



Council of the
European Union

Brussels, 21 December 2022
(OR. en)

16298/22

**Interinstitutional File:
2021/0366(COD)**

**ENV 1340
CLIMA 693
FORETS 142
AGRI 734
RELEX 1763
CODEC 2098**

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	16054/1/22 REV 1
No. Cion doc.:	14151/21 + ADD 1-7 - COM(2021) 706 final
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 - Letter to the Chair of the European Parliament Committee on the Environment, Public Health and Food Safety (ENVI)

Following the Permanent Representatives Committee meeting of 21 December 2022 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annex, to the Chair of the European Parliament Committee on the Environment, Public Health and Food Safety (ENVI).



Council of
the European Union

SGS 22 / 06010

Brussels, 21 December 2022

Mr Pascal CANFIN

Chair, European Parliament Committee on the Environment, Public Health and Food Safety
European Parliament
60, rue Wiertz
1047 BRUSSELS

Subject: *Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (2021/0366 (COD))*

Dear Mr Canfin,

Following the informal meeting between the representatives of the three institutions held on 5 December 2022, a draft overall compromise text was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise text contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely,

Jaroslav Zajíček
Chairman of the Permanent Representatives
Committee (Part 1)

copy to: Virginijus SINKEVIČIUS, Commissioner,
Christophe HANSEN, Rapporteur

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing

Regulation (EU) No 995/2010

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

Whereas:

- (1) Forests provide a broad variety of environmental, economic and social benefits, including timber and non-wood forest products and environmental services essential for humankind, as they harbour most of the Earth's terrestrial biodiversity. They maintain ecosystem functions, help protect the climate system, provide clean air and play a vital role for the purification of waters and soils as well as for water retention **and recharge. Large forest areas act as a moisture source and help prevent desertification of continental regions.** In addition, forests provide subsistence and income to about one third of the world's population and their destruction has serious consequences for the livelihoods of the most vulnerable people, including indigenous peoples and local communities who heavily depend on forest ecosystems.³ Furthermore, deforestation and forest degradation reduce essential carbon sinks. **Deforestation and forest degradation also increase contacts between wild animals, farmed animals and humans, thereby increasing** the likelihood of new diseases spreading **and the risks of new epidemics and pandemics.**

³ Commission Communication of 27 July 2019 'Stepping up EU Action to Protect and Restore the World's Forests', COM(2019) 352 final.

- (2) Deforestation and forest degradation are taking place at an alarming rate. The Food and Agriculture Organization of the United Nations estimates that 420 million hectares of forest – about 10% of the world’s remaining forests and an area larger than the European Union – have been lost worldwide between 1990 and 2020⁴. Deforestation and forest degradation are, in turn, important drivers of global warming and biodiversity loss — the two most important environmental challenges of our time. Yet every year the world continues to lose 10 million hectares of forest. ***Forests are also heavily impacted by climate change, and many challenges will need to be addressed to ensure the adaptability and resilience of forests in the coming decades.***
- (3) Deforestation and forest degradation contribute to the global climate crisis in multiple ways. Most importantly, they increase greenhouse gas emissions through associated forest fires, permanently removing carbon sink capacities, decreasing climate change resilience of the affected area and substantially reducing its biodiversity ***and resilience to diseases and pests***. Deforestation alone accounts for 11 % of greenhouse gas emissions.⁵

⁴ FAO, Global Forest Resource Assessment 2020, p. XII, <https://www.fao.org/documents/card/en/c/ca9825en>.

⁵ IPCC, Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems, <https://www.ipcc.ch/srccl/>.

- (4) Climate breakdown induces the loss of biodiversity globally and biodiversity loss aggravates climate change, they are inextricably linked, as recent studies have confirmed. Biodiversity *and healthy ecosystems are fundamental to climate resilient development*⁶. Insects, birds and mammals act as pollinators, seed dispersers and can help store carbon more efficiently, directly or indirectly. Forests also ensure a continuous replenishment of water resources and prevention of droughts and their deleterious effects to local communities, including indigenous peoples. Drastically reducing deforestation and forest degradation and systemically restoring forests and other ecosystems ■ the single largest nature-based opportunity for climate mitigation.
- (5) Biodiversity is essential for the resilience of ecosystems and their services both on local and global level. Over half of the global gross domestic product depends on nature and the services it provides. Three major economic sectors – construction, agriculture, food and drink – all highly depend on nature. Biodiversity loss threatens sustainable water cycles and our food systems, putting our food security and nutrition at risk. More than 75% of global food crop types rely on animal pollination. Further, several industrial sectors rely on genetic diversity and ecosystem services as critical inputs for production, notably for medicines, *including antimicrobials*.

⁶ *IPCC Report-Summary for policy makers, February 2022*
https://report.ipcc.ch/ar6wg2/pdf/IPCC_AR6_WGII_SummaryForPolicymakers.pdf

- (6) Climate change, biodiversity loss and deforestation are concerns of the highest global importance, affecting the survival of humanity and sustained living conditions on Earth. The acceleration of climate change, biodiversity loss and environmental degradation, paired with tangible examples of their devastating effects on nature, human living conditions and local economies, have led to the recognition of the green transition as the defining objective of our time and a matter of **gender equality and of** intergenerational equity.
- (6a) *Environmental human rights defenders, who strive to protect and promote human rights relating to the environment, including access to clean water, air, and land are most likely to be a target of persecution and lethal attacks. These attacks disproportionately affect indigenous peoples. According to 2020 reports, more than two thirds of victims were working to defend the world's forests from deforestation and industrial development.*
- (7) Union consumption is a considerable driver of deforestation and forest degradation on a global scale. The initiative's Impact Assessment estimated that without an appropriate regulatory intervention EU's consumption and production of the six commodities ■ (wood, cattle, soy, palm oil, cocoa and coffee) **alone** will rise to approximately 248,000 hectares of deforestation annually by 2030.

- (8) As regards the situation of forests within the EU ■ the State of Europe's Forests 2020 report⁷ states that, between 1990 and 2020, the area of forests in Europe has increased by 9%, carbon stored in the biomass has grown by 50% and wood supply has risen by 40%. *Primary and naturally regenerating forests are at risk by, amongst others, intensive management, and their unique biodiversity and structural features are in danger. Furthermore, the European Environment Agency⁸ has noted that less than 5% of European forest areas are now considered undisturbed, or natural, whereas 10% of Europe's forests has been classified as intensively managed. Forest ecosystems have to cope with multiple pressures caused by climate change, ranging from extreme weather patterns to pests, and human-related activities that negatively affect ecosystems and habitats. In particular, intensively managed even-aged forests may have a severe impact on whole habitats through clear-cutting and deadwood removal.*

⁷ Forest Europe - Ministerial Conference on the Protection of Forests in Europe, State of Europe's Forests 2020, <https://foresteurope.org/state-europes-forests-2020/>.

⁸ *European Environment Agency, State of the Environment 2020, <https://www.eea.europa.eu/soer/publications/soer-2020>; European Environment Agency, European forest ecosystems – state and trends, <https://www.eea.europa.eu/publications/european-forest-ecosystems/file>*

- (9) In 2019, the Commission adopted several initiatives to address the global environmental crises, including specific actions on deforestation. In its Communication ‘Stepping up EU Action to Protect and Restore the World’s Forests’⁹, the Commission identified as a priority the reduction of the Union consumption footprint on land and encourage the consumption of products from deforestation-free supply chains in the Union. In its Communication of 11 December 2019 entitled ‘The European Green Deal’¹⁰, the Commission set out a new growth strategy that aims to transform the Union into a fair and prosperous society, with a modern, resource-efficient and competitive economy ***built on sustainable and rule-based free trade***, where there are no net emissions of greenhouse gases in 2050, where economic growth is decoupled from resource use and no person or place are left behind. It aims to protect, conserve and enhance the Union's natural capital, and protect the health and well-being of citizens and future generations from environment-related risks and impacts. Furthermore, the European Green Deal aims to provide citizens and future generations with, among others, fresh air, clean water, healthy soil and biodiversity.

⁹ ***COM(2019) 352 final.***

¹⁰ ***Communication from the Commission to the European Parliament, The European Council, The Council, The European Economic and Social Committee and the Committee of the Regions, The European Green Deal, COM(2019) 640 final.***

To that end, the EU Biodiversity Strategy for 2030 ¹¹, the *Farm to Fork* Strategy¹², the *EU Forest Strategy*¹³, the EU Zero pollution action plan¹⁴ and other relevant strategies¹⁵ developed under the European Green Deal, further highlight the importance of action on forest protection and resilience. In particular, the EU Biodiversity Strategy aims to protect nature and reverse the degradation of ecosystems. Finally, the EU Bioeconomy Strategy¹⁶ enhances the protection of the environment and ecosystems while addressing the growing demand for food, feed, energy, materials and products by seeking new ways to produce and consume.

¹¹ Communication from the Commission to the European Parliament, *The European Council, The Council, The European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030 Bringing nature back into our lives*, COM(2020)380 final.

¹² Communication from the Commission to the European Parliament, the Council, *the European Council*, The European Economic and Social Committee and the Committee of the Regions, *A Farm to Fork Strategy – for a fair, healthy and environmentally-friendly food system*, COM(2020)381 final.

¹³ *Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, A new EU Forest Strategy: for forests and the forest-based sector, COM(2013) 659 final.*

¹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Pathway to a Healthy Planet for All EU Action Plan: ‘Towards Zero Pollution for Air, Water and Soil’*, COM(2021)400 final.

¹⁵ e.g. Communication from the Commission to the European Parliament, the Council, the European Council, The European Economic and Social Committee and the Committee of the Regions, *A long-term Vision for the EU's Rural Areas - Towards stronger, connected, resilient and prosperous rural areas by 2040*, COM (2021) 345 final.

¹⁶ Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, *A sustainable bioeconomy for Europe, Strengthening the connection between economy, society and the environment: updated bioeconomy strategy*, Updated Bioeconomy Strategy, COM(2018) 273 final.

- (10) Member States have repeatedly expressed their concern about persistent deforestation. They emphasised that since current policies and action at global level on conservation, restoration and sustainable management of forests do not suffice to halt deforestation, forest degradation **and biodiversity loss**, enhanced Union action is needed in order to contribute more effectively to the achievement of the Sustainable Development Goals (SDGs), under the 2030 Agenda for Sustainable Development, which was adopted by all United Nations Member States in 2015. The Council specifically supported the Commission announcement in the Communication ‘Stepping up EU Action to Protect and Restore the World’s Forests’ that it would assess additional regulatory and non-regulatory measures and that it would present respective proposals¹⁷. ***The Union and Member States have also endorsed the UN Decade of Action for the SDGs, the UN Decade on Ecosystem Restoration and the UN Decade of Family Farming.***

¹⁷ Council conclusions on the Communication on Stepping Up EU Action to Protect and Restore the World’s Forests (16 December 2019) 15151/19. Available at <https://www.consilium.europa.eu/media/41860/st15151-en19.pdf>.

- (11) The European Parliament highlighted that ongoing destruction *and degradation and conversion* of the world’s forests *and natural ecosystems, as well as human rights violations, are* linked, to a large extent, to the expansion of agricultural production — in particular by converting forests to agricultural land dedicated to producing a number of high-demand products and commodities. The Parliament adopted on 22 October 2020 a resolution¹⁸ in accordance with Article 225 of the Treaty on the Functioning of the European Union (TFEU) requesting the Commission to submit, on the basis of Article 192(1) TFEU, a proposal for an “EU legal framework to halt and reverse EU-driven global deforestation” *based on mandatory due diligence*.
- (12) Combatting deforestation and forest degradation constitutes an important part of the package of measures needed to reduce greenhouse gas emissions and to comply with the Union's commitment under the European Green Deal as well as with the 2015 Paris Agreement on Climate Change¹⁹, and *the Eighth Environment Action Programme adopted by Decision (EU) 2022/591 of the European Parliament and of the Council*²⁰, *and* with the legally binding commitment under the EU Climate Law to reach climate neutrality by 2050 *at the latest* and reduce greenhouse gas emissions by at least 55 % below 1990 levels by 2030.

¹⁸ European Parliament resolution of 22 October 2020 with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation (2020/2006(INL)) Available at https://www.europarl.europa.eu/doceo/document/TA-9-2020-0285_EN.html.

¹⁹ Ratified by the EU on 5 October 2016, and entered into force on 4 November 2016.

²⁰ *Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030 (OJ L 114, 12.4.2022, p. 22)*.

- (12a) *Combating deforestation and forest degradation constitutes also an important part of the package of measures needed to combat biodiversity loss and to comply with the Union’s commitments under the UN's Convention on Biological Diversity, the European Green Deal, the EU Biodiversity Strategy for 2030 and the accompanying EU nature restoration objectives.***
- (12b) *Primary forests are unique and irreplaceable. Plantation forests and planted forests have a different biodiversity composition and provide different ecosystems services compared to primary and naturally regenerating forests.***
- (13) Agricultural expansion drives almost 90% of global deforestation, with more than half of forest loss due to conversion of forest into cropland, whereas livestock grazing is responsible for almost 40 percent of forest loss²¹.**
- (13a) *Production of feed for livestock can contribute to deforestation and forest degradation. Promoting alternative, sustainable agricultural practices can address environmental and climate challenges, and prevent deforestation and forest degradation worldwide. Incentives to adopt more balanced, healthy and nutritious diets and a more sustainable lifestyle can decrease the pressure on land and resources.***

²¹ ***FAO new Global Remote Sensing Survey, 6 Nov. 2021 - FAO Remote Sensing Survey reveals tropical rainforests under pressure as agricultural expansion drives global deforestation.***

- (14) The Union imported and consumed one third of the globally traded agricultural products associated with deforestation between 1990 and 2008. Over that period, Union consumption was responsible for 10% of worldwide deforestation associated with the production of goods or services. Even if the relative share of EU consumption is decreasing, EU consumption is a disproportionately large driver of deforestation. The Union should therefore take action to minimise global deforestation and forest degradation driven by its consumption of certain commodities and products and thereby seek to reduce its contribution to greenhouse gas emissions and global biodiversity loss as well as promote sustainable production and consumption patterns in the Union and globally. To have the greatest impact, Union policy should aim at influencing the global market, not only supply chains to the Union. Partnerships and efficient international cooperation, ***including free trade agreements (FTAs)***, with producer and consumer countries are fundamental in that respect.

(14a) *The EU is committed to promote and implement ambitious environment and climate policies across the world, in accordance with the Charter of Fundamental Rights of the European Union, in particular its article 37 providing that a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development. As part of the external dimension of the European Green Deal, action under this Regulation will take into account the importance of existing global agreements, commitments and frameworks contributing to the reduction of deforestation and forest degradation such as the UN Strategic Plan for Forests 2017-2030 and its Global Forest Goals, the UN Framework Convention on Climate Change (UNFCCC) and its Paris Agreement, the Convention on Biological diversity (CBD) and its Post-2020 Global Biodiversity Framework, the global Strategic Plan for Biodiversity 2011-2020 and its Aichi Biodiversity Targets, and the UN Convention to Combat Desertification; as well as the multilateral framework in support of tackling the root causes of deforestation and forest degradation, such as the UN Sustainable Development Goals and the UN Declaration on the Rights of Indigenous Peoples.*

- (15) Halting deforestation and *restoring degraded forests* is an essential part of the SDGs. This Regulation should contribute in particular to meeting the goals regarding life on land (SDG 15), climate action (SDG 13), responsible consumption and production (SDG 12), zero hunger (SDG 2) and good health and well-being (SDG 3). The relevant target 15.2 to halt deforestation by 2020 has not been met, underlining the urgency of ambitious and effective action.
- (16) This Regulation should also respond to the New York Declaration on Forests²², a non-legally binding political declaration that endorses a global timeline to cut natural forest loss in half by 2020, and strive to end it by 2030. The Declaration was endorsed by dozens of governments, many of the world's biggest companies, and influential civil society and indigenous organisations. It also called on the private sector to meet the goal of eliminating deforestation from the production of agricultural commodities such as palm oil, soy, paper and beef products by no later than 2020, a goal that was not achieved. The Regulation should in addition contribute to the United Nations Strategic Plan for Forests, 2017-2030²³ whose Global Forest Goal 1 is to reverse the loss of forest cover worldwide through sustainable forest management, including protection, restoration, afforestation and reforestation, and increase efforts to prevent forest degradation and enhance the contribution of forests to climate change.

