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**Approval of the content of a draft Commission Notice on the Guidance Document for
Regulation (EU) 2023/1115 on Deforestation-Free Products**

ANNEX

Draft Commission Notice on the Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products



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COMMISSION NOTICE

Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products

GUIDANCE DOCUMENT¹
FOR REGULATION (EU) 2023/1115 ON DEFORESTATION-FREE PRODUCTS²

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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. 206–247. 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 is not legally binding; its sole 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 principle of proportionality is one of the general principles of Union law which applies to the interpretation and enforcement of Union legislation³. The responsibility for the enforcement of the provisions lies with the Member States.

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

Relevant legislation: EUDR – Article 2 – Definitions

The obligations on operators that apply under Article 4 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’ (see also Chapter 4 c) of this Guidance document).

An overview of scenarios, explaining the obligations which SME and non-SME operators and traders are under when placing or making available on or exporting relevant products from the Union market is provided in Annex I of this Guidance document. The scenarios also demonstrate the modifications of obligations for SME operators further down the supply chain (Article 4(8)) and for non-SME operators and traders (Article 4(9)).

³ For further details related to the implementation, please refer also to the Frequently Asked Questions which are available here: [Deforestation Regulation implementation - European Commission \(europa.eu\)](https://european-commission.europa.eu/Deforestation-Regulation-implementation).

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. 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” (Art. 2(15) EUDR) and of ‘in the course of a commercial activity’ (Art. 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 (for instance as a sample),
- b) for the purpose of processing, or
- c) for use in its own business

will be subject to the due diligence requirements and needs to present a due diligence statement, unless a simplification applies (see Art. 4(8), 4(9) 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 not intended directly for private use or consumption within the customs territory of the Union. Products intended for private use or consumption (e.g. by individual bringing such products from a trip outside the EU for his private use or consumption) are not subject to EUDR.

c) Export

Under Article 2(37), ‘export’ refers to the customs export procedure as laid down in Article 269 of Regulation (EU) No 952/2013⁴ and refers to Union goods to be taken out of the customs territory of the Union.

Article 269 of Regulation 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 952/2013.

Re-export as laid down in Article 270 of Regulation 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.

The relevant product loses its customs status of ‘Union good’ when exported from the customs territory of the Union, therefore that relevant product is considered as a new product when subsequently entering the Union market again, even if the HS code remains the same.

Annex I of this guidance includes examples of how the interpretation of the terms ‘placing on the market’, ‘making available’ and ‘export’ works in practice.

2. DEFINITION OF ‘OPERATOR’

Relevant legislation: EUDR – Article 2(15) – Definitions; Article 7 – Placing on the market by operators that are established in third countries

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

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).

- places relevant products on the market or exports them
- in the course of a commercial activity.

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 or uses them in the course of commercial activity once they have been produced; this may be the producer or manufacturer.
- A person that transforms a relevant product into another relevant product (new HS code according to Annex I of the Regulation) and places it on or exports from the market is an operator further down the supply chain.
- For relevant commodities or relevant products produced **outside the EU**:
 - the operator is 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 2015/24465)
 - 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 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 definition laid down in Article 2(15), it is subject to the obligations of an operator. This requirement comes on top of the normal obligation of the operator established outside the Union and aims at ensuring that there is always one responsible actor established in the EU.
- 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.
- 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

⁵ 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

procedure. The exporter is the person indicated in the relevant data element of the customs declaration, where applicable:

- o the "exporter" in data element 13 01 000 000 (Annex B of Delegated Regulation 2015/2446);
- o Data element DE 3/1 in a previous release of EU Customs Data Model (EUCDM);
- o the "Consignor/Exporter" in box 2 of the Single Administrative Document.

The role of operators is further explained with the help of the scenarios contained in Annex I of this Guidance document.

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 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 2024**.

For operators that were established as **micro-undertakings or small undertakings** by 31 December 2020 (in accordance with Article 3(1) or (2) 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 2025**, except as regards the products covered in the Annex of the Regulation No 995/2010 laying down the obligations of operators who place timber and timber products on the market⁶ (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 2024, deferred to 30 June 2025 for small undertakings or micro-undertakings established by 31 December 2020) 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**:

- 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 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 means that the deferred entry into application for **small and micro enterprise operators** (30 June 2025) will, in cases of them placing or making available on the market, also exempt medium and large operators and traders further down the supply chain that are trading with these products or their derived products.

⁶ OJ L 295, 12.11.2010, p. 23–34, ELI: <http://data.europa.eu/eli/reg/2010/995/oj>

- In the cases described above, the obligation of the operators further down the supply chain (or traders making the relevant product which has been placed on the market in the transitional period available subsequently) 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 2024 (or from 30 June 2025 by a micro or small undertakings), the operators further down the supply chain 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.

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 starts on the date on which the cattle is born.

For **timber and timber products** as defined in Article 2(a) of the EUTR, special rules apply, pursuant to Article 37(3) of EUDR:

For timber and timber products produced before 29 June 2023 and:

- o placed on the market before 30 December 2024, such products must comply with the rules of the EUTR;
- o placed on the market from 30 December 2024 until 31 December 2027: the rules of EUTR continue to apply;
- o placed on the market from 31 December 2027, such products shall comply with Article 3 of the EUDR.
- For timber and timber products produced from 29 June 2023 until 30 December 2024 and:
 - o placed on the market before 30 December 2024, such products must comply with the rules of the EUTR;
 - o placed on the market from 30 December 2024, such products must comply with the rules of the EUDR.
- Timber and timber products produced from 30 December 2024 must comply with the rules of the EUDR.

