whether the part of the plot of land used for agriculture is bigger than the part of the plot of land considered a forest under the definition, is not relevant. As an example, this means that if a 10-hectare property has a 2-hectare area that can be considered as forest area by objective criteria and 8 hectares are cultivated under agricultural use, then the 2 hectares of forest are classified as forest, regardless of the fact that it only makes up 20 % of the total property.

In the assessment of whether a certain plot of land constitutes forest, the actual forest properties should prevail over the designation in land registers and cadastral maps. For demonstrating agricultural use in the past, land registers and cadastral maps can be further elements to complement the satellite data. Furthermore, forest management plans and registers of designated forest areas can be of use when determining whether the area is a forest without current tree cover, particularly in case of the area is temporary unstocked without tree cover due to forest management practice, natural disaster, or the first years of afforestation. The EU Observatory ⁽²⁸⁾ provided by the Commission is a free to use tool for all stakeholders to determine the global forest cover of 2020. However, the Observatory is non-exclusive, non-mandatory and carries no legal value. Public and private stakeholders can use any maps or other data that they see fit for the purpose of their due diligence exercise or checks.

⁽²⁷⁾ FAO World Programme For The Census Of Agriculture 2020, Vol. 1, p. 120, point 8.12.12 and 8.12.13.

⁽²⁸⁾ EU Observatory on Deforestation and Forest Degradation: <https://forest-observatory.ec.europa.eu/forest/gfc2020>.