²² <https://unfccc.int/news/new-york-declaration-on-forests>

²³ https://www.un.org/esa/forests/wp-content/uploads/2016/12/UNSPF_AdvUnedited.pdf.

- (17) This Regulation should also respond to the 2021 Glasgow Leaders’ Declaration on Forests and Land Use²⁴ that recognises that “to meet our land use, climate, biodiversity and Sustainable Development Goals, both globally and nationally, will require transformative further action in the interconnected areas of sustainable production and consumption; infrastructure development; trade, finance and investment; and support for smallholders, *indigenous peoples*, and local communities”. The signatories *committed to working collectively to halt and reverse forest loss and land degradation by 2030 and* stressed that they will strengthen their shared efforts to facilitate trade and development policies, internationally and domestically, that promotes sustainable development and sustainable commodity production and consumption, that work to countries’ mutual benefit .

²⁴ <https://ukcop26.org/glasgow-leaders-declaration-on-forests-and-land-use/>.

(18) As a member of World Trade Organisation (WTO), the Union is committed to promoting a universal, rule-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the WTO, as well as an open, sustainable, and assertive trade policy. The scope of this Regulation will therefore include both commodities and products produced within the Union and commodities and products imported to the Union.

(18a) The challenges the world is facing in climate change and biodiversity loss can only be dealt with by global action. The Union should be a strong global actor, both leading by example and taking the lead in international cooperation to create an open and fair multilateral system where sustainable trade acts as a key enabler of the green transition to both fight climate change and reverse biodiversity loss.

- (19) This Regulation also follows the Commission’s *Communications on “The power of trade partnerships together for green and just economic growth”*²⁵ and on “An Open, Sustainable and Assertive Trade Policy”²⁶ which stated that with new internal and external challenges and more particularly a new, more sustainable growth model as defined by the European Green Deal and the European Digital Strategy, the EU needs a new trade policy strategy –one that will support achieving its domestic and external policy objectives and promote greater sustainability in line with its commitment of fully implementing the UN Sustainable Development Goals. Trade policy must play its full role in the recovery from the COVID-19 pandemic and in the green and digital transformations of the economy and towards building a more resilient Europe in the world.
- (19a) *In line with the Communication “The power of trade partnerships: together for green and just economic growth”, the Commission is stepping up engagement with trade partners to foster compliance with international labour and environmental standards. The communication foresees robust chapters on sustainable development, including clauses on deforestation and forest degradation. Ensuring enforcement of current and the conclusion of new trade agreements with such chapters will complement the aims of this Regulation.*

²⁵ *Communication from the Commission to the European Parliament, The European Council, The Council, The European Economic and Social Committee and the Committee of the Regions, The power of Trade Partnerships: Together for Green and Just Economic Growth, COM (2022)409 final/2.*

²⁶ Communication from the Commission to the European Parliament, the Council, the European, Economic and Social Committee and the Committee of the Regions, Trade Policy Review - An Open, Sustainable and Assertive Trade Policy, COM(2021) 66 final, 18 February 2021.

- (20) This Regulation should be complementary to other measures proposed in the Commission Communication ‘Stepping up EU Action to Protect and Restore the World’s Forests’²⁷, in particular: 1) working in partnership with producer countries, to support them in addressing root causes of deforestation, such as weak governance, ineffective law enforcement and corruption, and 2) strengthen international cooperation, with major consumer countries *by, amongst other actions, encourage trade in deforestation-free products, and* the adoption of similar measures to avoid products coming from supply chains associated with deforestation and forest degradation being placed on their markets.
- (20a) *This Regulation should take into account the principle of policy coherence for development and serve to promote and facilitate cooperation with developing countries, particularly with the least developed countries (LDCs), inter alia through the provision of technical and financial assistance, where possible and relevant.*

²⁷ *COM(2019) 352 final.*

(21) ***In coordination with Member States, the Commission should continue to work in partnership with producer countries, and more generally in cooperation with international organisations and bodies as well as relevant stakeholders active on the ground through multi-stakeholder dialogues. It should be reinforcing its support and incentives with regard to protecting forests and transition to deforestation-free production, acknowledging and strengthening the role and rights of indigenous peoples, local communities, smallholders and SMEs, improving governance and land tenure, increasing law enforcement and promoting sustainable forest management, with an emphasis on closer to nature forestry practices, based on science-based indicators and thresholds, ecotourism, climate-resilient agriculture, diversification, agro-ecology and agroforestry. In doing so it should fully recognise the role and rights of indigenous peoples and local communities in protecting forests, taking into account the principle of free, prior and informed consent. Building upon the experience and lessons learned in the context of the already existing initiatives, the Union and the Member States should work towards partnerships with producer countries, upon their request, and address global challenges while meeting local needs and paying attention to the challenges faced by smallholders in line with the Communication to Stepping up Action to Protect and Restore the World's Forests. The partnership approach should help producer countries and parts thereof in protecting, restoring and sustainably using forest, hence contributing to the objective of this Regulation to reduce deforestation and forest degradation, including through the use of digital technologies and geospatial information, and capacity building.***

(21a) Operators and traders should be bound by the obligations of this Regulation regardless of whether the making available on the market takes place via traditional or online means. This Regulation should therefore ensure that there is in every supply chain an operator within the meaning of this Regulation who is based in the Union and can be held liable for meeting the obligations under this Regulation. The Commission and the Member States should monitor the implementation of this Article and identify if digital and technological developments require further specifications or initiatives, as appropriate, in the future.

(22) Another important action announced in the Communication is the establishment of the EU Observatory on deforestation, forest degradation, changes in the world’s forest cover and associated drivers (“EU Observatory”) launched by the Commission in order to better monitor changes in the world’s forest cover and related drivers. **Building** on already existing monitoring tools, including Copernicus products **and other publicly or privately available sources**, the EU Observatory **should** facilitate access to information on supply chains for public entities, consumers and business, providing easy-to-understand data and information linking deforestation, forest degradation, and changes in the world’s forest cover to EU demand/trade for commodities and products. The EU Observatory **should** thus support the implementation of this Regulation by providing scientific evidence in regard to global deforestation and forest degradation and related trade. The EU Observatory **should provide for land cover maps, including with time series since the cut-off date defined in Article 2, point (8), and a range of classes allowing to examine landscape composition. The EU Observatory should participate in the development of an early warning system combining research and monitoring capacity. With regard to this Regulation, when technically feasible, the objective of the early warning system should be to be part of a platform that can assist the competent authorities, operators, traders and other relevant stakeholders and could provide continuous monitoring and early notifications on possible deforestation or forest degradation activity, and should be operational as soon as possible. The EU Observatory should cooperate with the competent authorities**, relevant international organisations, research institutes, **non-governmental organisations, operators, traders, third countries and other relevant stakeholders**.

- (23) The existing EU legislative framework focuses on tackling illegal logging and associated trade and does not address deforestation directly. It consists of Regulation (EU) No 995/2010 of the European Parliament and of the Council, laying down the obligations of operators who place timber and timber products on the market²⁸, and Council Regulation (EC) No 2173/2005, on the establishment of a Forest Law Enforcement, Governance and Trade licensing scheme for imports of timber into the European Community²⁹. Both Regulations were evaluated in a Fitness Check which determined that, while the legislation has had a positive impact on forest governance, the objectives of the two Regulations – namely to curb illegal logging and related trade, and to reduce the consumption of illegally harvested timber in the EU – have not been met³⁰ and it was concluded that focusing solely on legality of timber was not sufficient to meet the set objectives.
- (24) Available reports confirm that a sizable part of ongoing deforestation is legal according to the laws of the country of production. A recent report³¹ estimates that between 2013 and 2019, around 30% of deforestation destined to commercial agriculture in tropical countries was legal. Available data tend to focus on countries with weak governance — the global share of deforestation that is illegal might be lower, but already provide clear data **signaling** that leaving out deforestation that is legal in the country of production undermines the effectiveness of policy measures.

²⁸ *OJ L 295, 12.11.2010, p. 23.*

²⁹ *OJ L 347, 30.12.2005, p. 1.*

³⁰ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11630-Illegal-logging-evaluation-of-EU-rules-fitness-check_en

³¹ https://www.forest-trends.org/wp-content/uploads/2021/05/Illicit-Harvest-Complicit-Goods_rev.pdf.

- (25) The impact assessment of possible policy measures to address Union-driven deforestation and forest degradation, Council conclusions and the 2020 resolution of the European Parliament clearly identify the need to establish deforestation and forest degradation as the guiding criteria for future Union measures. ***Focusing only on legality could potentially entail a risk of lowered environmental standards with a view to obtaining market access.*** Therefore, the new Union legal framework should address both legality and whether the production of relevant commodities and products is deforestation-free.
- (26) The definition of “deforestation-free” should be sufficiently broad to cover ■ deforestation and forest degradation, it should provide legal clarity, and it should be measurable based on quantitative, objective and internationally recognised data.
- (26a) ***For the purpose of this Regulation, agricultural use should be defined as the use of land for the purpose of agriculture. The Commission should develop guidelines in order to clarify the interpretation of this definition, in relation in particular to situations of conversion of forest to land the purpose of which is not agricultural use.***

- (26b) *In line with FAO definitions, agroforestry systems, including when crops are grown under tree cover, as well as agrisilvicultural, silvopastoral and agrosilvopastoral systems, should not be considered forests, but as constituting agricultural use.*
- (27) The Regulation should cover those commodities whose Union consumption is the most relevant in terms of driving global deforestation and forest degradation and for which a Union policy intervention could bring highest benefits per unit value of trade. An extensive review of scientific literature, namely of primary sources estimating the impact of EU consumption on global deforestation and linking that *environmental* footprint to specific commodities, was carried out as a part of the study supporting the Impact Assessment and cross-checked via extensive consultation with stakeholders. That process delivered a first list of eight commodities. Wood was directly included in the scope as it was already covered by the EUTR. *According to* a recent research paper³² used for the efficiency analysis, *seven* commodities represent the largest share of EU-driven deforestation among the total of eight commodities analysed in that research paper: palm oil (34,00%), soy (32,8%), wood (8,6%), cocoa (7,5%), coffee (7,0%), beef (5,0%) *and rubber (3,4%).*

³² Pendrill F., Persson U. M., Kastner, T. 2020.

(27a) *To ensure that this proposal meets its objectives, it is important to ensure that feed used for livestock falling under the scope of this Regulation does not lead to deforestation. Therefore, operators placing on the Union market or exporting from the Union market relevant products that contain or have been made using cattle, which have been fed with relevant products that contain or have been made using other relevant commodities or products, should ensure, as part of their due diligence process, that the feed is deforestation-free. In that case, geolocation requirements of Article 9(1)(d) should be limited to referring to the geographical location of each of the establishments where the cattle were raised, and no geolocation information should be sought for the feed itself. If the competent authority obtains or is made aware of relevant information, including based on substantiated concerns submitted by third parties, that the feed might be at risk of not being in compliance with the requirements of this Regulation, the competent authorities should immediately request detailed information on such feed. When the feed has already been subject to due diligence in a previous step of the supply chain, operators should use as evidence the relevant invoices and/or reference numbers of relevant due diligence statements or other any other relevant documentation that the feed is deforestation-free and may be required to make it available to competent authorities upon request. The evidence should cover the lifetime of the animals, up to a maximum of five years.*

- (28) Bearing in mind that the use of recycled relevant commodities and products should be encouraged, and that including such commodities and products in the scope of this Regulation would place a disproportionate burden on operators, used commodities and products that have completed their lifecycle, and would otherwise be disposed of as waste, should be excluded from the scope of this Regulation.
- (29) *Obligations concerning relevant commodities and products should be laid down by this Regulation in order to effectively combat deforestation and forest degradation, and to promote deforestation-free supply chains, by taking into account the protection of human rights, and the rights of indigenous peoples and local communities, both in the Union and in third countries.*

- (29a) *When assessing the risk of non-compliance of relevant commodities and products intended to be placed on or exported from the Union market with the requirements of this Regulation, violations of human rights that are associated to deforestation or forest degradation, including rights of indigenous peoples, local communities and customary tenure rights holders, should be taken into account.*
- (30) Many international organisations and bodies (e.g. Food and Agriculture Organization of the United Nations, the Intergovernmental Panel on Climate Change, United Nations Environment Programme, the Paris Agreement, International Union for the Conservation of Nature, Convention on Biological Diversity) have developed work in the field of deforestation and forest degradation and the definitions in this Regulation build on this work.

(30a) It is essential that this Regulation also address the issue of forest degradation. The definition of forest degradation should be based on internationally agreed notions, and ensure that the associated obligations can easily be implemented by operators and competent authorities. Those obligations should be operationally measurable and verifiable, as well as clear and unambiguous to provide legal certainty. In this context, this Regulation should focus on key elements of forest degradation that are measurable and verifiable, and that are particularly relevant to avoid environmental impacts, based on the most up-to-date scientific data. For that purpose, the definition of forest degradation should build on internationally agreed concepts that are defined by the FAO. The definition of forest degradation should be reviewed, in accordance with Article 32, to assess the extension of the definition with a view to covering a broader scope of forest degradation drivers and of forest ecosystems worldwide to further support the environmental objectives of this Regulation, taking into account progress made in international discussions on the matter, as well as the diversity of forest ecosystems and practices around the world. This review should be conducted on the basis of an in-depth analysis, in close cooperation with the Member States, and in consultation with relevant stakeholders, international organisations and the scientific community.

- (31) *This Regulation should ensure a proper balance between the protection of the legitimate expectations of traders and operators commercializing relevant commodities and products in the Union, or exporting them from the Union, while minimizing sudden disruption to supply chains, and the fundamental right to protection of the environment as established in Article 37 of the Charter of Fundamental Rights. To this end, a cut-off date should be set to provide a basis for the evaluation of whether concerned land has been subject to deforestation or forest degradation, meaning that no commodities and products *within* the scope of this Regulation *may* be *placed on* the Union market, or **█** exported *from the Union market*, if they were produced on land subject to deforestation or forest degradation after that date.*

(31a) The cut-off date should correspond to existing international commitments set out in the Sustainable Development Goals of the United Nations General Assembly and the New York Declaration on Forests, which pursue the ambition of halting deforestation, restoring degraded forests and substantially increasing afforestation and reforestation globally by 2020, and thus be set on 31 December 2020. This date also corresponds to the period at which the Commission announced its intention to combat deforestation in the Commission Communication on Stepping up EU Action to Protect and Restore the World's Forests, the European Green Deal, the 2030 EU Biodiversity Strategy as well as the Farm to Fork Initiative. In line with the precautionary principle, the Commission proposal COM(2021) 706 final of 17 November 2021 made public that choice of date, which is anterior to the entry into force of the Regulation, in order to anticipate and prevent an acceleration of activities leading to deforestation and forest degradation between the announcement by the Commission proposal and the entry into force of this Regulation. This Regulation should acknowledge the environmental objective pursued and confirm the proposed cut-off date to ensure that the producers and operators which have continued deforestation and forest degradation during the period of negotiation of this Regulation are not allowed to place commodities and products produced on these lands on the Union market, or to export them from the Union market.