4. DUE DILIGENCE AND DEFINITION OF ‘NEGLIGIBLE RISK’

Relevant legislation: EUDR – Article 2(26) - Definitions; Article 4 – Obligations of operators, Article 8 – Due diligence; Article 9 – Information requirements; Article 10 – Risk assessment

According to Article 4(1) operators 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) of EUDR, operators shall establish and keep up to date a framework of procedures and measures – a due diligence system – to exercise due diligence in accordance with Article 8 to ensure that the relevant products they place on the market or export comply with Article 3 of the EUDR. Operators are responsible for a thorough examination and analysis of their own business activities, which requires the collection of relevant data, analysing it, and – as necessary – adopt risk mitigation measures, unless the risk of non-compliance is assessed as being negligible. . The data collection, risk analysis, and risk mitigation must be causally related, and must reflect the characteristics of the operator's business activities and of the supply chains.

Operators have to specify the risk assessment criteria according to 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 has to be tailored to the relevant products the operator intends to place on or export from the market.

a) Risk assessment

The due diligence requirements set out in Article 8 requires the operator to:

- collect information, documents and data from each particular 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.

Article 9(1) specifies the product-related information that must be assessed, which includes information specific to the product and its supply chain. 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 collected data, 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 has to 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 29⁷? 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 laws⁸ and been sanctioned by the state for the breach of such laws?

- **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.

⁷ Note that if no specific risk level has been assigned, countries are considered standard risk.

⁸ Those related to illegality, deforestation, and forest degradation.

- **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.

According to Article 13, SME and non-SME operators sourcing from low-risk countries are not required to fulfil the obligations under Article 10 and Article 11 in order to achieve a negligible risk after having ascertained that all relevant commodities and products they place on the market or export have been produced in countries or parts thereof that were classified as low risk in accordance with Article 29⁹. However, the steps described in Articles 10 and 11 apply if an operator sourcing from a low-risk country obtains or is made aware of any information that would point to a risk of non-compliance or circumvention, see Article 13(2).

For non-SME operators further down a supply chain, the simplification under Art. 4(9) can also apply, meaning the non-SME operators in this case merely have to ascertain that due diligence was properly carried out upstream. Ascertaining that due diligence was properly carried out may not necessarily imply having to systematically check every single due diligence statement submitted upstream. For example, the downstream non-SME operator could verify that upstream operators have an operational and up-to-date due diligence system in place, including adequate and proportionate policies, controls, and procedures to mitigate and manage effectively the risks of non-compliance of relevant products, to ensure that due diligence is properly and regularly exercised.

In case the risk assessment and risk mitigation exercise concludes that any of the risk criterion 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) Role of SME and non-SME traders

Traders, according to Article 2(17) are persons in the supply chain other than operators who, in the course of a commercial activity, make relevant products available on the market.

Whether a trader is subject to due diligence obligations depends on whether the trader is an SME or not, which is determined according to the criteria set out in Article 3 of Directive 2013/34/EU of the European Parliament and the Council, see Art. 2(30) of the EUDR.

⁹ 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.

If the trader is a non-SME, according to Article 5(1), obligations and provisions for non-SME operators apply, meaning that the non-SME trader must ascertain that due diligence was exercised upstream (see the previous subchapter).

For SME traders, the applicable obligations are set out in Art. 5(2) to (6) of the Regulation. SME traders shall make available relevant products on the market 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 the reference numbers of due diligence statements associated to the products. SME traders do not need to exercise due diligence and do not need to ascertain that due diligence was exercised upstream. Their obligation is to maintain traceability of the relevant products, meaning they must collect and keep information as well as make it available to competent authorities upon request to demonstrate compliance.

d) Interplay with Corporate Sustainability Due Diligence Directive

The Directive 2024/1760 on corporate sustainability due diligence¹⁰ (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 but are complementary, and both should be applied in a coherent manner to ensure effective due diligence. 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 Art. 1(3) CSDDD and it follows the principles of EU law, which give precedence to *lex specialis* over *lex generalis* in such cases.

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

¹⁰ 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>

unidentified steps in the supply chain or any other finding indicating non-compliance can lead to the conclusion that the risk is non-negligible.

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 or trader. 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 and traders 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
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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.

Relevant products must **meet all three criteria separately and individually**; otherwise, operators and non-SME traders shall refrain from placing or making them available 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 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, 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.

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,
- 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. 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 obligation to collect documents or other information depends on the different regulatory regimes of countries, as not all of them require the issuing of specific documentation. Therefore, the obligation should be understood as including, where applicable:

- Official documents issued by countries' authorities, such as e.g. administrative permits,
- 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.

The following additional documents can be also useful:

- Documents showing company policies and codes of conduct,
- 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 thereof¹¹, according to Article 13 of the EUDR, SME and non-SME 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.¹²

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

¹¹ 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.

¹² 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).

technologies/forensic methods tracking the relevant products which can help to reveal indications of corruptions or illegalities.

Downstream non-SME operators and traders are under the obligation to **ascertain** that due diligence, including on legality, has been exercised by the upstream operator, see Article 4(9) of the EUDR. When collecting information, documentation and data for this purpose, downstream operators and traders should respect the applicable data protection rules and competition rules.