- (31b) *The limitations on the exercise of the fundamental rights and the protection of the legitimate expectations of operators and traders induced by the choice of the cut-off date should be proportionate and strictly necessary for pursuing the general interest objective of environmental protection. To contribute to this aim, this Regulation should not apply to commodities and products produced before its entry into force. The deferred application of articles governing obligations for operators and traders which intend to place commodities and products on the Union market, or to export them from the Union market, also provides them a reasonable period of time to adapt to the new requirements of this Regulation.*
- (32) To strengthen the Union’s contribution to halting deforestation and forest degradation, and to ensure that **relevant** products from supply chains related to deforestation and forest degradation are not placed on **or exported from** the Union market, relevant **■** products should not be placed or made available on the Union market, nor exported from the Union market unless they are deforestation-free and have been produced in accordance with the relevant legislation of the country of production. To confirm that this is the case, they should always be accompanied by a due diligence statement.

- (33) On the basis of a systemic approach, operators should take the appropriate steps in order to ascertain that the relevant **■** products that they intend to place on the Union market comply with the deforestation-free and legality requirements of this Regulation. To that end, operators should establish and implement due diligence procedures. The due diligence procedure required by this Regulation should include three elements: information requirements, risk assessment and risk mitigation measures, ***complemented by reporting obligations***. The due diligence procedures should be designed to provide access to information about the sources and suppliers of the commodities and products being placed on the Union market, including information demonstrating that the absence of deforestation and forest degradation and legality requirements are fulfilled, inter alia by identifying the country **■** of production ***or parts thereof***, including geo-location coordinates of relevant plots of land. These geo-location coordinates that rely on timing, positioning and/or Earth observation could make use of space data and services delivered under the Union's Space programme (EGNOS/Galileo and Copernicus). On the basis of this information, operators should carry out a risk assessment. Where a risk is identified, operators should mitigate such risk to achieve no or negligible risk. Only after completing the required steps of the due diligence procedure and concluding that no or negligible risk exists that the relevant **■** product is not compliant with this Regulation, should the operator be allowed to place the relevant **■** product on the Union market or to export it.

- (33a) *When sourcing products, reasonable efforts should be undertaken to ensure that a fair price is paid to producers, in particular smallholders, so as to enable a living income and effectively address poverty as a root cause of deforestation.*
- (34) Operators should formally assume responsibility for the compliance of the relevant products that they intend to place on the Union market or to export by making available due diligence statements. A template for such statements should be provided by this Regulation. This is expected to facilitate enforcement of this Regulation through competent authorities and courts as well as increase compliance by operators.
- (35) In order to recognise good practice, certification or other third party verified schemes could be used in the risk assessment procedure, however, they should not substitute the operator's responsibility as regards due diligence.

- (36) Traders should be responsible for collecting and keeping information ensuring the transparency of the supply chain of relevant **■** products which they make available on the market. Large traders that are not small and medium-sized enterprises (SMEs) have a significant influence on supply chains and play an important role in ensuring that **supply chains** are deforestation-free. **They** should therefore have the same obligations as operators, ***assume responsibility for the compliance of the relevant products with the requirements of this Regulation, and ensure, prior to making available on the market the relevant products, that they have exercised due diligence in a way that fulfils the relevant requirements, including that no or only negligible risk was found.***
- (37) In order to foster transparency and facilitate enforcement, operators which **do not fall under the categories of SMEs, microenterprises or natural persons** should, on an annual basis, publicly report on their due diligence system, including on the steps taken to implement their obligations.
- (37a) ***Operators should be able to receive substantiated concerns from interested parties, for example by electronic means, and should thoroughly investigate all substantiated concerns received.***

(38) Other EU legislative instruments that set out due diligence requirements in the value chain with regard to adverse human rights or environmental impacts should apply in so far as there are no specific provisions with the same objective, nature and effect in this Regulation which may be adapted in the light of future legislative amendments. The existence of this Regulation should not exclude the application of other EU legislative instruments that lay down requirements regarding value chain due diligence. Where such other EU legislative instruments provide for more specific provisions or add requirements to the provisions laid down in this Regulation, such provisions should be applied in conjunction with those of this Regulation. Furthermore, where this Regulation contains more specific provisions, they should not be interpreted in a way that undermines the effective application of other EU legislative instruments on due diligence or the achievement of their general aim. *The Commission may issue clear and easy to understand guidelines for the compliance of operators and traders, in particular SMEs, with the requirements of this Regulation.*

(38a) Respecting the rights of indigenous peoples with regard to forests and the principle of Free, Prior and Informed Consent (FPIC), including as set out in the United Nations Declaration on the rights of indigenous peoples, contributes towards protecting biodiversity, mitigating climate change and addressing the associated public morals concerns. Indigenous peoples possess traditional knowledge of ecological and medical value, and very often offer a model of sustainable use of forest resources. This may contribute to in-situ conservation, in line with the desiderates of the Convention on Biological Diversity. Furthermore, studies suggest that forest-dwelling indigenous peoples play a dual role in combating climate change: first, they normally resist the occupation and deforestation of the lands they have inhabited for generations, and second, some indigenous communities consider their responsibility to protect the forests in order to mitigate climate change.

- (38b) *The principles set out in the 1992 Rio Declaration on Environment and Development of the United Nations are important in the context of securing sustainable forest management and, in particular, Principle 10 concerning the importance of public awareness and participation in environmental issues and Principle 22 concerning the vital role of indigenous people in environmental management and development.*
- (38c) *The concept of free, prior and informed consent (FPIC) of indigenous people has been developed over years since the approval of the ILO Convention 169 and later in the United Nations Declaration on the Protection of the Rights of Indigenous Peoples, and aims to be a safeguard to ensure that potential impacts on indigenous peoples will be considered in the decision-making process of projects affecting them.*
- (39) Operators falling within the scope of other EU legislative instruments that set out due diligence requirements in the value chain with regard to adverse human rights or environmental impacts should be in a position to fulfil the reporting obligations under this Regulation by including the required information when reporting under the other EU legislative instrument.

- (40) Responsibility for enforcing this Regulation should lie with the Member States, and their competent authorities should be required to ensure that this Regulation is fully complied with. A uniform enforcement of this Regulation as regards relevant **■** products entering or leaving the Union market can only be achieved through systematic exchange of information and cooperation amongst competent authorities, customs authorities and the Commission.
- (41) The effective and efficient implementation and enforcement of this Regulation are essential to achieving its goals. To this end, the Commission should set up and manage an information system to support the operators and the competent authorities in presenting and accessing the necessary information on relevant **■** products placed on the market. The operators should submit the due diligence statements to the information system. The information system should be accessible to competent authorities and customs authorities to facilitate fulfilling their obligations under this Regulation ***and should facilitate transfers of information among Member States, competent authorities and customs authorities.*** ***The non-commercially sensitive data*** should also be accessible for a wider public, with the ***data being*** anonymised, ***apart from information concerning the list of final judgments for infringements to this Regulation against legal persons and the penalties imposed on them, and*** provided in an open and machine-readable format in line with the Union's Open Data Policy.

(42) For the relevant **products** entering or leaving the Union market, competent authorities are tasked with the verification of the compliance of relevant **■** products with the obligations under this Regulation ***based on, inter alia, the due diligence statements submitted by the operators***, whereas the role of customs is to ensure that the reference of a due diligence statement is made available in the customs declaration where applicable and, in addition as from the moment the electronic interface will be in place to exchange information between customs authorities and competent authorities, to check the status of the due diligence statement after an initial risk analysis carried out by competent authorities in the Information System and act accordingly (i.e. suspend or refuse a commodity or product if requested to do so through the status in the Information System). This specific organisation of controls discards the application of Chapter VII of Regulation (EU) 2019/1020 in so far as the application and enforcement of this Regulation is concerned.

- (43) Member States should ensure that adequate financial resources are always available for the appropriate staffing and equipping of the competent authorities. Efficient checks are demanding in terms of resources, and stable resources should be provided at a level appropriate to the enforcement needs at any given moment. Member States should have the possibility to supplement public financing by reclaiming from the relevant economic operators the costs incurred when performing checks in relation to relevant commodities and products that were found to be non-compliant.
- (44) This Regulation is without prejudice to other Union legislation on goods and products entering or leaving the Union market, in particular the provisions of the Union Customs Code as regards the powers of customs authorities and customs controls. Importers should be reminded that Articles 220, 254, 256, 257 and 258 of Regulation (EU) No 952/2013 of the European Parliament and of the Council provide that products entering the Union market that require further processing shall be placed under the appropriate customs procedure allowing such processing. Generally, the release for free circulation or export should not be deemed to be proof of conformity with Union law, since such a release does not necessarily include a complete control of compliance.

- (45) In order to optimise and unburden the control process of relevant **■** products entering or leaving the Union market, it is necessary to set up *interoperable* electronic interfaces that allow the automatic data transfer between customs systems and the Information System of competent authorities. The EU Single Window environment for customs is the natural candidate to support such data transfers. The interfaces should be highly automated and easy-to-use, and *facilitate processes* for customs authorities *and operators*. Moreover, in view of the limited differences between the data to be declared respectively in the customs declaration and the due diligence statement, it is appropriate to propose also a ‘business-to-government’ approach whereby traders and economic operators make available the due diligence statement of a relevant **■** product via national single window environment for customs and this statement is transmitted automatically to the Information System used by competent authorities. Customs authorities and competent authorities should contribute to determine the data to be transmitted and any other technical requirement.

- (46) The risk of non-compliant **■** products being placed on the Union market varies depending on the commodity and product as well as on its country of origin and production *or parts thereof*. Operators sourcing commodities and products from countries or parts thereof that present a low risk of growing, harvesting or producing relevant commodities in violation of this Regulation should be subject to fewer obligations, thereby reducing compliance costs and administrative burden, ***unless the operator knows or has reason to believe that there are risks of non-compliance with this Regulation. Where a competent authority becomes aware of a risk that the requirements of this Regulation are being circumvented, for example where a relevant commodity or product produced in a high-risk country is subsequently processed in, or exported to, the Union from a low-risk country, and the customs declaration or due diligence statement indicate that the commodity or product was produced in a low-risk country, it should verify via further checks whether there is any non-compliance and, if necessary, take appropriate action, such as seizure and suspension of placing on the market of the relevant commodity or product, as well as carry out further checks.*** Commodities and products from high-risk countries or parts thereof should be subject to enhanced scrutiny by the competent authorities.

- (47) For this reason, the Commission should assess the deforestation and forest degradation risk at a level of a country or parts thereof based on a range of criteria that reflect both quantitative, objective and internationally recognised data, and indications that the countries are actively engaged in fighting deforestation and forest degradation. This benchmarking information should make it easier for operators in the Union to exercise due diligence and for competent authorities to monitor and enforce compliance, while also providing an incentive for producer countries to increase the sustainability of their agricultural production systems and reduce their deforestation impact. This should help making supply chains more transparent and sustainable. This benchmarking system should be based on a three-tier classification of countries to be regarded as low, standard or high risk. In order to ensure appropriate transparency and clarity, the Commission should in particular make publicly available the data being used for benchmarking, the reasons for the proposed change of classification and the reply of the country concerned. For relevant **■** products from low risk countries or parts of countries identified as low-risk, operators should be allowed to apply a simplified due diligence, whilst competent authorities should be required to apply enhanced scrutiny on relevant **■** products from high risk countries or parts of countries identified as high-risk. The Commission should be empowered to adopt implementing measures to establish the countries or parts thereof that present a low or high risk of producing relevant **■** products that are not compliant with this Regulation.
- (47a) *The Commission should cooperate with countries which are identified or could be identified as high risk, and with relevant stakeholders in these countries, in order to work towards reducing the level of risk.*

- (48) Competent authorities should carry out checks at regular intervals on operators and traders to verify that they effectively fulfil the obligations laid down in this Regulation. Moreover, competent authorities should carry out checks when in possession of and based on relevant information, including substantiated concerns submitted by third parties. ***The identification of checks to be carried out should be based on a risk-based approach.*** For a comprehensive coverage of the relevant █ products ***from high risk countries or parts thereof***, the respective operators and traders and the volumes of their share of commodities and products, a twofold approach should apply. Competent authorities should thus be required to check on a certain percentage of operators and traders, whilst also covering a specific percentage of relevant █ products. ***Moreover, for relevant products from countries or parts thereof identified as low or standard risk, competent authorities should be required to check at least a certain percentage of operators and traders. The level of checks*** should be higher for relevant █ products from high-risk countries or parts thereof ***whereas it can be lower for standard or low-risk countries or parts thereof. The review of the Regulation should evaluate and identify quantified objectives for the annual checks to be carried out by competent authorities that are appropriate to ensure the enforcement of the Regulation and a harmonised approach across the Union.***

(49) The checks of operators and traders by competent authorities should cover the due diligence systems and the compliance of the relevant █ products with the provisions of this Regulation. The checks should be based on a risk-based plan of checks. The plan should contain risk criteria that enable competent authorities to carry out a risk analysis of the due diligence statements submitted by operators and traders. The risk criteria should take into account the risk of deforestation associated to relevant commodities █ in the country of production, the history of *non-compliance* of operators and traders with the obligations of this Regulation and any other relevant information available to competent authorities. The risk analysis of due diligence statements should allow competent authorities the identification of operators, traders and relevant █ products to be checked, and should be carried out using electronic data processing techniques in the information system which collects the due diligence statements. *Where necessary and technically possible, competent authorities, after consultations and in close cooperation with authorities in third countries, should also be able to conduct controls in situ.*

- (50) In case the risk analysis of the due diligence statements reveals a high risk of non-compliance of specific relevant █ products, the competent authorities should be able to take immediate interim measures to prevent their placing or making available on the Union market *or their export from the Union*. In case such relevant █ products were entering or leaving the Union market, the competent authorities should request from customs authorities the suspension of the release for free circulation or the export to enable competent authorities to carry out the necessary checks. Such request should be communicated by means of the interface system between customs and competent authorities. Suspension of the placing or making available on the Union market, of the release for free circulation or of export should be limited to three working days, *or 72 hours in case of perishable products*, except where the competent authorities require additional time to assess the compliance of the relevant commodities and products with this Regulation. In that case, the competent authorities should take additional interim measures to extend the suspension period or request such extension to customs authorities in case of relevant █ products entering or leaving the Union market.
- (51) The plan for checks should be regularly updated on the basis of the results of its implementation. Those operators showing a consistent track record of compliance *might* be subject to a reduced frequency of checks.

(52) In order to ensure implementation and effective enforcement of this Regulation, Member States should have the power to withdraw and recall non-compliant relevant **■** products and take appropriate corrective actions. They should also ensure that infringements of this Regulation by operators and traders are sanctioned by effective, proportionate and dissuasive penalties.

(52a) In order to increase the accountability of operators and traders, the Commission should publish on its website the list of final judgments for infringements to this Regulation against legal persons and the penalties imposed on them. This could help competent authorities, other operators and traders in their risk assessments and increase the awareness of consumers and civil society as regards non-compliant operators and traders.

- (52aa) *The implementation of this Regulation will require sufficient resources and capacity. In this context, beyond national resources, Member States should use as much as possible opportunities and possibilities for support available at the Union level and through other means, including cohesion funds and capacity-building instruments notably in the context of the Technical Support Instrument.*
- (53) Taking into account the international character of deforestation and forest degradation and related trade, competent authorities should cooperate with each other, with customs authorities of the Member States, with the Commission, as well as with the administrative authorities of third countries. Competent authorities should also cooperate with the competent authorities for the supervision and enforcement of other EU legislative instruments that set out due diligence requirements in the value chain with regard to adverse human rights or environmental impacts.

- (53a) *According to settled case law of the Court of Justice, it is for the courts of the Member States to ensure judicial protection of a person’s rights under Union law. Furthermore, Article 19(1) TEU requires Member States to provide remedies sufficient to ensure effective judicial protection in the fields covered by Union law. In this respect, Member States should ensure that the public, including natural or legal persons submitting substantiated concerns in accordance with Article 29, is ensured access to justice in line with the obligations Member States have undertaken as parties to the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998 (the ‘Aarhus convention’).*
- (54) While this Regulation addresses deforestation and forest degradation, as envisaged in the 2019 Communication ‘Stepping up EU Action to Protect and Restore the World’s Forests, protecting forests should not lead to the conversion or degradation of other natural ecosystems. Ecosystems such as wetlands, savannahs and peatlands are highly significant to global efforts to combat climate change, as well as other sustainable development goals and their conversion or degradation require particular urgent attention. To address this, the Commission should assess the need and feasibility of extending the scope to other ecosystems and to further commodities two years after the entry into force. At the same time, the Commission should also undertake a review of the relevant *CN codes of* products as listed in Annex I of this Regulation by way of a delegated act.

(55) In order to ensure that ■ this Regulation *remains* relevant and in line with *trade*, scientific and technological developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of ■ the list of *CN codes related to* goods set out in Annex I of this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (56) Regulation (EU) No 995/2010 prohibits the placing of illegally harvested timber and timber products on the Union market. It lays down obligations for operators placing timber on the market for the first time to exercise due diligence and for traders to keep a traceable record of their suppliers and customers. This Regulation should retain the obligation to ensure the legality of relevant **■** products, including wood and wood products, placed on the Union market and complements them with the requirement on sustainability. This Regulation and the related Commission Implementing Regulation (EU) No 607/2012 are therefore rendered redundant by this Regulation and should be repealed. ***Timber and timber products as defined in Article 2, point (a) of Regulation No (EU) 995/2010 are the equivalent of wood and wood products listed in Annex I that contain or have been made using wood under this Regulation.***

(57) Regulation (EC) No 2173/2005 (*FLEGT Regulation*) establishes a *FLEGT licensing scheme for imports of timber into the European Union*. The licensing scheme is *implemented* through ■ Partnership Agreements ■ with timber ■ producing countries, *intended to halt illegal logging, and enhance forest governance and related trade*. *This Regulation should build upon the positive results achieved, especially in terms of enhanced stakeholders' participation and improved forest governance*. *VPA*s could in *specific cases complement this Regulation with regard to the legality of timber products*. To respect *ongoing* bilateral commitments ■ and to preserve the progress achieved with partner countries that have an operating system in place (FLEGT licensing stage) *and work, where relevant and agreed, with current VPA partners towards them reaching this stage*, this Regulation should include a provision declaring wood and wood-based products covered by a valid FLEGT license as fulfilling the legality requirement *of the FLEGT Regulation*.

(58) While this Regulation addresses deforestation and forest degradation, as envisaged in the 2019 Communication 'Stepping up EU Action to Protect and Restore the World's Forests, protecting forests should not lead to the conversion or degradation of other natural ecosystems. Ecosystems, ***including managed ecosystems***, such as wetlands, savannahs and peatlands are highly significant to global efforts to combat climate change ***and the biodiversity crisis***, as well as other sustainable development goals and their conversion or degradation require particular urgent ***action and need to be prevented***. ***In light of the Union's footprint on non-forest natural ecosystems, an evaluation should be undertaken of, and, where appropriate, a legislative proposal should be presented on, extending the scope of this Regulation to other wooded land at the latest one year after the entry into force of this Regulation. Moreover, no later than two years after the entry into force, the Commission should evaluate and, where appropriate, present a legislative proposal to extend the scope of this Regulation to other natural ecosystems, including other land with high carbon stocks and with a high biodiversity value such as grasslands, peatlands and wetlands. Ecosystems are also increasingly under pressure of conversion and degradation due to commodity production for the Union market. The Commission should also assess the need and*** **■** ***feasibility of extending the scope to further commodities at the latest two years after the date of entry into force of this Regulation. At the same time, the Commission should also undertake a review of the CN codes of the relevant products listed in Annex I to this Regulation by way of delegated act.***

- (58a) *Taking into account the request made by the European Parliament in its resolution ‘An EU legal framework to halt and reverse EU-driven global deforestation’ of 22 October 2020 and of the vast majority of the almost 1,2 million participants to the Commission’s public consultation, the Commission should focus its evaluation and possible legislative proposal on an extension of the scope of this Regulation to non-forest ecosystems and their conversion and degradation.*
- (59) Where, for the purposes of this Regulation, it is necessary to process personal data, these are to be handled in accordance with Union law on the protection of personal data. Any processing of personal data under this Regulation is subject to Regulation (EU) 2016/679 of the European Parliament and of the Council³³ and Regulation (EU) 2018/1725 of the European Parliament and of the Council³⁴, as applicable.

³³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

³⁴ ***Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).***

- (60) Since the objective of this Regulation, fighting against deforestation and forest degradation by reducing the contribution of consumption in the Union, cannot be achieved by the Member States individually and can therefore, by reason of its scale, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (61) Operators, traders and competent authorities should be given a reasonable period in order to prepare themselves to meet the requirements of this Regulation,

HAVE ADOPTED THIS REGULATION:

CHAPTER 1
GENERAL PROVISIONS

Article 1

Subject matter and scope

- 1.** This Regulation lays down rules regarding the placing and making available on the Union market, as well as the export from the Union market ■ of ■ products, as listed in Annex I, that contain, have been fed with or have been made using relevant commodities, ***being cattle, cocoa, coffee, oil palm, rubber, soya and wood***, with a view to :
- (a) minimising the Union's contribution to deforestation, forest degradation worldwide, ***and thereby contributing to a reduction in global deforestation;***
 - (b) reducing the European Union's contribution to greenhouse gas emissions and global biodiversity loss.
- 2.** ***Without prejudice to Article 35(3), the*** Regulation shall not apply to ■ products ***listed in Annex I*** produced before the date established in Article 36(1).

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (0) ‘relevant commodities’ means cattle, cocoa, coffee, oil palm, soya, rubber and wood;**
- (0a) ‘relevant products’ means products listed in Annex I that contain, have been fed with or have been made using relevant commodities;**
- (1) ‘deforestation’ means the conversion of forest to agricultural use, whether human-induced or not;
- (2) ‘forest’ means land spanning more than 0,5 hectares with trees higher than 5 *metres* and a canopy cover of more than 10%, or trees able to reach those thresholds in situ, excluding ■ land that is predominantly under agricultural or urban land use;
- (2a) ‘agricultural use’ means the use of land for the purpose of agriculture, including for agricultural plantations, and includes livestock and set-aside agricultural areas;**
- (3) ‘agricultural plantations’ means tree stands in agricultural production systems, such as fruit tree plantations, oil palm plantations, olive orchards and agroforestry systems when crops are grown under tree cover. It includes all plantations of the *relevant* commodities ■ other than wood. *Agricultural plantations are excluded from the definition of ‘forest’;*

- (4) 'plantation forest' means a planted forest that is intensively managed and meets, at planting and stand maturity, all the following criteria: one or two species, even age class, and regular spacing. It includes short rotation plantations for wood, fibre and energy, and excludes forests planted for protection or ecosystem restoration, as well as forests established through planting or seeding which at stand maturity resemble or will resemble naturally regenerating forests;
- (5) 'planted forest' means forest predominantly composed of trees established through planting and/or deliberate seeding provided that the planted or seeded trees are expected to constitute more than fifty percent of the growing stock at maturity; it includes coppice from trees that were originally planted or seeded;
- (6) *'forest degradation' means structural changes to forest cover, taking the form of the conversion of primary forests or naturally regenerating forests into plantation forests or into other wooded land and the conversion of primary forests into planted forests;*
- (6a) *'primary forest' means naturally regenerated forest of native tree species, where there are no clearly visible indications of human activities and the ecological processes are not significantly disturbed;*
- (6b) *'other wooded land' means land not classified as 'forest' spanning more than 0,5 hectares with trees higher than 5 metres and a canopy cover of 5 to 10%, or trees able to reach these thresholds in situ, or with a combined cover of shrubs, bushes and trees above 10 percent, excluding land that is predominantly under agricultural or urban land use;*

- (6c) ***‘naturally regenerating forest’ means forest predominantly composed of trees established through natural regeneration; it includes forests for which it is not possible to distinguish whether planted or naturally regenerated; it includes forests with a mix of naturally regenerated native tree species and planted or seeded trees, and where the naturally regenerated trees are expected to constitute the major part of the growing stock at stand maturity; it includes coppice from trees originally established through natural regeneration; and it includes naturally regenerated trees of introduced species;***
- (7) ***deleted***
- (8) **‘deforestation-free’ means**
- (a) **that the relevant *products contain, have been fed with or have been made using, commodities that* were produced on land that has not been subject to deforestation after December 31, 2020, and**
- (b) ***in case of relevant products that contain or have been made using wood,* that the wood has been harvested from the forest without inducing forest degradation after December 31, 2020;**
- (9) **‘produced’ means grown, harvested, raised  or obtained on relevant *plots* of land *or establishments in case of cattle;***

- (10) ‘placing on the market’ means the first making available of a relevant commodity or product on the Union market;
- (11) ‘making available on the market’ means any supply of a relevant ■ product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;
- (11a) ‘in the course of a commercial activity’ means for the purpose of processing, or for distribution to commercial or non-commercial consumers, or for use in the business of the operator or trader itself;***
- (11b) ‘person’ means a natural person, a legal person and any association of persons which is not a legal person but which is recognised under Union or national law as having the capacity to perform legal acts;***
- (12) ‘operator’ means any natural or legal person who, in the course of a commercial activity, places relevant ■ products on the Union market or exports them from the Union market;
- (13) ‘trader’ means any ■ person in the supply chain other than the operator who, in the course of a commercial activity, makes available on the Union market relevant ■ products;
- (14) ‘country of origin’ means a country or territory as defined in Article 60 of Regulation (EU) No 952/2013 of the European Parliament and of the Council³⁵;
- (15) ‘country of production’ means the country or territory where the relevant commodity or the relevant commodity used in the production of or contained in a product was produced;

³⁵ 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).

- (16) ‘negligible risk’ means *the level of risk that applies to relevant commodities and relevant products, where these commodities or products show no cause for concern for not being compliant with Articles 3(a) and 3(b) on grounds of a full assessment of both the product-specific and the general information, and, where necessary, of the application of the appropriate mitigation measures.*
- (16a) ‘person established in the Union’ means:
- (a) *in the case of a natural person, any person who has his or her residence in the Union;*
 - (b) *in the case of a legal person or an association of persons, any person having its registered office, central headquarters or a permanent business establishment in the Union;*
- (17) ‘authorised representative’ means any natural or legal person established *in* the Union who, *in accordance with Article 5*, has received a written mandate from an operator *or from a trader* to act on its behalf in relation to specified tasks with regard to the operator's *or the trader’s* obligations under this Regulation;
- (18) ‘non-compliant products’ means relevant **■** products that *do not comply with the requirements of Article 3*;

- (19) ‘plot of land’ is an extension of land within a single real-estate property, as recognised by the laws of the country of production, and which enjoys sufficiently homogeneous conditions as to allow to evaluate on the aggregate level the risk of deforestation and forest degradation associated with commodities produced on that extension of land;
- (19a) ‘establishment’ means any premises, structure, or, in the case of open-air farming, any environment or place, where animals are kept, on a temporary or permanent basis;**
- (20) ‘SMEs’ mean micro, small and medium-sized enterprises as defined in Directive 2013/34/EU³⁶;
- (21) ‘substantiated concern’ means **a duly motivated** claim based on objective and verifiable information regarding non-compliance with the present Regulation and which may require the intervention of competent authorities;
- (22) ‘competent authorities’ means the authorities designated under Article 13(1);
- (23) ‘customs authorities’ means customs authorities as defined in Article 5, point 1, of Regulation (EU) No 952/2013;
- (23a) ‘customs territory’ is the territory as defined in Article 4 of Regulation (EU) 952/2013;**
- (23b) ‘third country’ means a country or territory outside the customs territory of the Union;**

³⁶ **Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC Text with EEA relevance (OJ L 182, 29.6.2013, p. 19–76).**

- (24) ‘release for free circulation’ means the procedure laid down in Article 201 of Regulation (EU) No 952/2013;
- (25) ‘export’ means the procedure laid down in Article 269 of Regulation (EU) No 952/2013;
- (26) ‘relevant ■ products entering the Union market’ means relevant ■ products from third countries placed under the customs procedure ‘release for free circulation’ *that are* intended to be placed on the Union market or *and not* intended for *private* use or consumption ■ within the customs territory of the Union;
- (27) ‘relevant ■ products leaving the Union market’ means relevant ■ products placed under the customs procedure ‘export’;
- (28) ‘relevant legislation of the country of production’ means the *laws* applicable in the country of production concerning the legal status of the area of production in terms of:
- land use rights,
 - environmental protection,
 - *forest-related regulations including forest management and biodiversity conservation, where directly related to wood harvesting,*

- third parties' rights,
- *labour rights,*
- *human rights protected under international law,*
- *the principle of free, prior and informed consent, including as set out in the United Nations Declaration on the Rights of Indigenous Peoples,*
- *tax, anti-corruption,* trade and customs regulations ■ ;

(29) *'geolocation' means the geographical location of a plot of land described by means of latitude and longitude coordinates corresponding to at least one latitude and longitude point and using at least six decimal digits. For relevant commodities other than cattle, for plots of land of more than 4 hectares, the geographical location shall be provided using polygons, meaning sufficient latitude and longitude points to describe the perimeter of each plot of land.*

Article 3
Prohibition

Relevant commodities and products ***shall not*** be placed or made available on the Union market, or exported from the Union market, ***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 ■ .

CHAPTER 2
OBLIGATIONS OF OPERATORS AND TRADERS

Article 4
Obligations of operators

1. Operators shall exercise due diligence ***in accordance with Article 8*** prior to placing relevant ■ products on or prior to their export from the Union market in order to ensure their compliance with Article 3(a) and (b). ■

2. Operators ***shall not place relevant products on the Union market nor export them without prior submission of a due diligence statement.*** Operators that by exercising due diligence as referred to in Article 8 have come to the conclusion that the relevant █ products comply with the requirements of this Regulation shall make available to the competent authorities via the information system referred to in Article 31 a due diligence statement before placing on the Union market or exporting the relevant █ products. ***Such electronically available and transmittable*** statement shall confirm that due diligence was carried out and no or only negligible risk was found and shall contain the information set out in Annex II for the relevant █ products.
3. By making available the due diligence statement ***to competent authorities***, the operator assumes responsibility for the compliance of the relevant █ product with the requirements of this Regulation. Operators shall keep record of the due diligence statements for 5 years from the date ***the statement is made*** available via the information system referred to in Article 31.
4. ***deleted***
5. The operator shall not place the relevant █ products on the market nor export them if one or more of the following cases apply:
 - (a) the relevant █ products are not compliant with Article 3(a) or (b);

- (b) the exercise of due diligence has revealed a non-negligible risk that the relevant █ products are not compliant with Article 3(a) or (b);
 - (c) the operator was unable to complete *the obligations referred to in* paragraphs 1 and 2.
6. Operators that *obtain or are made aware of relevant* new information, including substantiated concerns, *indicating* that the relevant █ or product that they have already placed on the market is *at risk of not being* in conformity with the requirements of this Regulation shall immediately inform the competent authorities of the Member States in which they placed the relevant █ product on the market, *as well as traders to whom they have supplied the relevant product*. In the case of exports from the Union market, the operators shall inform the competent authority of *the* Member State which is the country of production.
7. Operators shall offer all *necessary* assistance *to the* to competent authorities to facilitate the performance of the checks under Article 15, including *the* access to premises and the presentation of documentation *and* records.