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 Nomenclature¹³ set out in Annex I to Council Regulation (EEC) No 2658/87.

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, 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 to support, protect or carry another product placed on the market *are not* covered by EUDR.

Within these categories, there is a further distinction 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 Nomenclature¹⁴ clarifies these differences, and examples are presented below. 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 placed on the market as products in their own right;

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)

¹⁴ Explanatory notes to the Combined Nomenclature of the European Union (OJ C 119, 29.3.2019, p.1)

- Containers which give a product its essential character: e.g. decorative gift boxes.

The following is not subject to the Regulation:

- Packing material presented with goods inside and used exclusively to support, protect or carry another product;
- User manuals accompanying shipments, unless they are placed on the market in their own right.

b) Clarification – Waste and recovered products

Relevant legislation: *EUDR - Recital (40); Annex I to the EUDR; Directive 2008/98/EC - Article 3(1)*

Operators and traders 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 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.
- Waste products specified as within-scope in Annex I of the EUDR (e.g. products under HS code 1802: cocoa shells, husks, skins and other cocoa waste).

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.

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 recovered 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 printed and unprinted paper products made from recycled paper subject to the Regulation?

No, if the products are made entirely from recycled material, they are not subject to the EUDR. However, if the products contain any amount of non-recycled pulp, that pulp would be subject to the Regulation.

Q4: Are fuel pellets made from empty fruit bunches or palm kernel shells, by-products of oil palm processing, subject to the Regulation?

Yes. Empty fruit bunches and palm kernel shells, even in pellet form, are solid residue by-products of the palm oil extraction process and are covered under HS code 2306 60 in Annex I of the EUDR.

Q5: Are products made from recycled cattle leather subject to the Regulation?

No, if the leather within the product is entirely recycled then it is not subject to the EUDR. However, if the products contain any amount of non-recycled leather, that leather would be subject to the Regulation.

Q6: 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.

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. palm oil from *Elaeis guineensis* is in the scope, but babassu oil from *Attalea speciosa* is not in the scope of the EUDR,
- ii. 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,
- iii. products of wood are in the scope, but rattan products 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 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 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. It should be noted that Article 9 also applies to non-SME traders who will be 'making available on the market' their relevant products. It may in some cases 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 Annex II of this Guidance document,

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. This applies to both SME and non-SME operators (Article 4(8) and (9)).

a) 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 a list of 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 relevant commodities within the relevant products that they are placing on the market or exporting. This information includes the geolocation of the relevant commodities contained in the relevant products, or used to make the relevant products, 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 of all plots of land where the relevant commodities 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 relevant commodities produced on different plots of land, the geolocation 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 requirement refers to all premises or structures associated with raising the cattle, encompassing the birthplace, 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. 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, paper and printed books. 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’).

b) Due diligence for composite products: using existing due diligence statements

Operators who are placing on the market or exporting ‘composite products (for example furniture made from other relevant timber products) can make reference to existing due diligence statements where applicable. When non-SME operators are making a submission to the Information System (described in Article 33) they can refer to due diligence statements that have already been submitted to the Information System, but only in cases where they have ascertained that the due diligence for the products contained in or made from relevant products has been properly exercised, in accordance with Article 4(1) and (9).

Information contained in existing due diligence statements may be referred to in order to complete the information requirements set out in Article 9. For example, the geolocation information for commodities may be identified in the due diligence statement of a relevant product contained in the relevant product that the operator is seeking to place on the market or export and will not have to be provided again if reference is made to the upstream due diligence statement. Reference can be made in the Information

System by entering the reference number of an upstream due diligence statement when a new statement is submitted. Operators and traders submitting due diligence statements will be able to decide whether the geolocation information contained in their statements submitted in the Information System will be accessible and visible for downstream operators via the referenced due diligence statements inside the Information System.

Overall, the development and functioning of the Information System will be in line with the applicable data protection provisions. In addition, **the system will be equipped with security measures that will ensure the integrity and confidentiality of the information that the Information System contains.**

According to Article 4(7) the operators - including SMEs - shall provide all information necessary to demonstrate compliance of the product, including the due diligence reference numbers to operators and traders further down the supply chain. According to Article 4(8) the SME operators are not required to exercise due diligence for relevant products contained in or made from relevant products that have already been subject to due diligence according to Article 4(1) and where a due diligence statement has already been submitted in accordance with Article 33. SME operators need to provide the competent authorities with the reference number of the due diligence statement upon the request of the competent authority. SME operators **do** have to exercise due diligence and submit a due diligence statement for parts of relevant products that have not already been subject to due diligence or no due diligence statement was submitted in accordance with Article 4(8).

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
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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.

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 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. 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.

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, for example operators should scrutinise the following aspects of the certification or third-party verification schemes under 1) ‘the relevant standards’:

- validity, authenticity, and inclusion within the scope of certification or third-party verification of the association of the certificate for a relevant commodity or product,
- 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)¹⁵. 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)¹⁶,
- 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,
- 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 chains¹⁷,

¹⁵ 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.

¹⁶ 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.

¹⁷ 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.

- 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.

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.¹⁸

¹⁸ European Commission, Report: Study on Certification and Verification Schemes in the Forest Sector and for Wood-based Products, Publications Office of the EU, 2021.

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 and traders.

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 practices 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 Assessment¹⁹, the EU best practice guidelines for voluntary certification schemes for agricultural products and foodstuffs²⁰, and the findings of the Commission’s Study on Certification and Verification Schemes in the Forest Sector and for Wood-based Products²¹.

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

¹⁹ European Commission, SWD (2021) 326 final.

²⁰ OJ C 341, 16.12.2010, p. 5–11.

²¹ European Commission, Report: Study on Certification and Verification Schemes in the Forest Sector and for Wood-based Products, Publications Office of the EU, 2021.

31 December 2020²². According to Article 2(3) ‘deforestation’ means the conversion of forest to agricultural use, whether human-induced or not.

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 Restoration²³ 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

²² 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.

²³ OJ L, 2024/1991, 29.7.2024, ELI: <http://data.europa.eu/eli/reg/2024/1991/oj>

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.

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. 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
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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 legitimate reasons or exceptional circumstances such as 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 more than five years 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
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‘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
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According to FAO documents²⁴ ‘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.

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.²⁵

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.

²⁴ FAO 2003. Multilingual Thesaurus on Land Tenure. Chapter 7. Land in an agricultural, pastoral and forestry context.

²⁵ FAO World Programme For The Census Of Agriculture 2020, Vol. 1, p.120, point 8.12.12 and 8.12.13

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 Observatory²⁶ 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 that they see fit for the purpose of their due diligence exercise or checks.

²⁶ <https://forest-observatory.ec.europa.eu/forest/gfc2020>

HOW DO THE INTERPRETATIONS OF ‘PLACING ON THE MARKET’, ‘MAKING AVAILABLE ON THE MARKET’ AND ‘EXPORT’ APPLY IN PRACTICE?

The following scenarios outline situations in which a natural or legal person is considered an operator under the EUDR.

[Unless otherwise specified, operators in all scenarios below are responsible for carrying out due diligence on the relevant products/commodities and submitting a due diligence statement (DDS) to the EUDR Information System or assigning an authorised representative, referred to Article 6, to submit the DDS on their behalf.]

[According to Article 4(3) the submission of a due diligence statement (DDS) implies that the operator or non-SME trader has exercised due diligence as directed under the applicable provisions of the EUDR and assumes responsibility for the conclusion that they are deforestation-free and have been produced in accordance with the relevant legislation of the country of production, according to Article 3).]

Scenario 1 – Processing of products

EU-established manufacturer A (non-SME operator) is a company that buys palm oil [HS 1511] in a third country and imports it into the EU, where it uses the palm oil to produce industrial fatty alcohols [HS 3823 70]. It then sells the industrial fatty alcohols to manufacturer B in another EU Member State.

► Manufacturer A is an operator when importing into the EU (declare for the customs procedure ‘release for free circulation’) the palm oil, as palm oil is a relevant product covered by Annex I of the EUDR. This means that manufacturer A must exercise due diligence on the palm oil, submit a DDS to the Information System and include the DDS reference number in the customs declaration for release for free circulation.

► Manufacturer A is also an operator when placing the industrial fatty alcohols on the market, as industrial fatty alcohols are relevant products covered by Annex I of the EUDR. This means that manufacturer A must submit a separate DDS for the industrial fatty alcohols before placing them on the market, in which they may refer to their previous DDS reference number according to Article 4(9).

Scenario 2 – Packaging materials

Scenario 2a

EU-established manufacturer C (SME operator) imports coated craft paper [HS 4810] from producer B established in a third country and uses it to package other products that are subsequently sold on the Union market.

► Manufacturer C is an operator when importing into the EU (i.e., declare for the customs procedure ‘release for free circulation’) the craft paper, as craft paper is a relevant product covered by Annex I of the EUDR: although it will be used as packaging, the craft paper is imported as a product in its own right (*compare with Scenario 2b*) and therefore is subject to due diligence. Manufacturer C must submit a DDS to the Information System and include the DDS reference number in the customs declaration for release for free circulation.

► Manufacturer C is not required to exercise due diligence or submit a DDS for the craft paper when subsequently used for packaging other products as it is not sold as a product in its own right but rather

as packaging material (not giving the product its essential character) and is therefore not regulated as a relevant product under the EUDR.

Scenario 2b

EU-established company D (SME operator) imports wooden frames [HS 4414] from a third country and sells them to EU-established retailer E. The frames were packaged in cardboard.

► Company D is an operator when importing into the EU (i.e. declare for the customs procedure ‘release for free circulation’) the wooden frames, as wooden frames are a relevant product covered by Annex I of the EUDR. This means that company D must exercise due diligence on the wooden frames, submit a DDS to the Information System and include the DDS reference number in the customs declaration for release for free circulation.

► Company D is not required to exercise due diligence or submit a DDS for the cardboard packaging, as this was not imported as a product in its own right but rather as packaging material (not giving the product its essential character) and is therefore not regulated as a relevant product under the EUDR.

Scenario 3 – Transfers of ownership

Scenario 3a

EU-established manufacturer F (non-SME operator) buys raw hides of cattle [HS ex 4101] from supplier H, who is established outside the EU. Under the contract, ownership is immediately transferred to manufacturer F while the hides are still outside the EU and manufacturer F imports them into the EU. After the import in the EU, manufacturer F processes the hides into tanned hides [HS ex 4104] and sells them to EU-established non-SME retailer I (trader).