8. *Operators shall communicate to operators and traders further down the supply chain of the relevant products they placed on or exported from the Union market, all information necessary to confirm that due diligence was carried out and no or only negligible risk was found, including the reference numbers of the due diligence statements associated to those products.*

9. *SME operators shall be exempted from the obligation to exercise due diligence for relevant products contained in or made from the relevant product that have already undergone due diligence in accordance with Article 4(1) and for which a due diligence statement was already submitted in accordance with Article 31. The reference number of the existing due diligence statement shall be provided to the competent authorities upon request. For parts of products that have not been covered by a due diligence procedure, the SME operator shall exercise due diligence set out in Article 4(1). Operators referring to existing due diligence retain their responsibility for the compliance of the relevant product with the requirements of this Regulation, including that no or only negligible risk was found, prior to placing on or exporting from the Union market such relevant products.*

9a. *Operators which are not SMEs may refer to existing due diligence statements only after having ascertained that the due diligence relating to the relevant products contained in or made from the relevant product was exercised in accordance with Article 4(1). They shall include reference numbers of such existing due diligence statements in the due diligence statements that they submit under Article 4(2) in accordance with Article 31. For parts of products that have not been covered by a due diligence procedure, the operators which are not SMEs shall exercise due diligence set out in Article 4(1). Operators which are not SMEs retain their responsibility in accordance with Article 4(3).*

Article 4a

Obligations of traders

1. Traders which are SMEs may only make available **relevant products** on the market **■** if they are in possession of the information required under paragraph 3.
2. *Traders which are not SMEs shall be considered as operators which are not SMEs and be subject to obligations and provisions in Articles 3, 4, 5, 8 to 12, Article 14(9), (10), (10a) and (10b), and Article 15 of this Regulation with regard to the relevant commodities and products that they make available on the Union market.*

3. Traders which are SMEs shall collect and keep the following information relating to the relevant ■ products they intend to make available on the market:
- (a) the name, registered trade name or registered trade mark, the postal address, the email and, if available, a web address of the operators or the traders who have supplied the ■ products to them, *as well as the reference numbers of the due diligence statements associated to those products*;
 - (b) the name, registered trade name or registered trade mark, the postal address, the email and, if available, a web address of the traders to whom they have supplied the relevant ■ products.
4. Traders which are SMEs shall keep the information referred to in this Article for at least 5 years *from the date of the making available on the market* and shall provide that information to the competent authorities upon request.

5. Traders which are SMEs that ***obtain or are made aware of relevant*** new information, including substantiated concerns, ***indicating*** that the relevant commodity or product that they have already made available on the market is ***at risk of not being*** in conformity with the requirements of this Regulation shall immediately inform the competent authorities of the Member States in which they made available the relevant **█** product on the market ***as well as traders to whom they have supplied the relevant product.***
6. Traders, ***whether or not they are SMEs,*** shall offer all ***necessary*** assistance **█** to ***the*** competent authorities to facilitate the performance of the checks under Article ***15 and*** 16, including as regards access to premises and the presentation of documentation ***and*** records.

Article 5

Authorised representatives

1. ***Operators or traders may mandate an authorised representative to make available the due diligence statement pursuant to Article 4(2) on their behalf. The operator or trader shall in that case retain the responsibility for the compliance of the relevant product with the requirements of this Regulation.***
2. ***The authorised representative shall, upon request, provide a copy of the mandate in an official language of the European Union to the competent authorities and a copy in an official language of the Member State in which the due diligence statement is handled or, failing that, in English.***

3. *An operator that is a natural person or a microenterprise may request the next operator or trader further down the supply chain that is not a natural person or a microenterprise to act as an authorised representative. Such next operator or trader further down the supply chain shall not place relevant products on or export relevant products from the Union market, or make relevant products available on the Union market, without making available the due diligence statement pursuant to Article 4(2) on behalf of that operator. The operator that is a natural person or a microenterprise shall in that case retain the responsibility for the compliance of the relevant product with the requirements of this Regulation, and shall communicate to that next operator or trader further down the supply chain all information necessary to confirm that due diligence was carried out and no or only negligible risk was found.*

Article 6

Obligations of traders

deleted

Article 7

Placing on the market by operators established in third countries

In case a natural or legal person established outside the Union places on the Union market relevant **█** products, the first natural or legal person established in the Union who ***makes available on the Union market*** such relevant **█** products shall be considered operator within the meaning of this Regulation.

Article 8
Due diligence

1. Prior to placing relevant █ products on the market or before exporting them, operators shall exercise due diligence with regard to all relevant █ products supplied by each particular supplier.
2. For the purposes of this Regulation, the due diligence shall include:
 - (a) the collection of information and documents needed to fulfil the requirements set out in Article 9;
 - (b) risk assessment measures as referred to in Article 10;
 - (c) risk mitigation measures as referred to in Article 10a.

Article 9
Information requirements

1. Operators shall collect information, documents and data demonstrating that the relevant █ products are compliant with Article 3. For this purpose, the operator shall collect, organise and keep for 5 years *from the date of the placing on, or export from, the Union market*, the following information, *accompanied by evidence*, relating to *each* relevant *product*:

- (a) description, including the trade name and type of **the** relevant **█** products as well as, *in the case of relevant products that contain or have been made using wood*, the common name of the species and *their* full scientific name; *the product description shall include the list of relevant commodities or products contained therein or used to make those products;*
- (b) quantity (expressed in net mass *or, when applicable*, volume, or number of units)³⁷ of the relevant **█** products;
- (c) identification of the country of production *and, where relevant, parts thereof;*
- (d) *geolocation* of all plots of land where the relevant commodities *that the relevant product contains, or has been made using*, were produced, as well as date or time range of production. *Where a relevant product contains or has been made with relevant commodities produced in different plots of land, the geolocation of all different plots of land shall be included. Any deforestation or forest degradation in the given plots of land shall automatically disqualify all products and commodities from those plots of land from being placed and made available on the market or exported therefrom. For relevant products that contain or have been made using cattle, and for such relevant products that have been fed with relevant products, the geolocation shall refer to all the establishments where the cattle were kept; for all other products of Annex 1, the geolocation shall refer to the plots of land.*

³⁷ *The quantity must be expressed in kilograms of net mass or, when applicable, in the supplementary unit set out in Annex I to Council Regulation (EEC) No 2658/87 against the indicated Harmonised System code. A supplementary unit is applicable when it is defined consistently for all possible subheadings under the Harmonised System code mentioned in the due diligence statement.*

- (e) name, email and address of any business or person from whom they have been supplied with the relevant █ products;
- (f) name, email and address of any business or person to whom the relevant █ products have been supplied;
- (g) **adequately conclusive** and verifiable information that the relevant █ products are deforestation-free;
- (h) **adequately conclusive** and verifiable information that the production **of relevant commodities** has been conducted in accordance with **the** relevant legislation of the country of production, including any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity.

2. The operator shall make available to the competent authorities upon request the information, documents and data collected under this Article.

█

Article 10
Risk assessment ■

1. Operators shall verify and analyse information collected in accordance with Article 9 and any other relevant documentation, and on this basis carry out a risk assessment to establish whether there is a risk that the relevant ■ products intended to be placed on or exported from the Union market are non-compliant with the requirements of this Regulation. ***Unless this risk assessment reveals no or only negligible risk that the relevant products are not compliant with Article 3(a) or (b), operators shall not place the relevant ■ product on the Union market nor export it.***

2. The risk assessment shall take special account of the following risk assessment criteria:
 - (a) the assignment of risk to the relevant country ***of production*** or parts thereof in accordance with Article 27;

 - (b) the presence of forests in the country and area of production of the relevant commodity ■ ;
 - (ba) ***the presence of indigenous peoples in the country, region and area of production of the relevant commodity;***

 - (bb) ***the consultation and cooperation in good faith with indigenous people in the country, region and area of production of the relevant commodity;***

- (bc) *the existence of duly motivated claims by indigenous peoples based on objective and verifiable information regarding the use or ownership of the area used for the purpose of producing the relevant commodity*
- (c) prevalence of deforestation, or forest degradation in the country, region and area of production of the relevant commodity ■ ;
- (d) the source, reliability, validity and links to other available documentation of the information referred to in Article 9(1);
- (e) concerns in relation to the country, *region and area* of production and origin, such as level of corruption, prevalence of document and data falsification, lack of law enforcement, *violations of international human rights*, armed conflict or presence of sanctions imposed by the United Nations Security Council or the Council of the European Union;
- (f) the complexity of the relevant supply chain *and the stage of processing of the relevant products*, in particular difficulties in connecting *relevant* products to the plot of land where *the relevant commodities* were produced; *and/or*

- (g) the risk of *circumvention or* mixing with *relevant* products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring;
- (h) **■** conclusions of the *meetings of the Commission expert groups supporting the implementation of this Regulation, as* published in the Commission’s expert group register;
- (i) substantiated concerns submitted under Article 29, *and information on the history of non-compliance of operators or traders along the relevant supply chain with this Regulation;*
- (ia) *any relevant information that would point to a risk that the relevant products may not meet the requirements of this Regulation;*
- (j) complementary information on compliance with this Regulation, which may include information supplied by certification or other third-party-verified schemes, including voluntary schemes recognised by the Commission under Article 30(5) of Directive (EU) 2018/2001 **■**, provided that the information meets the requirements set out in Article 9;

3. Wood products which are in scope of Council Regulation (EC) No 2173/2005 that are covered by a valid FLEGT license from an operational licensing scheme shall be deemed to be in compliance with Article 3(b) of this Regulation.

3a. *The risk assessments shall be documented, reviewed at least on an annual basis and made available to the competent authorities upon request. Operators shall be able to demonstrate how the information gathered was checked against the risk assessment criteria set out in paragraph 2 and how the operator determined the degree of risk.*

Article 10a

Risk mitigation

1. Except where the ***risk assessment*** undertaken in accordance with ***Article 10 has revealed*** that there is no or negligible risk that the relevant █ products are not compliant with ***Article 3(a) or (b)***, the operator shall adopt prior to placing the relevant █ products on the Union market or to their export risk mitigation procedures and measures that are adequate to reach no or negligible risk. This may include requiring additional information, data or documents, undertaking independent surveys or audits or other measures pertaining to information requirements set out in Article 9. ***This may also include supporting the compliance with this Regulation of their suppliers, in particular smallholders, through capacity building and investments.***

█

2. Operators shall have in place adequate and proportionate policies, controls and procedures to mitigate and manage effectively the risks of non-compliance of relevant **■** products identified. These shall include:
 - (a) model risk management practices, reporting, record-keeping, internal control and compliance management, including for operators that are not SMEs, the appointment of a compliance officer at management level;
 - (b) an independent audit function to check the internal policies, controls and procedures referred to in point (a) for all operators that are not SMEs.
3. ***The decisions on risk mitigation measures shall be documented, reviewed at least on an annual basis and made available to the competent authorities upon request. Operators shall be able to demonstrate how a decision on risk mitigation measures was taken.***

Article 11

Establishment and maintenance of due diligence systems, ***reporting*** and record keeping

1. In order to exercise due diligence in accordance with Article 8, operators shall establish and keep up to date a ***framework of procedures and measures*** to ensure that ***the relevant products*** they ***place on or export from the EU market comply*** with the requirements set out in Article 3(a) and (b) (***'due diligence system'***).

- 1a.** The due diligence system shall be reviewed at least once a year and if necessary adapted to and accounting for new developments which may influence the exercise of due diligence ***when operators become aware of them***. Operators shall keep record of updates in the due diligence system(s) for 5 years ■
- 2.** ***Operators*** which ***do not fall under the categories of SMEs, microenterprises or natural persons*** shall, on an annual basis, publicly report as widely as possible, including on the internet, on their due diligence system including on the steps taken by them to implement their obligations as set out in Article 8. Operators falling also within the scope of other EU legislative instruments that lay down requirements regarding value chain due diligence may fulfil their reporting obligations under this paragraph by including the required information when reporting in the context of other EU legislative instruments.

- 2a. ***Without prejudice to provisions set out in Union data protection legislation the reports shall, in respect of relevant commodities and products include the following information:***
- (a) ***summary of information set out in Article 9 paragraph 1 point (a), (b) and (c);***
 - (b) ***state the conclusions of the risk assessment conducted under Article 10(1) and measures undertaken pursuant to Article 10(4) and describe the information and evidence obtained and used to assess the risk;***
 - (c) ***describe the process of consultation of indigenous peoples, local communities, and other customary tenure rights holders or the respective civil society organisations that are present in the area of production of the relevant commodities and products, where applicable.***
3. Operators shall keep for at least 5 years all ***due diligence*** documentation related to due diligence, such as all relevant records, measures and procedures pursuant to Article 8. They shall make them available to the competent authorities upon request.

Article 12
Simplified due diligence

1. When placing relevant **■** products on the Union market or exporting them from it, operators are not required to fulfil the obligations under Article 10 *and 10a* where they can ascertain, that all relevant commodities and products have been produced in countries or parts thereof that were identified as low risk in accordance with Article 27, ***after having assessed the complexity of the relevant supply chain and the risk of circumvention or the risk of mixing with products of unknown origin or origin in high risk or standard risk countries or parts thereof. The operator shall be able to make available to the competent authority upon request relevant documentation that there is a negligible risk of circumvention or of mixing with products of unknown origin or origin in high risk or standard risk countries or parts thereof.***

2. However, if the operator obtains or is made aware of any ***relevant*** information, ***including via the assessment carried out under paragraph 1, and including regarding substantiated concerns submitted under Article 29,*** that would point to a risk that the relevant **■** products may not fulfil the requirements of this Regulation ***or that the rules of this Regulation are circumvented,*** all obligations of Article 10 and 10a have to be fulfilled. ***The operator shall immediately communicate any relevant information to the competent authority.***

- 2a. *Where a competent authority is made aware of any information that would point to a risk of possible circumvention of the requirements of this Regulation, including cases in which relevant commodities or products are produced in a standard-risk or high-risk country and are subsequently processed in, or exported to, the Union from a low-risk country, the competent authority shall proceed to checks in accordance with Article 14(6) [numbering to be adjusted] and, where necessary, adopt interim measures in accordance with Article 21.*

CHAPTER 3

OBLIGATIONS OF MEMBER STATES AND THEIR COMPETENT AUTHORITIES

Article 13

Competent *authorities*

1. Member States shall designate one or more competent authorities responsible for carrying out the obligations arising from this Regulation.
2. By *six* months after the date of entry into force of this Regulation *at the latest*, Member States shall *inform* the Commission of the names, addresses and contact details of the competent authorities *referred to in* paragraph 1. Member States shall inform the Commission without undue delay of any changes to this information.

3. The Commission shall make the list of the competent authorities publicly available on its website ***without undue delay***. The Commission shall regularly update the list, based on relevant updates received from Member States.
4. Member States shall ensure that the competent authorities have adequate powers, ***functional independence*** and resources to perform the obligations set out in Chapter 3 of this Regulation.

Article 13a

Technical assistance, guidance and exchange of information

1. Without prejudice to the operators' obligation to exercise due diligence as set out in Article 8, Member States may provide technical and other assistance and guidance to operators. ***The Commission, in collaboration with Member States, may also provide, where necessary, guidance to operators and competent authorities. Technical and other assistance and guidance shall take into account the situation of SMEs, microenterprises and natural persons, in order to facilitate compliance with the requirements of this Regulation, including as regards the conversion of data from relevant systems to identify geolocation into the information system established under Article 31, and take into account relevant current and future Union legislation containing due diligence obligations.***

2. Member States ***shall*** facilitate the exchange and dissemination of relevant information, in particular with a view to assisting operators in assessing risk as set out in Article ***10***, and on best practices regarding the implementation of this Regulation.
3. ***The competent authorities and the Commission shall continuously monitor and exchange information on any significant change in the pattern of trade of relevant products that can lead to the circumvention of this Regulation.***
4. Assistance shall be provided in a manner which does not compromise the independence, legal obligations and responsibilities of competent authorities in enforcing this Regulation.
5. ***The Commission may facilitate the harmonised implementation of the Regulation, by issuing relevant guidelines and by promoting an adequate exchange of information, coordination and cooperation between competent authorities, between competent authorities and customs authorities, and between competent authorities and the Commission.***

Article 14

Obligation to perform checks

1. The competent authorities shall carry out checks *within their territory* to establish whether operators and traders *established in the Union* comply with their obligations under this Regulation and whether the relevant **■** products placed or made available on the Union market or exported from it are compliant with the requirements of this Regulation.
2. The checks referred to in paragraph 1 shall be conducted in accordance with Article 15 and 16.

- 2a.** *The identification of checks to be carried out shall be based on a risk-based approach. Risk criteria shall be identified based on an analysis of risks of non-compliance with this Regulation, taking into account in particular the relevant commodities, the complexity and the length of supply chains, including whether it involves mixing relevant products, and the stage of processing of the relevant product, whether the plots of land concerned are adjacent to forests, the assignment of risk to countries or parts thereof in accordance with Article 27, including special attention to the situation of countries or parts thereof identified as high risk, the history of non-compliance of operators or traders with this Regulation, risks of circumvention, and any other relevant information. This analysis of risks shall build on the information requirements referred to in Articles 9 and 10 and may build on the information contained in the register referred to in Article 31, and be supported by other relevant sources such as monitoring data, risk profiles from international organisations, substantiated concerns submitted under Article 29, or conclusions of EU expert meetings.*
- 2b.** *The Commission shall, where appropriate, set out and regularly review and update indicative risk criteria at the Union level, in accordance with paragraph 2a, and communicate them to competent authorities.*

3. To carry out the checks referred to in paragraph 1, the competent authorities shall establish *annual plans containing* at least:

- (a) *national risk criteria to* ■ *inform the identification of checks to be carried out. Those national criteria shall be set out in accordance with paragraph 2a and shall build on any indicative risk criteria at the Union level set out by the Commission in accordance with paragraph 2b. They shall systematically include risk criteria in relation to countries or parts thereof identified as high risk;*
- (b) *an identification of the operators and traders to be checked. Those operators and traders shall be selected based on the national risk criteria referred to in point (a), using inter alia information contained in the register referred to in Article 31 and electronic data-processing techniques. For each operator or trader to be checked, competent authorities may identify specific due diligence statements to be checked.*

- 3a. ***The annual review of the plans by the competent authorities shall systematically build*** on the results of the checks and the experience on implementation of the plans ***referred to in paragraph 3*** in order to improve their effectiveness.
4. ***Deleted***
5. ***Deleted***
6. ***Deleted***
7. ***Deleted***
8. ***Competent authorities shall communicate their established plans of checks, as well as updates thereof, to other competent authorities and the Commission.*** Competent authorities shall exchange information on and coordinate the development and application of the risk criteria referred to in paragraph 3 with competent authorities of other Member States and with the Commission, in order to improve the effectiveness of the enforcement of this Regulation.

9. Each Member State shall ensure that the annual checks carried out by their competent authorities *in accordance with paragraph 1* cover at least 3% of the operators placing, making available on or exporting from the Union market *relevant products that contain or have been made using* relevant commodities *produced in a country of production or parts thereof listed as standard risk in accordance with Article 27*.
10. *Each Member State shall ensure that the annual checks carried out by their competent authorities in accordance with paragraph 1 cover at least 9% of the operators placing, making available on or exporting from the Union market relevant products that contain or have been made using relevant commodities as well as 9% of the quantity of each of the relevant products that contain or have been made using relevant commodities produced in a country or parts thereof listed as high risk in accordance with Article 27.*
- 10a. *Each Member State shall ensure that the annual checks carried out by their competent authorities in accordance with paragraph 1 cover at least 1% of the operators placing, making available on or exporting from the Union market relevant products that contain or have been made using* relevant commodities **■** *produced in a country or parts thereof listed as low risk in accordance with Article 27* **■** .
- 10b. *The quantified objective of checks to be carried out by competent authorities shall be met separately for each of the relevant commodities. They shall be calculated by reference to the total number of operators who placed, made available on, or exported from the Union market relevant products in the previous year, and volume, where applicable. Operators shall be considered as having been checked where the competent authority has checked the relevant elements mentioned in Article 15 1(a) and (b).*

11. Without prejudice to **■** checks *planned in advance pursuant to paragraph 3*, competent authorities shall conduct checks referred to in paragraph 1 when they *obtain or are made aware of* relevant information, including based on substantiated concerns provided by third parties under Article 29, concerning *a* potential non-compliance with this Regulation.
 12. Checks shall be carried out without prior warning of the operator or trader, except where prior notification of the operator or trader is necessary in order to ensure the effectiveness of the checks.
 13. The competent authorities shall keep records of the checks indicating in particular their nature and results, as well as on the measures taken in case of non-compliance. Records of all checks shall be kept for at least *ten* years.
- 13a. *Records of checks carried out under this Regulation and reports of their results and outcomes shall constitute environmental information for the purposes of Directive 2003/4/EC³⁸ and shall be made available upon request.***

³⁸ *Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).*

Article 14a

Relevant products calling for immediate action

- 1. Competent authorities shall identify situations where relevant products present such high risk of non-compliance with the provisions of this Regulation that they require immediate action by competent authorities before they are placed or made available on the Union market or exported. Competent authorities shall register such identified situations in the information system established under Article 31.*

- 2. When competent authorities identify such situations, including when a due diligence statement relating to such relevant products is made available by an operator, the information system shall identify the high risk of non-compliance with the provisions of this Regulation and inform competent authorities, which shall:*
 - (a) take immediate interim measures under Article 21 to suspend the placing or making available on the Union market of those relevant products or,*

 - (b) in the case of relevant products entering or leaving the Union market and once the electronic interface referred to in Article 26(1) is in place, shall require customs authorities for suspension under Article 24(6) of their release for free circulation or export.*

3. *The suspensions referred to in paragraph 2 shall end within 3 working days, or 72 hours in case of perishable products, starting from the date when the high risk of non-compliance is identified in the information system. Where the competent authorities, based on the result of the checks conducted within that period, conclude that they require additional time to establish whether the relevant products comply with the requirements of this Regulation, they shall extend the period of suspension, by additional periods of 3 working days, by means of additional interim measures taken under Article 21 or, in the case of relevant products entering or leaving the Union market, by notifying the customs authorities of the need to maintain the suspension under Article 24(6).*

Article 15

Checks on operators *and non-SME traders*

1. The checks on operators shall include:
- (a) examination of the due diligence system, including risk assessment and risk mitigation procedures, *and of documentation and records that demonstrate the proper functioning of the due diligence system*;
 - (b) examination of documentation and records that demonstrate the compliance of a specific *relevant* product that the operator has placed, intends to place on or export from the Union market with the requirements of this Regulation, *including, when applicable, through risk mitigation measures, as well as examination of the relevant due diligence statements*;

2. ***The checks on operators may also include***, where appropriate, ***notably where examinations mentioned in paragraph 1 have raised questions:***
- (a) on the ground examination of relevant commodities ***or of the relevant*** products with a view to ascertaining their conformity to the documentation used for exercising due diligence;
 - (ab) ***examination of corrective measures taken under Article 22;***
 - (b) any technical and scientific means adequate to determine ***the biological species or*** the exact place where the relevant commodity or product was produced, including ***anatomical, chemical or DNA analysis;***
 - (c) any technical and scientific means adequate to determine whether the relevant ***products*** are deforestation-free, including Earth observation data such as from Copernicus programme and tools ***or from other publicly or privately available relevant sources;*** and
 - (d) spot checks, including field audits, including where appropriate in third countries, ***provided that such third countries agree,*** through cooperation with the administrative authorities of ***those*** third countries.

Article 16

Checks on *SME* traders

1. The checks on traders *that are SMEs* shall include *the* examination of documentation and records that demonstrate the compliance with Article 6(2), (3) *and* (4).
2. *The checks on traders that are SMEs may also include*, where appropriate, *notably where examinations mentioned in paragraph 1 have raised questions*, spot checks, including field audits.

Article 17

Recovery of costs by competent authorities

1. Member States may authorise their competent authorities to reclaim from the operators or traders the totality of the costs of their activities with respect to instances of non-compliance.
2. The costs referred to in paragraph 1 may include the costs of carrying out testing, the costs of storage and the costs of activities relating to products that are found to be non-compliant and are subject to corrective action prior to their release for free circulation, their placing on or exporting from the Union market.

Article 18

Cooperation and exchange of information

1. Competent authorities shall cooperate with each other ***and with customs authorities from their Member State, with competent authorities and customs*** authorities from other Member States, with the Commission, and if necessary, with administrative authorities of third countries in order to ensure compliance with this Regulation, ***including as regards the implementation of field audits.***
2. ***Competent*** authorities shall establish administrative arrangements with the Commission concerning the transmission of information ***on investigations*** and the conduct of investigations.
3. Competent authorities shall exchange information necessary for the enforcement of this Regulation, ***including through the register established pursuant to Article 31.*** This shall include giving access to and exchange of data on operators and traders including due diligence statements, ***and the nature and results of the checks carried out,*** with other Member States' competent authorities to facilitate the enforcement of this Regulation.

4. Competent authorities shall immediately alert competent authorities of other Member States and the Commission when they detect *any possible infringements* of this Regulation and serious shortcomings that may affect more than one Member State. Competent authorities shall, in particular, inform competent authorities of other Member States when they detect a relevant █ product on the market that *they deem to be* not compliant with this Regulation, to enable the withdrawal or recall of such █ product from sales in all Member States.
5. At the request of a competent authority, Member States shall provide to it the █ information *necessary* to ensure compliance with this Regulation.

Article 19

Reporting

1. Member States shall make available to the public and the Commission, at the latest by 30 April of each year, information on the application of this Regulation during the previous calendar year. This information shall include █ :
 - (a) *the plans of checks and the risk criteria on which they were based,*

- (b) the number and the results of the controls *checks* carried out on operators, *non-SME traders and other traders in relation to total number of operators, non-SME traders and other traders*, including the *types of non-compliance identified*,
- (c) the *quantity (expressed in net mass or, when applicable, volume, or number of units)*³⁹ of relevant █ products checked in relation to the total quantity of relevant █ products placed on the market-*or exported and* the countries of █ production,
- (d) *in cases of non-compliance, the corrective action taken in accordance with Article 22 and penalties imposed in accordance with Article 23,*
- (e) *the percentage of checks undertaken with prior warnings pursuant to Article 14(12) the use of which shall be justified by the Competent Authorities in their control reports.*

2. The Commission services shall make publicly available, *at the latest by 30 October of each year*, a Union-wide overview of the application of this Regulation based on the data submitted by the Member States under paragraph 1.

³⁹ *The quantity must be expressed in kilograms of net mass or, when applicable, in the supplementary unit set out in Annex I to Council Regulation (EEC) No 2658/87 against the indicated Harmonised System code. A supplementary unit is applicable when it is defined consistently for all possible subheadings under the Harmonised System code mentioned in the due diligence statement.*

Article 20
Enhanced scrutiny

deleted

Article 21
Interim measures

Member States shall provide for the possibility for their competent authorities to take immediate interim measures, including seizure or suspension of the placing or making available on and exporting from the Union market of the relevant commodities and products, when possible infringements of this Regulation have been detected:

- ***either on the basis of the examination of evidence or other relevant information, including information exchanged under Article 18 or substantiated concerns submitted under Article 29,***
- ***or following the checks referred to in Article 15 and 16,***
- ***or risks have been identified by the Information system referred to in Article 31.***

Where necessary, Member States shall immediately inform the Commission and the competent authorities of other Member States about such measures.

Article 22

Corrective action in case of non-compliance

1. Without prejudice to Article 23, where competent authorities establish that an operator or trader has not complied with its obligations under this Regulation or that a relevant **█** product *placed or made available on the Union market or exported from it* is not compliant with *the requirements set out in* this Regulation, they shall without delay require the relevant operator or trader to take appropriate and proportionate corrective action to bring the non-compliance to an end *within a specified and reasonable period of time*.
2. For the purposes of paragraph 1, the corrective action required to be taken by the operator or trader shall include at least one or more of the following, *as applicable*:
 - (a) rectifying any formal non-compliance, in particular with the requirements of Chapter 2 of this Regulation;
 - (b) preventing the relevant **█** product from being placed, made available on or exported from the Union the market;
 - (c) withdrawing or recalling the relevant **█** product immediately;

(d) ***donating*** the relevant █ product █ to charitable or public interest purposes ***or, if this is not possible, disposing of it in line with the EU rules on waste management.***

2a. ***Irrespective of the corrective action taken under paragraph 2, and with a view to preventing the risk of further infringements, the operator or trader shall address any shortcomings in the due diligence system which may have led to its non-compliance with this Regulation.***

3. If the operator or trader fails to take corrective action referred to in paragraph 2 ***within the period of time specified by the competent authority under paragraph 1***, or where the non-compliance referred to in ***that*** paragraph █ persists, ***after that period of time*** competent authorities shall ***secure application of the prescribed corrective action referred to in paragraph 2 by all means available to them under the law of the Member State concerned.***

Article 23

Penalties

1. ***Without prejudice to the obligations of Member States under Directive 2008/99/EC⁴⁰***, Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation by operators and traders and shall take all measures necessary to ensure that they are implemented. Member States shall notify the Commission of those provisions and without delay of any subsequent amendments affecting them.
2. The penalties provided for ***in paragraph 1*** shall be effective, proportionate and dissuasive, ***and***. Penalties shall include **■** :
 - (a) fines proportionate to the environmental damage and the value of the relevant commodities or products concerned, calculating the level of such fines in such way as to make sure that they effectively deprive those responsible of the economic benefits derived from their infringements, and gradually increasing the level of such fines for repeated infringements; ***in the case of a legal person***, the maximum amount of such ***a fine*** shall be ***set*** at least ***at*** 4 % of the ***operator's*** or trader's ***total*** annual ***Union-wide*** turnover in the ***financial year preceding the fining decision, calculated in accordance with the calculation of aggregate turnover for undertakings laid down in Article 5(1) of Council Regulation (EC) 139/2004, and shall be increased, where necessary, to exceed the potential economic advantage gained;***

⁴⁰ ***Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, OJ L 328, 6.12.2008, p. 28–37.***

- (b) confiscation of the relevant ■ products concerned from the operator and/or trader;
- (c) confiscation of revenues gained by the operator and/or trader from a transaction with the relevant ■ products concerned;
- (d) temporary exclusion *for a maximum period of 12 months* from public procurement processes *and from access to public funding, including tendering procedures, grants and concessions*;
- (da) *temporary prohibition from placing or making available relevant commodities and products on the Union market, or exporting them, in the event of a serious infringement or of repeated infringements*;
- (db) *prohibition from the use of the simplified due diligence procedure set out in Article 12 in the event of a serious infringement or of repeated infringements*;

2a. *Member States shall notify the Commission of final judgement for infringements to this Regulation against legal persons and the penalties imposed on them within 30 days of the relevant finding of non-compliance, taking due account the relevant data protection rules. The Commission shall publish on its website a list of such judgements which shall contain the following elements:*

- (a) *the name of the legal person*;

- (b) *the date of the final judgement;*
- (c) *a summary of the activities for which the legal person was found in violation of this Regulation; and*
- (d) *the nature and, where financial, the amount of the penalty imposed.*

CHAPTER 4

PROCEDURES FOR RELEVANT ■ PRODUCTS ENTERING OR LEAVING THE UNION MARKET

Article 24

Controls

1. Relevant ■ products placed under the customs procedure ‘release for free circulation’ or ‘export’ shall be subject to the controls and measures laid down in this Chapter. The application of this Chapter is without prejudice to any other provisions of this Regulation as well as to other Union legislation governing the release for free circulation or export of goods, in particular the Union Customs Code and its Articles 46, 47, 134 and 267. Chapter VII of Regulation (EU) No. 2019/1020 of the European Parliament and of the Council ■⁴¹ shall however not apply to controls on relevant ■ products entering the Union market in so far as the application and enforcement of this Regulation is concerned.

⁴¹ Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011.