► Manufacturer F is an operator when importing into the EU (declare for the customs procedure ‘release for free circulation’) raw hides of cattle, as raw hides of cattle are a relevant product covered by Annex I of the EUDR. This means that manufacturer F must exercise due diligence on the raw hides, submit a DDS to the Information System and include the DDS reference number in the customs declaration for release for free circulation. As part of their due diligence for the raw hides, manufacturer F must include geolocation information referring to all the establishments where the cattle were raised (in accordance with Article 9(1)(d)). In accordance with recital 39, manufacturer F determines whether the cattle used to produce those hides were fed with another relevant product, and if so, conducts also the required due diligence for the livestock feed.

► Manufacturer F is also an operator when placing the tanned hides on the market, as the tanned hides are relevant products covered by Annex I of the EUDR. This means that manufacturer F must submit a separate DDS for them before selling them to trader I. Manufacturer F may refer to the existing DDS relating to the raw hides it previously placed on the market upon import into the EU.

► As a *non-SME trader*, trader I assumes the same due diligence obligations as an operator. After having ascertained that due diligence relating to the raw hides of cattle was exercised, trader I is required to submit a separate DDS for the tanned hides bought from manufacturer F before selling them to consumers or other actors further down the supply chain (i.e., *making them available* on the Union market). Trader I’s DDS may reference manufacturer F’s existing DDS for the tanned hides according to Article 4(9).

[In this scenario, ownership is transferred from a non-EU person to an EU person before the product physically enters the EU]

Scenario 3b

An EU-established manufacturer F (non-SME operator) buys tanned hides of cattle [HS ex 4104] online from supplier H, who is established outside the EU. Under the contract, ownership is only transferred to manufacturer F when the hides are delivered to their factory in the EU. Shipping agent G imports the hides into the EU on behalf of supplier H and delivers them to manufacturer F's factory.

► Supplier H is an operator when importing the tanned hides of cattle into the EU (i.e., declare for the customs procedure 'release for free circulation'), as they are a relevant product covered by Annex I of the EUDR. This means that supplier H must exercise due diligence on the hides of cattle, submit a DDS to the Information System and include the DDS reference number in the customs declaration for release for free circulation [or mandate shipping agent G as authorised representative according to Article 6(1) to submit it]. As part of their due diligence for the hides, supplier H must include geolocation information referring to all the establishments where the cattle were raised (in accordance with Article 9(1)(d)). In accordance with recital 39, supplier H determines whether the cattle used to produce those hides were fed with another relevant product, and if so, conducts also the required due diligence for the livestock feed.

► Manufacturer F is the first natural or legal person to make the relevant products available on the EU market and is also deemed to be an operator pursuant to Article 7, i.e. although it is actually not an operator pursuant to the definition laid down in Article 2(15), Article 7 establishes that it is subject to the same obligations as an operator. Therefore, manufacturer F must exercise due diligence and submit a separate DDS to the Information System before selling them to consumers or other actors further down the supply chain, in which it may refer to the DDS of supplier H according to Article 4(9).

[In this scenario, ownership is only transferred from the non-EU person to the EU person after the product has physically entered the EU]

Scenario 4 – Placing vs. making available on the market

[Scenarios 4a, 4b, 4c and 4d demonstrate the difference between placing and making available on the Union market and exemplify some of the circumstances under which a downstream business may be an operator.]

Scenario 4a

EU-established wholesaler J (SME operator) imports cocoa powder [HS 1805] from a third country (non-EU) producer and sells it to EU-established non-SME retailer K. Retailer K imports additional cocoa powder from a third country (non-EU producer) and mixes it with the cocoa powder purchased from wholesaler J for sale to end consumers within the EU (*compare with Scenarios 4b, 4c, 4d*).

► Wholesaler J is an operator when importing into the EU (i.e., declare for the customs procedure 'release for free circulation') the cocoa powder (*placing on the market*), as cocoa powder is a relevant product covered by Annex I of the EUDR. This means that wholesaler J must exercise due diligence on the cocoa powder, submit a DDS to the Information System and include the DDS reference number in the customs declaration for release for free circulation.

► For the cocoa powder bought from wholesaler J, retailer K is acting as a trader because this cocoa powder has already been placed on the Union market. As a *non-SME* trader, retailer K assumes the same due diligence obligations as an operator and is required to submit a DDS for the cocoa powder bought from wholesaler J prior to selling it (*making it available*). Retailer K can refer to wholesaler J's existing DDS for the cocoa powder, after confirming that due diligence has been undertaken properly in accordance with the EUDR requirements according to Article 4(9), but retailer K still retains responsibility for compliance.

► Retailer K is an operator for the additional cocoa powder that K imports directly into the EU (declare for the customs procedure ‘release for free circulation’), as cocoa powder is a relevant product covered by Annex I of the EUDR and K is placing the additional cocoa powder on the market for the first time. This means that retailer K must exercise due diligence on the additional cocoa powder, submit a DDS to the Information System and include the DDS reference number in the customs declaration for release for free circulation.

Scenario 4b

EU-established wholesaler J (SME operator) imports cocoa powder [HS 1805] from a third country (non-EU) producer and sells it to EU-established retailer K (non-SME trader). Retailer K resells the cocoa powder within the EU.

► Wholesaler J is an operator when importing the cocoa powder into the EU (i.e., declare for the customs procedure ‘release for free circulation’), as cocoa powder is a relevant product covered by Annex I of the EUDR. This means that wholesaler J must exercise due diligence on the cocoa powder, submit a DDS to the Information System and include the DDS reference number in the customs declaration for release for free circulation.

► As the cocoa powder has already been placed on the market by retailer J and provided that retailer K neither processed nor supplemented it before resale, retailer K is only *making available* a relevant product. For the purpose of exercising due diligence and submitting due diligence statements according to Article 4(2) and (9), retailer K can refer to existing DDS after determining that due diligence was exercised properly by wholesaler J according to Article 4(9), but retailer K still retains responsibility for compliance.

Scenario 4c

EU-established wholesaler J (SME operator) imports soya-bean oil [HS 1507] from a third country (non-EU) producer and sells it to EU-established retailer K (SME trader). Retailer K resells the soya-bean oil within the EU.

► Wholesaler J is an operator when importing the soya-bean oil into the EU (i.e., declare for the customs procedure ‘release for free circulation’), as soya-bean oil is a relevant product covered by Annex I of the EUDR. This means that wholesaler J must exercise due diligence on the soya-bean oil, submit a DDS to the Information System and include the DDS reference number in the customs declaration for release for free circulation.

► As the soya-bean oil has already been placed on the market by wholesaler J and provided that retailer K neither processed nor supplemented it before reselling, retailer K is only *making available* a relevant product. Since retailer K is an *SME trader*, it does not have the same due diligence obligations as an operator. Retailer K must therefore collect and keep the information required under Article 5 of the EUDR, but it is not required to submit a DDS for the soya-bean oil prior to reselling it according to Article 5(2).

Scenario 4d

EU-established wholesaler J (SME operator) imports cocoa beans [HS 1801] from a third country (non-EU) producer and sells them to EU-established manufacturer K (non-SME operator). Manufacturer K uses the cocoa beans to make chocolate bars [HS 1806], which it sells within the EU.

► Wholesaler J is an operator when importing the cocoa beans into the EU (*declare for customs procedure ‘release for free circulation’*), as cocoa beans are a relevant product covered by Annex I of the EUDR. This means that wholesaler J must exercise due diligence on the cocoa beans, submit a DDS

to the Information System and include the DDS reference number in the customs declaration for release for free circulation.

► Manufacturer K becomes an operator when selling the chocolate bars, because chocolate bars are also a relevant product listed in Annex I of the EUDR and these are being placed on the market (*made available for the first time*). For the purpose of exercising due diligence and submitting due diligence statements according to Article 4(2) and (9), retailer K can refer to existing DDS after determining that due diligence was exercised properly by wholesaler J according to Article 4(9), but retailer K still retains responsibility for compliance.

Scenario 5 – Using existing DDS as reference

EU-established company L (non-SME operator) purchases frozen cattle meat [HS ex0202] from EU-established farmer M (SME operator) who has produced the cattle within the EU. Farmer M purchased the feed of the cattle from retailer W (SME operator) who exercised due diligence. Company L then exports the frozen cattle meat [HS ex0202] to a third country. Meat has not been processed into or mixed with other relevant products.

► Farmer M is an operator when selling the frozen cattle meat to company L and must conduct due diligence and submit a DDS for the cattle meat to the Information System before selling. As part of their due diligence for the cattle meat, farmer M must include geolocation information referring to all the establishments where the cattle were raised (in accordance with Article 9(1)(d)). In accordance with recital 39, farmer M determines whether the cattle were fed with another relevant product, and if so, farmer M should use as evidence the relevant invoices, reference numbers of relevant due diligence statements or any other relevant documentation received from retailer W indicating that the feed was deforestation-free.

► Company L is an operator when exporting the meat from the EU (i.e., declare for the customs export procedure). Company L must therefore ascertain that due diligence relating to the cattle meat was exercised, and submit a separate DDS, which may refer to the previous DDS submitted by farmer M according to Article 4(9). If, instead of exporting the meat to a third country, company L decides to sell the meat within the EU then company L would be acting as a trader, but they would be subject to the **same** obligations as above, as non-SME traders are considered as non-SME operators according to Article 5(1).

Scenario 6 – Due diligence for natural persons/microenterprises

EU-established private forest owner N (SME operator) contracts timber company O (non-SME operator) to harvest some of its trees. The company O harvests the trees, but the logs [HS 4403] are still owned by the private forest owner N. When the logs are collected, the private forest owner N sells the harvested logs to timber company O. Timber company O then sends the logs to their own sawmill and places them on the market as sawn wood [HS 4407].

► Forest owner N is an operator and must conduct due diligence before placing the logs on the market. However, because forest owner N is a *natural person/microenterprise*, it has the option of mandating the next operator or trader further down the supply chain that is not a natural person/microenterprise to act as an authorised representative and submit the DDS on their behalf. In case forest owner N chooses to mandate company O to submit the DDS on their behalf, it communicates to company O all information necessary to confirm that it has already exercised due diligence and no/negligible risk was found according to Article 6(3). Forest owner N retains responsibility for compliance.

► Timber company O is an operator when places on the market sawn wood as a relevant wood product covered by Annex I of the EUDR, produced from logs that were harvested in the forest of forest owner

N. This means that timber company O must ascertain that due diligence relating to the logs was exercised and submit a separate DDS to the Information System before placing on the market the sawn wood produced from sawing the trees of forest owner N.

Scenario 7 – Mandating third-parties as authorised representatives

EU-established retailer P (SME operator) imports pneumatic rubber tyres [HS ex4011] from a third country (non-EU) and chooses to mandate EU-established company Q as their authorised representative to submit the DDS as a service provider for retailer P.

► Retailer P is an operator when importing into the EU (declare for the customs procedure ‘release for free circulation’) the rubber tyres, as rubber tyres are a relevant product covered by Annex I of the EUDR. This means that retailer P must exercise due diligence on the rubber tyres but, retailer P may mandate company Q as authorised representative to submit the DDS for the tyres on their behalf according to Article 6(1). Company Q does not act as a supply chain member, it is only a service provider that submits the DDS to the Information System on retailer P’s behalf and, upon request from the competent authorities, provide a copy of the mandate according to Article 6(2). Retailer P retains responsibility for the tyres’ compliance with Article 3 of the EUDR.

Scenario 8 – Product coverage

EU-established manufacturer R (SME operator) imports palm oil [HS 1511] from third country (non-EU) producers into the EU and processes it within their factory into soap [HS 3401] which it sells within the EU.

► Manufacturer R is an operator when importing into the EU (declare for the customs procedure ‘release for free circulation’) the palm oil, as palm oil is a relevant product covered by Annex I of the EUDR. This means that R must exercise due diligence, submit a DDS to the Information System and include the DDS reference number in the customs declaration for release for free circulation.

► However, when selling the soap, manufacturer R is not required to exercise due diligence or submit a DDS for the palm oil contained in the soap, as the soap itself is not a relevant product listed in Annex I of the EUDR.

Scenario 9 – Placing relevant products on the market by an SME operator

Scenario 9a

EU-established soya merchant S (non-SME trader) buys soya beans [HS 1201] that were already placed on the market by another company. EU-established non-SME merchant S sells soya beans to EU-established company T (SME operator). Company T creates soya bean flour [HS 1208 10] from the soya beans and sells them.

► Merchant S is a non-SME trader when selling (*making available*) the soya beans to company T, as soya beans are a relevant product covered by Annex I of the EUDR. This means that merchant S must ascertain that due diligence relating to the soya beans was exercised and submit a new DDS to the Information System before selling the soya beans to company T.

► Company T is an operator when placing the soya bean flour on the market by selling them, as it has processed the soya beans into a new product (the soya bean flour), which is a relevant product with a separate HS code under EUDR Annex I. Since this sale by company T is a placing on the market (*first making available*) of a new relevant product, company T is an operator. As an SME enterprise, company T is not required to perform due diligence before placing the soya bean flour on the market nor to submit a due diligence statement in the Information System because the soya bean flour is made from soya

beans that have already been subject to due diligence and for which a due diligence statement has already been submitted by merchant S according to Article 4(8), but company T still retains responsibility for compliance.

Scenario 9b

EU-established private forest owner U (SME operator) harvests some of its own trees. It then processes the logs and creates personalized wooden photo frames [HS4414] from the logs in his own business to sell the wooden photo frames directly to end-consumers.

► Forest owner U is an operator and must conduct due diligence before placing the harvested logs [HS 4403] on the market for processing them into wooden photo frames and submit a DDS to the Information System.

► Forest owner U is an operator when it places on the market the personalised wooden photo frames it creates, as personalised wooden photo frames are a relevant product covered by Annex I of the EUDR and it is their *first* making available on the market. Forest owner U is an SME operator, hence according to Article 4(8) neither does it have to exercise due diligence nor submit a new due diligence statement in the Information System for the wooden photo frames because they were made from the logs that were already subject to due diligence and DDS has been submitted for the logs in the Information System.

[If, in the above scenario 9b, forest owner U would harvest some of its trees to create personalized photo frames for its own use in its home, it would not be an operator and would consequentially not be subject to obligations under the EUDR. Same would apply if he would process other relevant products for own personal use from the trees, such as poles for his fence or furniture for his house.]

Scenario 10 – Relevant products offered for sales online or by other means of distance sales

EU established person V (SME trader) buys wooden photo frames [HS 4414] for subsequent sale through their online craft shop in the course of a commercial activity. The wooden photo frames were already subject to due diligence by operator Z.

► Person V is a trader when making available on the market the wooden photo frames, or an operator in case exporting the wooden frames to a third country, as wooden frames are a relevant product under EUDR Annex I. EUDR contains *no* provision whereby the mere offering for sales online or by other means of distance sales is deemed to be making available on the market or an export. Person V must comply with EUDR prior to entering into contractual purchase agreement with the buyer of the wooden photo frames.

2. ANNEX II

EXAMPLES OF INFORMATION AND DUE DILIGENCE REQUIREMENTS FOR COMPOSITE PRODUCTS COVERED BY ANNEX I OF THE EUDR

Example 1: Information and due diligence requirements have been met for the relevant product and all parts that contain or are made from other relevant products.

Product type	Volume	Has due diligence been conducted for the relevant product?

CKD office furniture (HS 9403)	1,500 units				Yes, the operator has carried out due diligence in accordance with Article 8 EUDR, including the information requirements contained in Article 9 (see below) and submitted a due diligence statement.
Part of relevant product (component)	Information on relevant parts of the product (per Article 9)				Is the part of the relevant product covered by a due diligence statement (DDS)?
	Description ²	Species	Country of production	Geolocations of commodity	
Core	particle board (HS 4410)	Sitka spruce (<i>Picea sitchensis</i>)	EU Member State	Multiple plantations. All geolocations known.	Yes: the operator referenced the existing DDS, after ascertaining that DD had been properly exercised.
Face and back	0.5 mm veneer (HS 4408)	European beech (<i>Fagus sylvatica</i>)	EU Member State	Private forest owners. All geolocations known.	Yes: the operator referenced the existing DDS, after ascertaining that DD had been properly exercised.

Example 2: Information and due diligence requirements have been met for the relevant product and all parts that contain or are made from other relevant products

Product type	Volume	Has due diligence been conducted for the relevant product?
Chocolate-based confectionary (HS 1806)	2000 kg	Yes, the operator has carried out due diligence in accordance with Article 8 EUDR, including the information requirements contained in Article 9 (see below) and submitted a due diligence statement.

Part of relevant product (component)	Information on relevant parts of the product (per Article 9)			Is the part of the relevant product covered by a due diligence statement (DDS)?
	Description	Country of production	Geolocations of commodity	
Ingredient	Cocoa butter (HS 1804)	Several third countries	Multiple farms /smallholdings. All geolocations known.	Yes. There was no existing DDS, so the operator conducted the DD for this part of the relevant product.
Ingredient	Cocoa paste (HS 1803)	Several third countries	Multiple farms /smallholdings. All geolocations known	Yes: the operator referenced the existing DDS, after ascertaining that DD had been properly exercised.

Example 3: Information and due diligence requirements have not been met for the relevant product and all parts that contain or are made from other relevant products. The relevant product cannot be placed on the market as the geolocations of commodities relating to one relevant product within the composite product are unknown.

Product type	Volume	Has due diligence been conducted for the relevant product?
Plywood (HS 4412)	8,500 m ³	Yes, the DD has been carried out but because the DD process revealed that required geolocation information is not available, the relevant product cannot be placed on the market.
Part of relevant product (component)	Information on relevant parts of the product (per Article 9)	The part of the relevant product is covered by a due diligence statement (DDS)?

	Descripti on	Species	Country of producti on	Geolocatio ns of commodit y	
Face and back	Veneer sheets (HS 4408)	Bintangor (<i>Calophyllum</i> spp.)	Third country	Multiple concessions. All geolocations known.	Yes: the operator referenced the existing DDS, after ascertaining that DD had been properly exercised.
Core	Veneer sheets (HS 4408)	Poplar (<i>Populus</i> sp.)	Third country	Farm woodlots. Geolocations unspecified / unknown.	No: it is not possible to fulfil the DD obligations without knowing the geolocations.

Example 4: Information and due diligence requirements have not been met for the relevant product and all parts that contain or are made from other relevant products. The relevant product cannot be placed on the market as the geolocations of commodities relating to one relevant product within the composite product are unknown and species information was unavailable for another relevant product.

Product type	Volume				Has due diligence been conducted for the relevant product?
Writing paper (90 g/m ²) (HS 4802)	1,200 tonnes				Yes, the due diligence has been carried out but information required as part of that process is not available so the relevant product cannot be placed on the market.
Part of relevant product (component)	Information on relevant parts of the product (per Article 9)				The part of the relevant product is covered by a due diligence statement (DDS)?
	Descripti on	Species	Countr y of produc tion	Geolocation s of commodity	

Pulp	Short-fibre pulp (HS 47)	<i>Acacia mangium</i>	Third country	Forest plantation. Geolocation known.	Yes: the operator referenced the existing DDS, after ascertaining that DD had been properly exercised.
Pulp	Short-fibre pulp (HS 47)	Mixed tropical hardwoods of unknown species	Third country	Forest plantations. All geolocations known.	No: it is not possible to fulfil the DD obligations without identifying all species within wood products.
Pulp	Long-fibre pulp (HS 47)	<i>Pinus radiata</i>	Third country	Forest plantations. Geolocations, unspecified/unknown.	No: it is not possible to fulfil the DD obligations without knowing the geolocations.

Example 5: Information and due diligence requirements have not been met for the relevant product and all parts that contain or are made from other relevant products. The relevant product cannot be placed on the market as due diligence conducted for one relevant product within the composite product revealed that it was not deforestation-free.

Product type	Volume			Has due diligence been conducted for the relevant product?
Chocolate-based confectionary (HS 1806)	900 kg			Yes, the due diligence has been carried out but it is not possible to confirm that the products are deforestation free so the relevant product cannot be placed on the market.
Part of relevant product (component)	Information on relevant parts of the product (per Article 9)			Is the part of the relevant product covered by a due diligence statement (DDS)?
	Description	Country of production	Geolocations of commodity	
	Cocoa butter (HS 1804)	Several third countries	Multiple farms /smallholdings. All geolocations known	Yes: the operator referenced the existing DDS, after ascertaining that DD had been properly exercised.

	Cocoa paste (HS 1803)	Several third countries	Multiple farms/ smallholdings. All geolocations known	Yes: the operator referenced the existing DDS, after ascertaining that DD had been properly exercised.
	Cocoa powder (HS 1805)	Several third countries	Multiple farms. All geolocations known.	No. DD conducted but some locations had been subject to deforestation after the cut-off date, hence the component does not comply with Article 3 and is prohibited.