2. Competent authorities shall be responsible for the overall enforcement of this Regulation with regard to a relevant █ product entering or leaving the Union market. In particular, competent authorities shall be responsible, *in accordance with Article 14, of identifying checks to be carried out based on a risk-based approach and* of establishing, through the checks *referred to in* Article █ 14, whether any such relevant █ product complies with the requirements of this Regulation. The competent authorities shall carry out these duties in accordance with the relevant provisions of Chapter 3 of this Regulation.
3. *Without prejudice to paragraph 2, customs authorities shall carry out controls on the customs declarations lodged in relation to* relevant █ products entering or leaving the Union market *in accordance with Articles 46 and 48 of Regulation (EU) No 952/2013.* Such controls shall █ primarily *be based* on risk analysis, *as established in Article 46(2) of Regulation (EU) No 952/2013.*

4. The reference number of the due diligence statement *shall be made available to customs authorities before the release for free circulation or export of a relevant product entering or leaving the Union. For that purpose, the reference number of the due diligence statement* assigned by the information system referred to in Article 31 in relation to *such* relevant **█** product **█** shall be made available to customs authorities *by the person lodging the customs declaration for release for free circulation or export of that relevant product by including the reference number of the due diligence statement in the customs declaration* when lodging *such* customs declaration **█** , except where the due diligence statement is *made available through the electronic interface mentioned in* Article 26(2).
- 4a. *For the purpose of taking into account compliance with the provisions of this Regulation in allowing a relevant product to be released for free circulation or exported:*
- (a) *Until the electronic interface referred to in Article 26(1) is in place, paragraphs 5 to 8 shall not apply, and customs authorities shall exchange information and cooperate with competent authorities in accordance with Article 25, and, where necessary, take into account such exchange of information and cooperation in allowing relevant products to be released for free circulation or exported;*
- (b) *Once the electronic interface referred to in Article 26(1) is in place, paragraphs 5 to 8 shall apply, and notifications and requests under paragraphs 5 to 8 shall take place by means of that electronic interface.*

5. ***When carrying out controls on*** customs declaration for release for free circulation or export of a relevant █ product entering or leaving the Union market, customs authorities shall ***examine***, using the electronic interface referred to in Article 26(1), the status ***assigned to*** the corresponding due diligence statement ***by competent authorities in the register referred to in*** Article 31.
6. ***Where the status referred to in paragraph 5 indicates that the*** relevant █ product ***entering or leaving the Union market has been identified, pursuant to Article 14a(2), as requiring*** to be checked before ***it is*** placed or made available on the ***Union*** market or exported, customs authorities shall suspend the release for free circulation or export of that relevant █ product.
7. Where all other requirements and formalities under Union or national law relating to the release for free circulation or export have been fulfilled, customs authorities shall allow a relevant █ product ***entering or leaving the Union market*** to be released for free circulation or exported in any of the following circumstances:
- (a) ***Where the status referred to in paragraph 5 does not indicate that such relevant product has been identified, pursuant to Article 14a(2), as requiring to be checked before it is placed or made available on the Union market or exported;***
- (b) Where the release for free circulation or export has been suspended in accordance with paragraph 6, ***and*** the competent authorities have not requested ***to maintain*** the ***suspension*** to maintain the suspension ***before the end*** of the ***suspension period set out, and, if applicable, extended, pursuant to Article 14a(3);***

- (c) Where *the release for free circulation or export has been suspended in accordance with paragraph 6, and the* competent authorities have notified customs authorities █ that the suspension of the release for free circulation or export of the relevant █ products can be lifted.

8. *Where the competent authorities conclude that a relevant product entering or leaving the Union market is not compliant with this Regulation, they shall notify the customs authorities accordingly and customs authorities shall not allow the release for free circulation or export of that relevant product.*

9. *deleted*

9a. The release for free circulation or export shall not be deemed proof of compliance with Union law and, in particular, with this Regulation.

█

Article 25

Exchange of information and cooperation among authorities

1. To enable the risk-based approach referred to in Article 14(3) for relevant **■** products entering or leaving the Union market and to ensure that checks are effective and performed in accordance with the requirements of this Regulation, the Commission, competent authorities and customs authorities shall cooperate closely and exchange information.
2. Customs authorities and competent authorities shall cooperate in accordance with Article 47(2) of Regulation (EU) No 952/2013 and exchange information necessary for the fulfilment of their functions under this Regulation, including via electronic means.
 - 2a. *The customs authorities may communicate, in accordance with Article 12(1) of Regulation (EU) No 952/2013, confidential information acquired by the customs authorities in the course of performing their duties, or provided to the customs authorities on a confidential basis, to the competent authority of the Member State where the operator or trader is established.*
 - 2b. *Where the competent authorities have received information in accordance with the preceding paragraphs, those competent authorities may communicate the information to competent authorities from other Member States pursuant to Article 18(3).*

3. Risk-related information shall be exchanged:
- (a) Between customs authorities in accordance with Article 46(5) of Regulation (EU) No 952/2013; and
 - (b) Between customs authorities and the Commission in accordance with Article 47(2) of Regulation (EU) No 952/2013;
 - (c) ***Between customs authorities and competent authorities, including competent authorities from other Member States, in accordance with Article 47(2) of Regulation (EU) No 952/2013.***

Article 26

Electronic interfaces

1. The Commission shall develop an electronic interface based on the EU Single Window Environment for Customs* [***Regulation (EU) 2022/2399***] to enable the transmission of data, in particular the notifications and requests referred to in Article 24, paragraphs 5 to 9, between national customs systems and the information system referred to in Article 31. This electronic interface shall be in place at the latest ***five*** years from the ***entry into force of this Regulation***.

2. The Commission *shall* develop an electronic interface *in accordance with Article 12 of the Regulation establishing* the EU Single Window Environment for Customs* *[when the Regulation is adopted, reference can be made to it directly: to be added; Regulation (EU) 2022/2399]* to enable:
- (a) Traders and operators to make available the due diligence statement of a relevant commodity or product via national single window environment for customs referred to in Article 8 of Regulation [PO to check the reference number and article number after the proposal is adopted; *to be added; Regulation (EU) 2022/2399]* and receive feedback thereon from competent authorities; and
 - (b) The transmission of that due diligence statement to the information system referred to in Article 31 of this Regulation.

3. The Commission shall adopt implementing acts specifying the details of implementation arrangements for paragraphs 1 and 2 and, in particular, defining the data, including its format, to be transmitted in accordance with paragraphs 1 and 2. ***The implementing act shall also clarify how any changes in the status assigned by competent authorities to due diligence statements in the register referred to in Article 31 shall be notified immediately and automatically to the relevant customs authorities through the electronic interface mentioned in paragraph 1.*** The implementing acts may also determine that certain specific data available in the due diligence statement and necessary for activities of customs authorities, including surveillance and fight against fraud, is transmitted and registered in EU and national customs systems. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 34(2).

CHAPTER 5

COUNTRY BENCHMARKING SYSTEM AND COOPERATION WITH THIRD COUNTRIES

Article 27

Assessment of countries

1. This Regulation establishes a three-tier system for the assessment of countries or parts thereof. ***This system shall apply to both EU Member States and third countries under this system, or parts thereof, classified in one of the following risk categories:***
 - (a) ***'high risk', which means countries, or parts thereof, for which the assessment mentioned in paragraph 2 results in the identification of a high risk of producing in such countries, or in parts thereof, relevant commodities for which the relevant products are not compliant with Article 3, point (a);***

- (b) *‘low risk’, which means countries, or parts thereof, for which the assessment mentioned in paragraph 2 concludes that there is a sufficient assurance that instances of producing in such countries, or in parts thereof, relevant commodities for which the relevant products are not compliant with Article 3, point (a), are exceptional;*
- (c) *‘standard risk’, which means countries, or parts thereof, which do not fall in the category of ‘high risk’ nor the category of ‘low risk’.*

1a. *Upon the entry into force of this Regulation, all countries shall be assigned a standard level of risk. The Commission shall identify countries, or parts thereof, that present a low or high risk in accordance with paragraph 1. The list of the countries, or parts thereof, that present a low or high risk shall be published by means of implementing acts to be adopted in accordance with the examination procedure referred to in Article 34(2), no later than 18 months from the entry into force of this Regulation. That list shall be reviewed, and updated if appropriate, as often as necessary in light of new evidence.*

2. The identification of low and high risk countries or parts thereof pursuant to paragraph 1 shall ***be based on an objective and transparent assessment by the Commission, taking into account the latest scientific evidence and internationally recognised sources. The identification shall be primarily*** based on the following assessment criteria:

- (a) rate of deforestation and forest degradation,
- (b) rate of expansion of agriculture land for relevant commodities,
- (c) production trends of relevant commodities and ***of relevant*** products,

2a. ***The assessment mentioned in paragraph 2 may also take into account***

- (a) ***information provided by the country concerned as well as by regional authorities concerned, operators as well as NGOs and third parties, including indigenous peoples, local communities and civil society organisations, with regard to the effective covering of emissions and removals from agriculture, forestry and land use in the nationally determined contribution (NDC) to the United Nations Framework Convention on Climate Change;***

- (b) agreements and other instruments ■ between the country concerned and the Union *and/or its Member States* that address deforestation *and* forest degradation and facilitates compliance of relevant commodities and products with the requirements of this Regulation and their effective implementation;
- (c) whether the country concerned has national or subnational laws in place, including in accordance with Article 5 of the Paris Agreement, and takes effective enforcement measures to *tackle deforestation and forest degradation, and to* avoid and sanction activities leading to deforestation and forest degradation ■ and in particular whether sanctions of sufficient severity to deprive of the benefits accruing from deforestation or forest degradation are applied;
- (d) *whether the country concerned makes relevant data available transparently; and, if applicable, the existence, compliance with, or effective enforcement of laws protecting human rights, the rights of indigenous peoples, local communities and other customary tenure rights holders;*
- (e) *sanctions imposed by the UN Security Council or the Council of the European Union on imports or exports of the commodities and products listed in Annex I.*

- 2b. *The Commission shall engage in a specific dialogue with all countries that are or risk to be classified as high risk, with the objective to reduce their level of risk.*
3. *Without prejudice to the previous paragraph, the Commission shall formally* notify the countries concerned of its intent to assign a change to the existing risk category and invite them to provide any information deemed useful in this regard. *The Commission shall also inform the competent authorities of such intent.* The Commission shall allow the countries adequate time to provide a response, which may include information on measures taken by the country to remedy the situation in case its status or the status of parts thereof might be changed to a higher risk category.

It shall include in the notification the following information:

- (a) the reason or reasons for the intention to change the risk identification of the country or parts thereof;
- (b) the invitation to respond to the Commission in writing with regard to the intention to changing the risk status of the country or parts thereof;
- (c) the consequences of its identification as a high or low risk country.

4. The Commission shall, without delay, notify ***the country concerned and*** the competent authorities of inclusion or removal of a country, ***or parts thereof***, from the list referred to in paragraph 1a.

Article 28

Cooperation with third countries

1. ***Within their respective spheres of competence, the Commission on behalf of the Union, and interested Member States, shall engage in a coordinated approach with producer countries and parts thereof, concerned by this Regulation, in particular those identified as high-risk in the context of Article 27, via the use of existing and future partnerships, and other relevant cooperation mechanisms to jointly address the root causes of deforestation and forest degradation. The Commission shall develop a comprehensive EU strategic framework for such engagement and shall consider mobilising relevant EU instruments.*** Such partnerships and cooperation mechanisms ***shall*** focus on the conservation, restoration and sustainable use of forests, deforestation, forest degradation, and the transition to sustainable commodity production, consumption processing and trade methods. Partnerships and cooperation mechanisms may include, ***but are not limited to***, structured dialogues, ■ administrative arrangements, and ■ existing agreements or ***provisions thereof, as well as joint roadmaps*** that enable ■ the transition to an agricultural production that facilitates the compliance ■ with the requirements of this regulation, ***paying particular attention to the needs of indigenous peoples, local communities and smallholders and ensuring the participation of all interested actors.***

2. Partnerships and cooperation **shall** allow the full participation of all stakeholders, including civil society, indigenous **peoples**, local communities, **women** and the private sector including **micro enterprises and other** SMEs, and smallholders. **Partnerships and cooperation shall also support or initiate inclusive and participatory dialogue towards national legal and governance reform processes to enhance forest governance and address domestic factors contributing to deforestation.**
3. Partnerships and cooperation shall promote the development of integrated land use planning processes, relevant legislations, **multi-stakeholder processes**, fiscal **or commercial** incentives and other pertinent tools to improve forest and biodiversity conservation, sustainable management and restoration of forests, tackle the conversion of forests and vulnerable ecosystems to other land uses, optimise gains for the landscape, tenure security, agriculture productivity and competitiveness, transparent supply chains, strengthen the rights of forest dependent communities including smallholders, **local communities, and** indigenous peoples, **whose rights are set out in the United Nations Declaration on the Rights of Indigenous Peoples**, and ensure public access to forest management documents and other relevant information.

4. ***Within their respective spheres of competence, the Commission on behalf of the Union, or Member States, or both,*** shall engage in international bilateral and multilateral discussion on policies and actions to halt deforestation and forest degradation, including in multilateral fora such as Convention on Biological Diversity, Food and Agriculture Organization of the United Nations, United Nations Convention to Combat Desertification, United Nations Environment Assembly, United Nations Forum on Forests, United Nations Framework Convention on Climate Change, World Trade Organisation, G7 and G20. Such engagement shall include the promotion of the transition to sustainable agricultural production and sustainable forest management as well as the development of transparent and sustainable supply chains as well as continue efforts towards identifying and agreeing robust standards and definitions that ensure a high level of protection of ***forests and other natural*** ecosystems ***and related human rights***.
5. ***Within their respective spheres of competence, the Commission on behalf of the Union, and interested Member States, shall engage in dialogue and cooperation with other major consuming countries, to promote the adoption of ambitious requirements to minimise such countries' contribution to deforestation and forest degradation, and a global level playing field.***

CHAPTER 6
SUBSTANTIATED *CONCERNS*

Article 29

Natural or legal persons' substantiated concerns

1. Natural or legal persons shall be entitled to submit substantiated concerns to competent authorities when they deem ■ that one or more operators or traders are failing to comply with the provisions of this Regulation.
2. Competent authorities shall, *without undue delay*, diligently and impartially assess the substantiated concerns, *including whether the claims are well-founded*, and take the necessary steps, including checks and hearings of operators and traders, with a view to detecting potential breaches of the provisions of this Regulation and, where appropriate, interim measures under Article 21 to prevent the placing making available on and export from the Union market of relevant ■ products under investigation.
3. *Within 30 days of receiving a substantiated concern, if not otherwise stated in* the relevant provisions of national law, *the competent authority shall* inform the ■ persons referred to in paragraph 1, which submitted ■ the *substantiated concerns, of the follow-up given to the submission* and shall provide the reasons for it.

- 3a. ***Without prejudice to the obligations pursuant to Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law, Member States shall provide for measures to protect the identity of the natural or legal persons who submit substantiated concerns or who carry out investigations with the aim of verifying compliance by operators or traders with this Regulation.***

Article 30

Access to justice

1. Any natural or legal person having *a* sufficient interest, ***as determined in line with the existing national systems of legal remedies***, including those having submitted *a* substantiated concern in accordance with Article 29, ***where they meet the criteria, if any, laid down in its national law***, shall have access to ***administrative or judicial procedures*** to review the **■** legality of the decisions, acts or failure to act of the competent ***authorities*** under this Regulation.
2. This Regulation shall be without prejudice to any provisions of national law which ***regulate access to justice and those which*** require that administrative review procedures be exhausted prior to recourse to judicial proceedings.

CHAPTER 7
INFORMATION SYSTEM

Article 31

“Register” Information System

1. The Commission shall establish and maintain, by the date established in Article 36(2), an information system (“Register”) which shall contain the due diligence statements made available pursuant to Article 4(2).
2. ***Without prejudice to the fulfilment of obligations established in Chapter 2 and Chapter 3, the*** information system shall provide at least **■** the following functionalities:
 - (a) registration of operators and traders and their authorised representatives in the EU; for operators placing relevant **■** products under the customs procedure ‘release for free circulation’ or ‘export’, the Economic Operators Registration and Identification (EORI) number established pursuant to Article 9 of Regulation (EU) No 952/2013, shall be included in their registration profile;
 - (b) registration of due diligence statements including the delivery to the operator or trader concerned of a reference number for each due diligence statement;
 - (ba) ***making available of the reference number of existing due diligence statements in application of Articles 4(9) and (9a);***
 - (bb) ***where possible, the conversion of data from relevant systems to identify geolocation;***

- (c) registration of the outcome of controls on due diligence statements;
- (d) interconnection with customs via the EU Single Window Environment for Customs* *[when the Regulation is adopted, reference can be made to it directly; to be added; Regulation (EU) 2022/2399]*, in accordance with Article 26, including to allow the notifications and requests *referred to in* Article 24(5) to (9);
- (e) *provision of relevant information to support the risk profiling for the plan of checks referred to in Article 14(3), including results of checks*, the risk profiling of operators, traders and relevant commodities and products for the purpose of identifying, *based on electronic data-processing techniques, operators and traders to be checked as referred to in Article 14(3), and relevant products that require to be checked by competent authorities*;
- (f) *facilitation of* administrative assistance and cooperation between competent authorities, *and between competent authorities* and the Commission, to exchange information and data;
- (g) *support to the* communication between competent authorities and operators and traders for the purposes of implementation of this Regulation, *including, where appropriate, through the use of digital supply management tools*.

3. The Commission shall, by means of implementing acts, establish rules for the functioning of the information system, including rules for the protection of personal data and exchange of data with other IT systems. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 34(2) of this Regulation.
4. The Commission shall provide access to that information system to customs authorities, competent authorities, operators and traders ***and, if applicable, their authorised representatives***, in accordance with their respective obligations under this Regulation.
5. In line with the EU's Open Data Policy, ■ the Commission shall provide access to the wider public to the complete anonymised datasets of the information system in an open format that can be machine-readable and that ensures interoperability, re-use and accessibility.

CHAPTER 8

REVIEW

Article 32

Review

1. ***No later than one year after the entry into force, the Commission shall present an impact assessment accompanied, where appropriate, by a legislative proposal to extend the scope of this Regulation to include other wooded land. The assessment shall include, inter alia, the cut-off date referred to in Article 2, with a view to minimising the Union's contribution to natural ecosystems' conversion and degradation. The review shall include an assessment of the effect of the relevant commodities on deforestation and forest degradation.***

2. No later than two years after the entry into force, the Commission shall ***present an impact assessment*** accompanied, ***where*** appropriate, by a legislative proposal ***to extend*** the scope of this Regulation to other ***natural*** ecosystems, including ***other*** land with high carbon stocks and **■** with a high biodiversity value such as grasslands, peatlands and wetlands. ***The assessment shall cover a potential ecosystem expansion, including on the basis of the cut-off date referred to in Article 2, with a view to minimising the Union's contribution to natural ecosystems' conversion and degradation. This review shall also address the need and the feasibility of extending the scope to further commodities, including maize. The review shall include an assessment of the effect of the relevant commodities on deforestation and forest degradation, as indicated by scientific evidence, and take into account changes in consumption.***
3. ***The assessment foreseen in paragraph 2 shall also include whether it is appropriate to amend or extend the relevant products listed in Annex I in order to ensure that the most relevant products that contain, have been fed with or have been made using relevant commodities are included in that list. This assessment shall pay specific attention to the potential inclusion of biofuels (HS code 382600) in Annex I.***
- 3a. ***The assessment foreseen in paragraph 2 shall also evaluate the role of financial institutions in preventing financial flows contributing directly or indirectly to deforestation and forest degradation and assess the need to provide for any specific obligations for financial institutions in EU legislation in that regard, taking into account any relevant existing horizontal and sectoral legislation.***

4. ***The Commission may adopt delegated acts in accordance with Article 33 to amend Annex I with regard to the relevant CN codes of products that contain or have been made using relevant commodities.***
5. No later than five years after the entry into force and at least every five years thereafter, the Commission shall carry out a general review of this Regulation, and shall present a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal. The first of the reports shall include in particular, based on specific studies, an evaluation of:
- (a) the need for and feasibility of additional trade facilitation tools – ***and in particular for LDCs highly impacted by this Regulation and countries identified as standard or high risk*** – to support the achievement of the objectives of the Regulation ■ ;
 - (b) the impact of the Regulation on farmers, in particular smallholders, indigenous peoples and local communities and the possible need for additional support for the transition ***towards*** sustainable supply chains ***and for smallholders to meet the requirements of this Regulation;***

- (c) *the further extension of the definition of ‘forest degradation’, on the basis of an in-depth analysis, and taking into account progress made in international discussions on the matter*
- (d) *the threshold for mandatory use of polygons of Article 2(29) taking into account its impact on tackling deforestation and forest degradation;*
- (e) *changes in the trade patterns of the products and commodities included in the scope of this Regulation when they could indicate as a practice of circumvention;*
- (f) *an assessment of whether the checks carried out have been effective to ensure that relevant commodities and products made available on, or exported from, the Union market comply with the requirements set out in this Regulation.*

Chapter 9
Final provisions

Article 33
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in *Article 32(3)* shall be conferred on the Commission for a period of 5 years from DD/MM/YY. The Commission shall draw up a report in respect of the delegation of power at the latest 6 months before the end of the 5 year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in *Article 32(3)* may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to **Article 32(3)** shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Article 34

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011⁴².
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply, having regard to the provisions of Article 11 thereof.

⁴² ***Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.***

Article 35

Repeals

1. Regulation (EU) No 995/2010 is repealed with effect from the date of application of this Regulation set out in Article 36(2).
2. ***However, Regulation (EU) No 995/2010 shall continue to apply during 3 years from the date set out in Article 36(2) to timber and timber products as defined in Article 2, point (a), of Regulation (EU) No 995/2010 that were produced before the date set out in Article 36(1) and placed on the Union market on or after the date set out in Article 36(2).***
3. ***By derogation from Article 1, second paragraph, the timber and timber products as defined in Article 2, point (a), of Regulation (EU) No 995/2010 that were produced before the date set out in Article 36(1) and placed on the Union market more than three years after the date set out in Article 36(2) shall comply with the requirements of this Regulation.***

Article 36

Entry into force and date of application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. Articles 3 to 12, 14 to 22, 24, 29 and 30 shall apply **18** months from the entry into force of this Regulation.
3. Articles referred to paragraph 2 shall apply 24 months from the entry into force of this Regulation for operators that are microenterprises **and small enterprises**⁴³ established by December 31, 2020, except for products covered in the Annex to Regulation (EU) No 995/2010.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

⁴³ As defined in Article 3(1) **and (2)** of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

ANNEX I

The table below lists goods as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87⁴⁴, that are, referred to in Article 1 of the present Regulation.

The present Regulation shall not apply to goods if they are produced entirely from material that has completed its lifecycle and would otherwise have been discarded as waste, as defined in Article 3(1) of Directive 2008/98/EC⁴⁵. This exemption does not apply to by-products of a manufacturing process, where that process involved material that was not waste as defined in Article 3 (1) of that Directive.

<i>Relevant commodity</i>	<i>Relevant products</i>
<i>Cattle</i>	<p><i>ex 0102 Live cattle</i></p> <p><i>ex 0201 Meat of cattle, fresh or chilled</i></p> <p><i>ex 0202 Meat of cattle, frozen</i></p> <p><i>ex 0206 10 Edible offal of cattle, fresh or chilled</i></p> <p><i>ex 0206 22 Edible cattle livers, frozen</i></p> <p><i>ex 0206 29 Edible cattle offal (excluding tongues and livers), frozen</i></p> <p><i>160250 Other prepared or preserved meat, meat offal, blood of bovine animals</i></p> <p><i>ex 4101 Raw hides and skins of cattle (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split</i></p> <p><i>ex 4104 Tanned or crust hides and skins of cattle, without hair on, whether or not split, but not further prepared</i></p> <p><i>ex 4107 Leather of cattle, further prepared after tanning or crusting, including parchment-dressed leather, without hair on, whether or not split</i></p>

⁴⁴ *The nomenclature codes are taken from the Combined Nomenclature as defined in Article 1(2) of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff and as set out in Annex I thereto, which are valid at the time of publication of this Regulation and mutatis mutandis as amended by subsequent legislation.*

⁴⁵ *Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3–30.*

<i>Relevant commodity</i>	<i>Relevant products</i>
<i>Cocoa</i>	<p><i>1801 00 00 Cocoa beans, whole or broken, raw or roasted</i></p> <p><i>1802 00 00 Cocoa shells, husks, skins and other cocoa waste</i></p> <p><i>1803 Cocoa paste, whether or not defatted</i></p> <p><i>1804 00 00 Cocoa butter, fat and oil</i></p> <p><i>1805 00 00 Cocoa powder, not containing added sugar or other sweetening matter</i></p> <p><i>1806 Chocolate and other food preparations containing cocoa</i></p>
<i>Coffee</i>	<p><i>0901 Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion</i></p>

<i>Relevant commodity</i>	<i>Relevant products</i>
<i>Oil palm</i>	<p><i>1511 Palm oil and its fractions, whether or not refined, but not chemically modified</i></p> <p><i>1207 10 Palm nuts and kernels</i></p> <p><i>1513 21 Crude palm kernel and babassu oil and fractions thereof</i></p> <p><i>1513 29 Palm kernel and babassu oil and their fractions, whether or not refined, but not chemically modified (excluding Crude oil)</i></p> <p><i>2306 60 Oilcake and other solid residues of palm nuts or kernels, whether or not ground or in the form of pellets, resulting from the extraction of palm nuts oils or kernels oils</i></p> <p><i>382319 fatty acids, industrial, monocarboxylic; acid oils from refining (excl. stearic acid, oleic acid and tall oil fatty acids)</i></p> <p><i>291590 saturated acyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulphonated, nitrated or nitrosated derivatives (excl. formic acid and acetic acid, mono-, di- or trichloroacetic acids, propionic acid, butanoic and pentanoic acids, palmitic and stearic acids, their salts and esters, and acetic anhydride)</i></p> <p><i>382370 fatty alcohols, industrial</i></p> <p><i>382311 stearic acid, industrial</i></p> <p><i>290545 glycerol</i></p> <p><i>291570 palmitic acid, stearic acid, their salts and esters</i></p> <p><i>382312 oleic acid, industrial</i></p>

<i>Relevant commodity</i>	<i>Relevant products</i>
<i>Soya</i>	<p><i>1201 Soya beans, whether or not broken</i></p> <p><i>1208 10 Soya bean flour and meal</i></p> <p><i>1507 Soya-bean oil and its fractions, whether or not refined, but not chemically modified</i></p> <p><i>2304 Oilcake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soya-bean oil</i></p>

<i>Relevant commodity</i>	<i>Relevant products</i>
<i>Wood</i>	<p><i>4401 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms</i></p> <p><i>4402 Wood charcoal (including shell or nut charcoal), whether or not agglomerated</i></p> <p><i>4403 Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared</i></p> <p><i>4404 Hoopwood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed but not turned, bent or otherwise worked, suitable for the manufacture of walking sticks, umbrellas, tool handles or the like; chipwood and the like</i></p> <p><i>4405 Wood wool; wood flour</i></p> <p><i>4406 Railway or tramway sleepers (cross-ties) of wood</i></p> <p><i>4407 Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm</i></p> <p><i>4408 Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm</i></p> <p><i>4409 Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed</i></p> <p><i>4410 Particle board, oriented strand board (OSB) and similar board (for example, waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances</i></p> <p><i>4411 Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances</i></p> <p><i>4412 Plywood, veneered panels and similar laminated wood</i></p>

<i>Relevant commodity</i>	<i>Relevant products</i>
	<p><i>4413 00 00 Densified wood, in blocks, plates, strips or profile shapes</i></p> <p><i>4414 Wooden frames for paintings, photographs, mirrors or similar objects</i></p> <p><i>4415 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</i></p> <p><i>(Not including packing material used exclusively as packing material to support, protect or carry another product placed on the market.)</i></p> <p><i>4416 00 00 Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves</i></p> <p><i>4417 Tools, tool bodies, tool handles, broom or brush bodies and handles, of wood; boot or shoe lasts and trees, of wood</i></p> <p><i>4418 Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes</i></p> <p><i>ex 4419 Tableware and kitchenware, of wood</i></p> <p><i>4420 Wood marquetry and inlaid wood; caskets and cases for jewellery or cutlery, and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling in Chapter 94</i></p> <p><i>4421 Other articles of wood, including 4421 20 Coffins</i></p> <p><i>Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products</i></p> <p><i>ex 9401 Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof</i></p> <p><i>9403 30, 9403 40, 9403 50 00, 9403 60 and 9403 90 30 Wooden furniture</i></p> <p><i>9406 10 00 Prefabricated buildings of wood</i></p> <p><i>4900 Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans</i></p>

<i>Relevant commodity</i>	<i>Relevant products</i>
Rubber	<p>4001 Natural rubber, balata, gutta-percha, guayule, chicle and similar gums; in primary forms or in plates, sheets or strip</p> <p>4005 Compounded rubber, unvulcanised, in primary forms or in plates, sheets or strip</p> <p>4006 Unvulcanised rubber in other forms (e.g. rods, tubes and profile shapes) and articles (e.g. discs and rings)</p> <p>4007 Vulcanised rubber thread and cord</p> <p>4008 Plates, sheets, strips, rods and profile shapes, of vulcanised rubber other than hard rubber</p> <p>4010 Conveyer or transmission belts or belting, of vulcanised rubber</p> <p>4011 New pneumatic tyres, of rubber (other)</p> <p>4012 Retreaded or used pneumatic tyres of rubber; solid or cushion tyres, interchangeable tyre treads and tyre flaps, of rubber</p> <p>4013 Inner tubes, of rubber</p> <p>4015 Articles of apparel and clothing accessories (including gloves), for all purposes of vulcanised rubber other than hard rubber</p> <p>4016 Articles of vulcanised rubber other than hard rubber, not elsewhere specified in chapter 40</p> <p>4017 Hard rubber (i.e. ebonite) in all forms including waste and scrap; articles of hard rubber</p>

ANNEX II

Due diligence statement

Information to be contained in the due diligence statement in accordance with Article 4(2) of this Regulation:

- 1. Operator's name, address and, in case of relevant commodities and products entering or leaving the Union market, the Economic Operators Registration and Identification (EORI) number in accordance with Article 9 of Regulation (EU) No 952/2013;**
- 2. Harmonised System code, free-text description, including the trade name as well as, where applicable, the full scientific name, and quantity⁴⁶ (expressed in net mass or, when applicable, volume, or number of units) of the relevant product that is intended to be placed on or exported from the Union market by the operator.**
- 3. Country of production and geolocation of all plots of land where the relevant commodities were produced. Where the relevant product contains or has been made using commodities produced in different plots of land, the geolocation of all different plots of land shall be included in accordance with Article 9(1)(d);**

⁴⁶ **The quantity must be expressed in kilograms of net mass, specifying a percentage estimate or deviation, and, when applicable, also in the supplementary unit set out in Annex I to Council Regulation (EEC) No 2658/87 against the indicated Harmonised System code. A supplementary unit is applicable when it is defined consistently for all possible subheadings under the Harmonised System code mentioned in the due diligence statement.**

4. *The text: “By submitting this due diligence statement the operator confirms that due diligence according to the provisions of Regulation XXXX/XX was carried out and no or only negligible risk was found that the relevant products are not compliant with Article 3(a) or (b).”*

5. *Signature in the following format:*

Signed for and on behalf of:

and date of issue:

Name, function:

Signature:
