



EU regulatory approach to prevent deforestation and forest degradation at a global scale

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I. Introductory comments

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Scientific definition of a forest

« Communauté vivante, constituée par un certain nombre de population végétales et animales liées par des relations intra-et interspécifiques. Cet ensemble structuré et fonctionnel constitue un écosystème. »

– *Encyclopedia universalis. Dictionnaire de l'écologie*, Paris, Albin-Michel, 604

What is an ecosystem?



An **ecosystem** is a community of living organisms (plants, animals and microbes) in conjunction with the non-living components of their environment (things like air, water and mineral soil), interacting as a system.



1992 Convention on Biological Diversity (CBD): the ecosystem is defined as “a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit”.

Main forest habitats

- **Tropical forest:** The natural and semi-natural tropical or subtropical forest ecosystems, whether primary or secondary, whether closed or open forests, in both dry and humid areas. The areas concerned are those found within the tropics and subtropics delimited by the 30th northern and southern parallels.
- **Temperate forest:** Mixed forest of conifers and broad-leaf deciduous trees, or mixed conifer and broad-leaf evergreen trees, or entirely broad-leaf deciduous, or entirely broad-leaf evergreen trees, found in temperate regions across the world; characterized by high rainfall, warm summers, cold winters occasionally subzero, seasonality; typically with dense canopies, understorey saplings and tall shrubs, large animals, carnivores dominant, very rich in bird species.
- **Boreal forest:** The northern hemisphere, circumpolar, tundra forest type consisting primarily of black spruce and white spruce with balsam fir, birch and aspen.
- **Mangrove forest:** A community of salt-tolerant trees and shrubs, with many other associated organisms, that grows on some tropical and sub-tropical coasts in a zone roughly coinciding with the intertidal zone.

(European Environment Agency's online glossary)

What is an habitat?

Article 2 CBD: “Habitat” means the place or type of site where an organism or population naturally occurs.



Article 1 Habitats Directive: habitat of a species means an environment defined by specific abiotic and biotic factors, in which the species lives at any stage of its biological cycle.

Forest habitats under Annex I of the 1992 Habitats Directive

“(Sub)natural woodland vegetation comprising native species forming forests of tall trees, with typical undergrowth, and meeting the following criteria: rare or residual, and/or hosting species of Community interest.”

90. Forests of Boreal Europe
91. Forests of temperate Europe
92. Mediterranean deciduous forests
93. Mediterranean sclerophyllous forests
94. Temperate mountainous coniferous forests
95. Mediterranean and Macaronesian mountainous coniferous forests

What is a species?

Art. 1(g) Habitats directive:

“*Species of EU interest* means species which (...) are:

(i) endangered, except those species whose natural range is marginal in that territory and which are not endangered or vulnerable in the western palearctic region; or

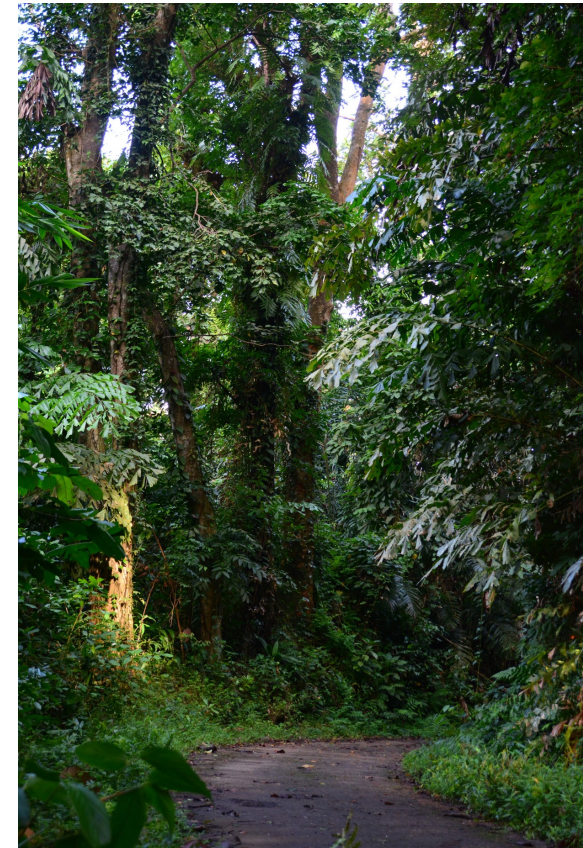
(ii) vulnerable, i.e. believed likely to move into the endangered category in the near future if the causal factors continue operating; or

(iii) rare, i.e. with small populations that are not at present endangered or vulnerable, but are at risk.

(iv) endemic, and requiring particular attention by reason of the specific nature of their habitat and/or the potential impact of their exploitation on their habitat and/or the potential impact of their exploitation on their conservation status.”

Convention on International Trade in Endangered Species of Wild Fauna and Flora

Article I (a): “Species” means any species, subspecies, or geographically separate population thereof



Ecosystem services provided by forests

- food, fuel and fibre,
- clean the air,
- filter water supplies,
- control floods and erosion,
- sustain biodiversity and genetic resources,
- provide opportunities for recreation, education, and cultural enrichment.



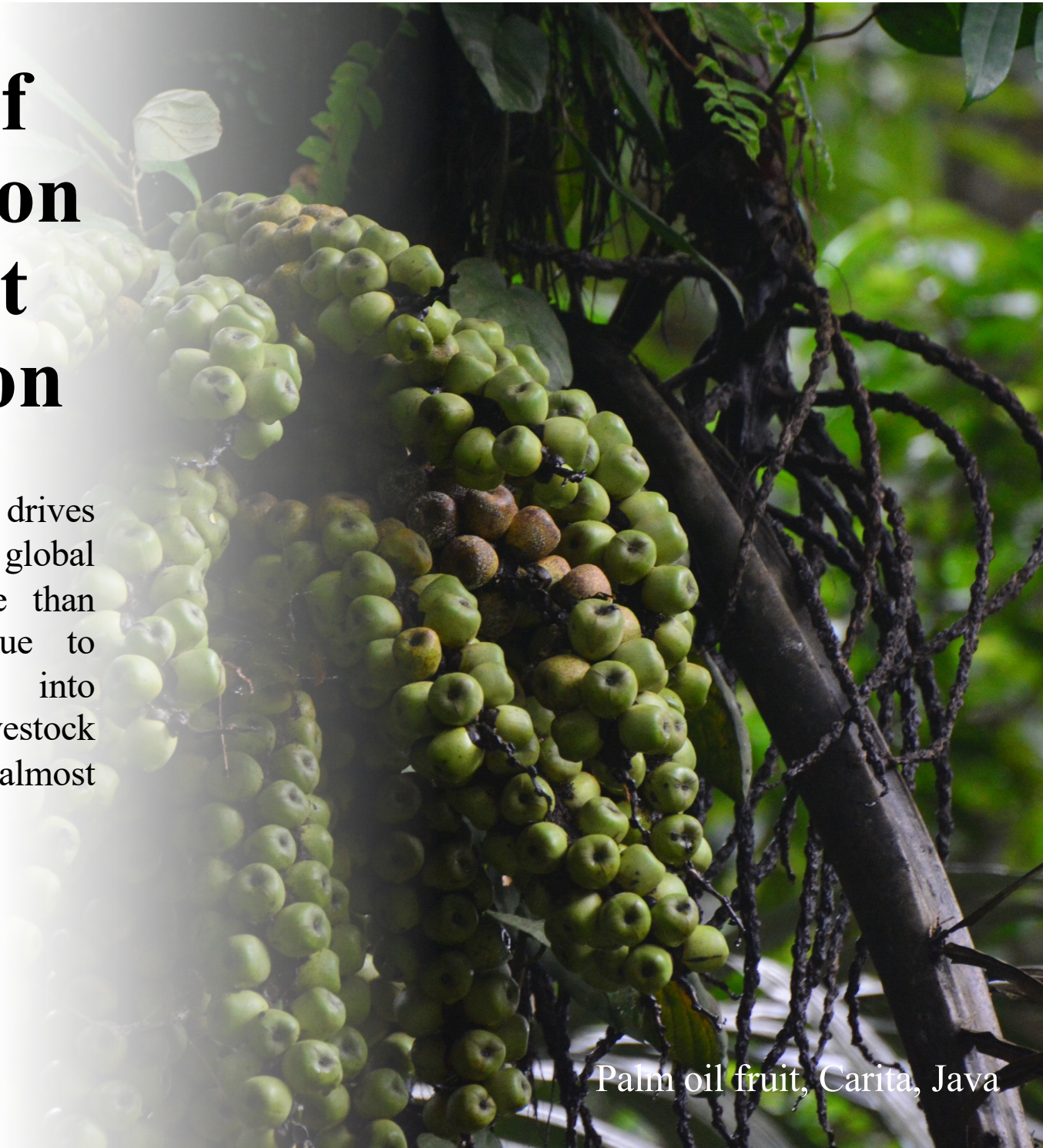
Deforestation and forest degradation

- FAO: 20 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 2020 (FAO (2020), *Global Forest Resource Assessment 2020: Main Report*, p. XII)
- Every year the world continues to lose 10 million hectares of forest.
- Deforestation and forest degradation are drivers of global warming and biodiversity loss — the two most important environmental challenges of our time.

Drivers of deforestation and forest degradation

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 loss

Palm oil fruit, Carita, Java



II. Sources of international law aiming at forest conservation



A. Treaty Law



B. Soft Law



C. Institutional actors

Sources of international law aiming at forest conservation

Treaty Law: No framework agreement on forest protection

1983 International Tropical Timber Agreement (ITTA) provides an effective framework for cooperation between tropical timber producers and consumers and to encourage the development of national policies aimed at sustainable utilization and conservation of tropical forests.

The question of protecting forests under an international binding convention has challenged nations like few other environmental issues and dominated much of the “United Nations Conference on Environment and Development” (UNCED) in 1992.

A. Treaty Law

Environmental Multilateral Agreements applicable to forest ecosystems:

- 1972 UNESCO Convention concerning the Protection of World Cultural and Natural Heritage
- 1973 Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora
- 1971 Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat
- 1992 Convention on Biological Diversity
- 1994 UN Convention to Combat Desertification



CITES

Each Party must establish a Management Authority and at least one Scientific Authority, and trade is regulated by means of a permit system.

- **Appendix I listed species:** trade in principle prohibited;
- **Appendix II listed species:** For a country to export a specimen of a species listed in Appendix II, which is the majority of tree species, the Management Authority has to confirm that the species has been harvested sustainably as well as in accordance with all relevant national legislation;
- **Appendix III listed species:** Identified by a State party as being the subject of regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and for which the control of trade requires cooperation from other Parties.

Regional agreements applicable to forest ecosystems:



Council of Europe Convention on the conservation of European wildlife and natural habitats

Group of Experts on Protected Areas and Ecological Networks, Interpretation manual of the habitats listed in Resolution No. 4 (1996) listing endangered natural habitats requiring specific conservation measures (Strasbourg, 2015)

B. Soft Law

1. International Soft law

- 1992 Non-legally Binding Authoritative Statement of Principles for a Global Consensus on Management, Conservation and Sustainable Development of All Types of Forests (**Rio Forest Principles**)
- **SDG 15.2**: promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally
- Aichi Targets 5 and 7
- **UN Strategic Plan for Forests 2017-2030**
- Glasgow Leaders' Declaration on Forests and Land Use

B. Soft Law

2. EU Soft Law

- **Stepping Up EU Action to Protect and Restore the World's Forests (COM(2019) 352 final)**
- **New EU Forest Strategy for 2030 (COM(2021) 572 final)**

Point 2.1 Promoting sustainable forest bioeconomy for long-lived wood products: Within the boundaries of sustainable availability and supply of wood, the forest-based sector holds significant economic potential for improving its production of sustainable and legally harvested wood for circular and long-lived materials and products.

C. Institutional Actors

- United Nations Forum on Forests (UNFF; since 2000)
 - Intergovernmental Panel on Forests (IPF; 1995-1997)
 - Intergovernmental Forum on Forests (IFF; 1997-2000)
- Collaborative Partnership on Forests (CPF)
 - Successor to Interagency Task Force on Forests (ITFF)
 - Objective to support the UNFF and its member countries and to enhance cooperation and coordination on forest issues.
 - Comprises 16 International Organisations:
CIFOR, CBD, CITES, FAO, GEF, GCF, ITTO, IUCN, IUFRO, UNCCD, UNDP, UNEP, UNFF, UNFCCC, World Agroforestry, World Bank



Tropical forest buttress tree, Benin



III. EU legal instruments on forest conservation



A. Responsibility of the EU in deforestation and forest degradation



B. Forest Law Enforcement, Governance and Trade (FLEGT)



C. EU implementation of CITES

A. Responsibility of the EU in deforestation and forest degradation

- In 2020, the EU27+UK imported a total of 1,093,600 tons of primary tropical timber products (logs, plywood, sawn wood, veneer) and 175,800 tons of the secondary tropical timber products (doors, windows, etc.).
- The main importing countries for tropical products are Belgium, France, and the Netherlands. Brazil (21% of imports) is the largest supplier of tropical primary and secondary timber products, followed by Cameroon (20%), Indonesia (16%), Gabon (15%), Malaysia (9%), Republic of Congo (6%), and Ivory Coast (3%).
- As the EU is considered the world's biggest per capita importer of commodities embodying deforestation, the import of timber and timber products increases its environmental footprint in other continents.

IDH, The Sustainable Trade Initiative, *Europe's sourcing of verified tropical timber and its impact on forests* (2021).

A. Responsibility of the EU in deforestation and forest degradation



EU consumption is a considerable driver of deforestation and forest degradation on a global scale.

EU consumption and production of the commodities (wood, cattle, soy, palm oil, cocoa and coffee) will rise to approximately 248,000 hectares of deforestation annually by 2030.

Between 1990 and 2008, EU consumption was responsible for 10% of worldwide deforestation associated with the production of goods or services.

>> EU consumption is a **disproportionally large driver of deforestation.**

B. Forest Law Enforcement, Governance and Trade (FLEGT)

>> **FLEGT Action Plan** (COM(2003) 251 final): voluntary scheme to ensure that only legally harvested timber is imported into the EU from countries agreeing to take part in this scheme.

The two main FLEGT initiatives are:

1. the FLEGT licensing scheme, negotiated under bilateral Voluntary Partnership Agreements (**VPAs**) with partner timber-producing countries,
2. the implementation of an EU Timber Regulation (**EUTR**).

B.1. Voluntary Partnership Agreements (FLEGT VPAs)

>> Council Regulation (EC) N° 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community

- The VPAs create a legally binding obligation for the parties to implement a licensing scheme and to regulate trade in timber and timber products identified in those agreements. They aim to ensure that only legally harvested timber is imported into the EU, in order to halt trade in illegal timber.
- VPAs have been concluded with Ghana, Republic of Congo, Vietnam, Indonesia, Liberia, and the Central African Republic.
- The EU has concluded negotiations with Honduras and Guyana.
- Negotiations are ongoing with the Ivory Coast, Democratic Republic of the Congo, Gabon, Laos, Malaysia and Thailand.

B.2. EU Timber Regulation (EUTR)

>> **Regulation (EU) N° 995/2010 laying down the obligations of operators who place timber and timber products on the market**

- covers a broad range of timber products, including solid wood products, flooring, plywood, pulp and paper.
- Operators who first place timber on the EU market must exercise ‘due diligence’, those further down the supply chain (‘Traders’) must keep records of suppliers.
- Operators must take the appropriate steps in order to ascertain that illegally harvested timber and timber products are not placed on the internal market.
- Only timber and by-products harvested **in accordance with the national legislation of the producing country** can be imported into the EU from countries agreeing to take part in this scheme.
- System of checks and controls seeking to guarantee the legality of such products.
- Products with FLEGT or CITES license are deemed compliant with the EUTR.

EU regulatory schemes	FLEGT	EUTR
Legal nature	Voluntary; the VPA creates binding obligations once it is ratified	Compulsory
Type of measures	Supply-side	Demand-side
Scope of the license scheme	With countries entering in a partnership with the EU	Regulates trade in timber and timber products with all other third countries



B.3. FLEGT weaknesses

1. Voluntary scheme
2. Only Indonesia of the 15 countries with which the EU has engaged in a VPA process has an operating FLEGT licensing system
3. Only 3% of timber imports to the EU covered by an operational licensing scheme
4. Difficulties to enforce the FLEGT regulation

C. EU implementation of CITES



Washington Convention
on International Trade in
Endangered Species of
Wild Fauna and Flora

1973

9 Dec. 1996

Council Regulation No
338/97 of 9 December
1996 on the protection of
species of wild fauna
and flora by regulating
trade therein

C. EU implementation of CITES

Mixed agreement: the EU as well as all its M.St. are Parties to CITES

>> Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein

- The species covered by these Regulations are listed in four Annexes (A, B, C and D).
- It goes beyond CITES.
- More stringent requirement for an import permit for Appendix II/ Annex B species. Possibility to impose import restrictions for certain species/country combinations.

Listing of 3 species of African Rose Wood (Bois de rose d'Afrique)

Guibourtia demeusei , *Guibourtia pellegriniana*, *Guibourtia tessmannii*

CITES Annex II

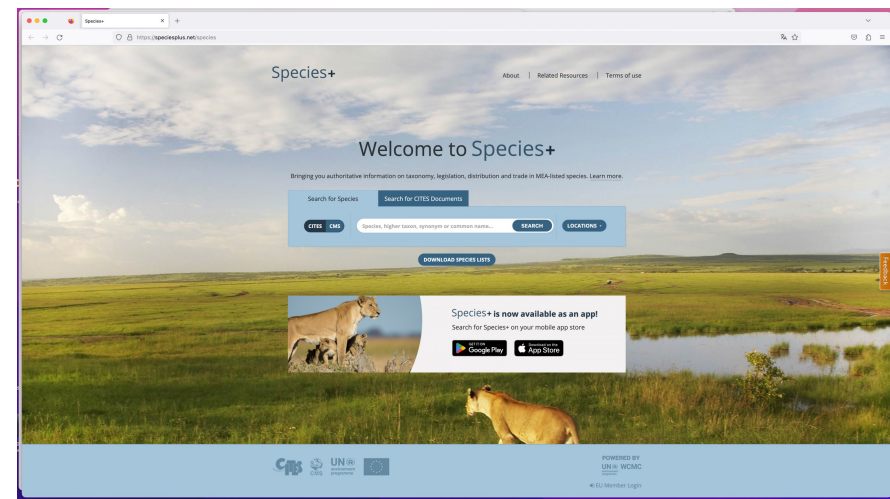
Support programs for regeneration of *Guibourtia tessmannii* and *Guibourtia pellegriniana* have been in place for several years in several certified Forest Stewardship Council (FSC) forest concessions in Gabon and Cameroon.

Cameroon CITES 2023 export quota for these species 5333 m³

Exceptions for "finished musical instruments", "finished components for musical instruments" and "finished equipment for musical instruments » (18th meeting of CITES)

EU Annex B

Commission Regulation 2023/966 of 15 May 2023 amending Council Regulation (EC) No 338/97 to reflect the amendments adopted at the 19th meeting of the CITES



C. EU implementation of CITES

Committee on Trade in Wild
Fauna and Flora

Scientific Review Group
(SRG)

Enforcement Group.

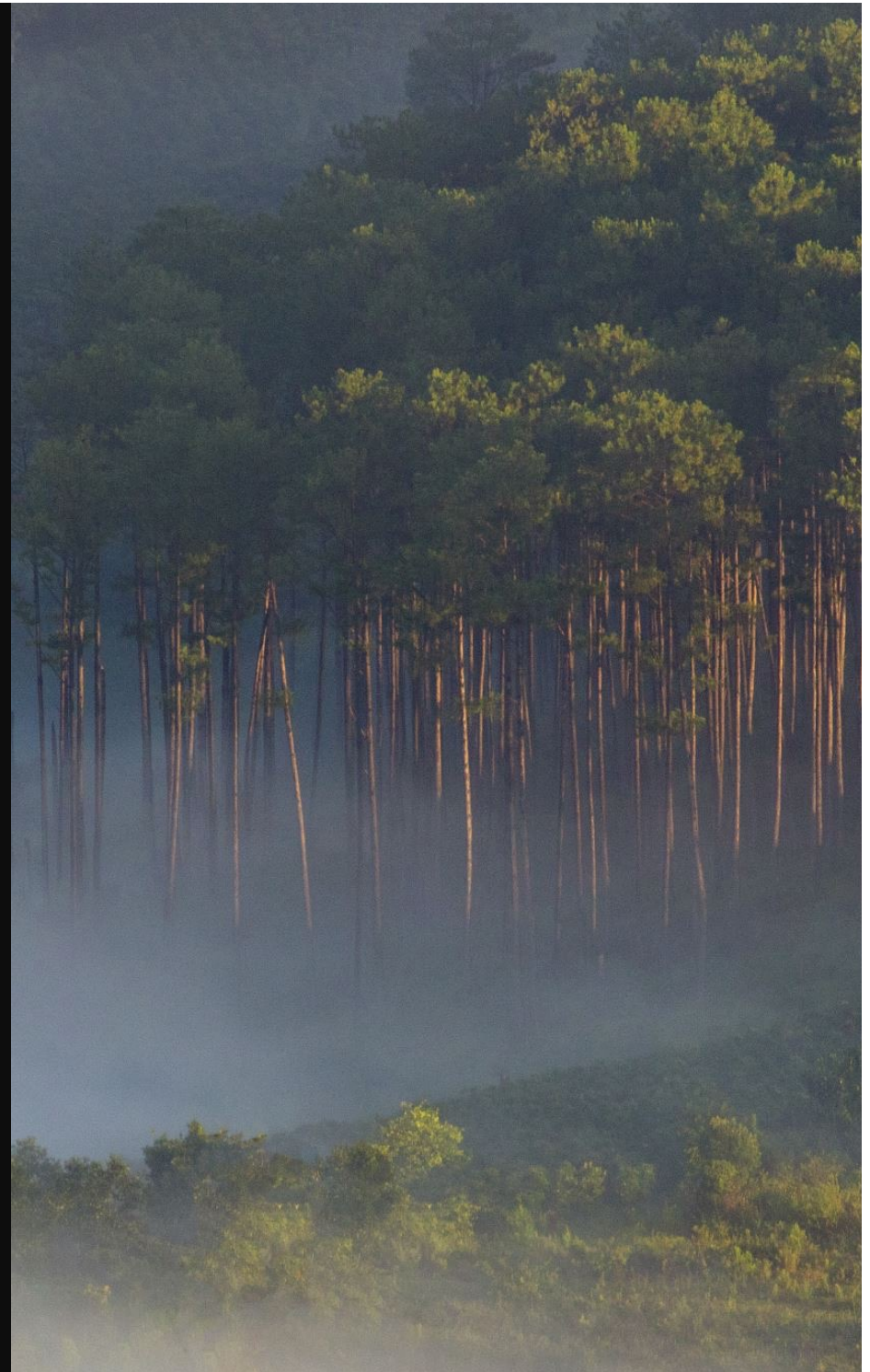
If a MS's Scientific Authority doubts the sustainability of an import, other MSs might refuse similar imports and the application will be discussed at a meeting of the SRG.

The SRG may form an opinion (positive, negative, none) and these may lead to EU import suspensions and ultimately a restriction.

IV. 2023 Forest Risk Commodities Regulation

Regulation 2023/1115 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation No 995/2010

- Legal basis and instrument
 - Scope
 - Regulatory schemes
 - Enforcement
-



Legal bases

- **Environmental = Article 191(1) TFEU:** “preserving, protecting, and improving the quality of the environment, protecting human health, prudent and rational utilisation of natural resources, promoting measures to deal with regional or worldwide environmental problems, and in particular combatting climate change”
 - **Procedural = Article 192 TFEU:** Ordinary legislative procedure
- > Application of the *principle of subsidiarity*

A regulation and not a directive

‘A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States’ (Article 288 TFEU).

- Ensures that the obligations are implemented at the same time and in the same way in all 27 Member States.
- Reduces uncertainties over timelines during the transposition process typically associated with a Directive.

Objectives pursued by the FRC Reg



Imposes due diligence obligations on operators and traders.



Aims at reducing the impact of EU consumption and production on deforestation and forest degradation worldwide.



Aims to minimise consumption of products coming from supply chains associated with deforestation or forest degradation – and increase EU demand for and trade in legal and ‘deforestation free’ commodities and products.

Material Scope: Commodities and products

FRC Reg, article 2 – Definitions:

- (1) ‘Relevant commodities’** means cattle, cocoa, coffee, oil palm, rubber, soya and wood;
- (2) ‘Relevant products’** means products listed in Annex I that contain, have been fed with or have been made using relevant commodities.
 - E.g., beef, pulp and paper (except if bamboo-based or recycled).

× CSDD: “Actual and potential human rights adverse impacts and environmental adverse impacts with respect to their own operations, the operations of their subsidiaries, and the value chain operations carried out by entities with whom the company has an established business relationship.” (article 1(1)(a))

Personal Scope: Operators and traders

FRC Reg, article 2 – Definitions:

(15) ‘operator’ means any natural or legal person who, in the course of a commercial activity, places relevant products on the market or exports them;

(16) ‘placing on the market’ means the first making available of a relevant commodity or relevant product on the Union market;

(17) ‘trader’ means any person in the supply chain other than the operator who, in the course of a commercial activity, makes relevant products available on the market;

(18) ‘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.

Temporal Scope

FRC Reg, article 38 – Entry into force and date of application:

1. The regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*
➔ 9 June 2023 + 20 days = **29 June 2023**
2. Subject to paragraph 3 of this Article, Articles 3 to 13, Articles 16 to 24 and Article 26, 31 and 32 shall apply from **30 December 2024**
3. Except as regards the products covered in the Annex to Regulation (EU) No 995/2010, for operators that by 31 December 2020 were established as **micro-undertakings or small undertakings** pursuant to Article 3(1) or (2) of Directive 2013/34/EU, respectively, the Articles referred to in paragraph 2 of this Article shall apply from **30 June 2025**

Substantive Obligations

- Goes beyond the legality criterion embedded in the EUTR, which is not salient given that around 30% of deforestation destined to commercial agriculture in tropical countries is deemed to be legal.
- Imposes Obligations on operators and traders (chapter 2) and on Member States and their competent authorities (chapter 3).
- Repeals EUTR Regulation (EU) No 995/2010.

A General prohibition

FRC Reg, Article 3 – prohibition:

Placing or making available the listed commodities and products on the EU market would be prohibited unless (cumulative requirements):

- they are "**deforestation-free**",
- they have been produced **according to the relevant legislation of the country of production**, and
- and they are covered by a **due diligence** statement.

Obligations of operators and traders

FRC Reg, Article 4 – Obligation of operators:

- Where a relevant commodity or product is placed on the market by an entity from outside the EU, the **operator** would be the first entity established in the EU who buys or takes possession of it → EU importers would therefore qualify as operators.
- Operators would have to exercise due diligence before placing said commodities or products on the EU market or exporting them from it. In other words, it shall not place:
 - Non-compliant products;
 - Products where the due diligence has revealed a non-negligible risk of non-compliance;
 - Products where the operator is unable to exert due diligence.

Obligations of operators and traders

FRC Reg, Article 5 – Obligation of traders:

- **Non-SME traders** are considered as non-SME operators, and thus subject to the same rules;
- **SME traders** shall make available relevant products on the market only if they are in possession of the information required, namely the name, registered trade name or registered trademark, postal address, email and, if available, web address:
 - Of the operators or traders *who have supplied the relevant products to them*, as well as the reference numbers of the due diligence statements associated to those products;
 - Of the operators or the traders *to whom they have supplied* the relevant products.

Due Diligence Statement

FRC Reg, Article 8 – Due diligence:

(1) Must be submitted prior to placing the relevant products.

(2) Shall include:

(a) The collection of information, data and documents referred to in Article 9;

(b) Risk assessment measures as referred to in Article 10;

(c) Risk mitigation measures as referred to in Article 11.

(a) Exercise of due diligence: Information

FRC Reg, Article 9 – Information requirements:

The collection, organisation and preservation for five years of detailed information about:

- The commodities and/or products placed on the EU market and their quantity;
- Their sources and suppliers, by identifying the country and area of production, including geo-location coordinates of relevant plots of land where production took place, and time of production;
- Adequately conclusive evidence that commodities and products are deforestation-free;
- Adequately conclusive evidence that commodities and products are produced in line with relevant legislation of the country of production.

(b) Exercise of due diligence: Risk assessment

FRC Reg, Article 10 – Risk assessment:

The verification and analysis of the collected information, and the determination of the risk of non-compliance. It shall take into account:

- Country classification into three risk categories (high, low, standard) as provided in Article 29;
- The presence of forests and of indigenous peoples, and the latter's consultation and possible duly reasoned claims;
- Prevalence of deforestation or forest degradation;
- Complexity of supply chain;
- Possible corruption, data falsification, lack of law enforcement, human rights violations, etc. in country of production.
- ...

(c) Exercise of due diligence: Risk mitigation

FRC Reg, Article 11 – Risk mitigation:

Except for non-existent or negligible risk, the operator must adopt adequate mitigating procedures and measures, e.g.:

- Requiring more information;
- Conducting additional surveys/audits;
- Capacity building and investments;
- ...

Obligations of Member States: Checks

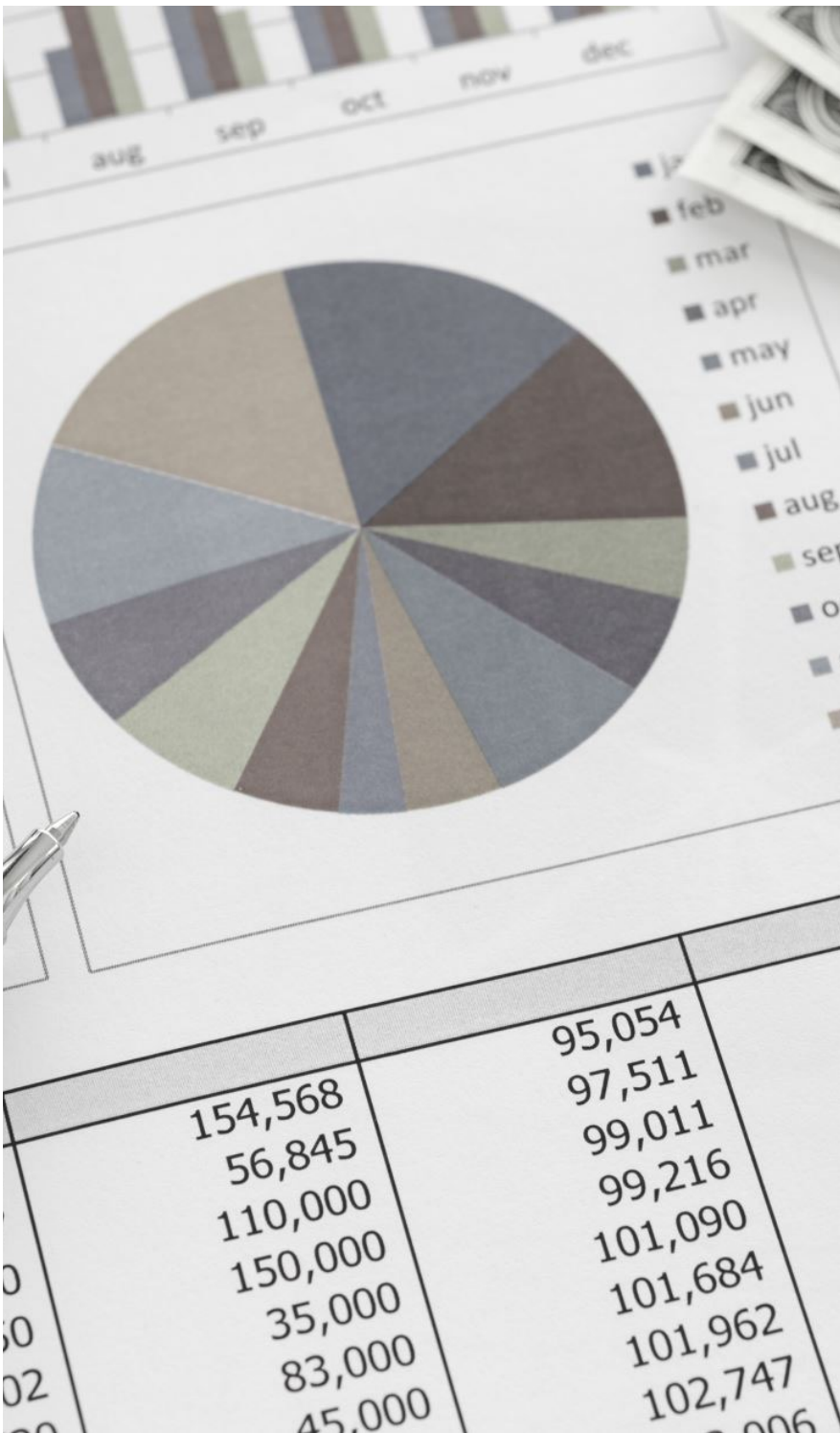
FRC Reg, Article 16 – Obligation to carry out checks:

- Within their territory
- Establish whether operators and traders comply with the regulation
- At least 9% of operators and of total quantity annually from high risk countries (1% for low risk countries)
- Risk-based approach
- Shall communicate their plans of checks, as well as updates thereto, to other competent authorities and the Commission → exchange of information and cooperation

Obligations of Member States: Reporting

FRC Reg, Article 22 – Reporting:

1. By 30 April of each year, Member States shall make available to the public and *to the Commission* information on the application of this regulation during the previous calendar year.
2. By 30 October of each year, the Commission services shall make publicly available a Union-wide overview of the application of this regulation based on the data submitted by the Member States.



Obligations of Member States: Enforcement and penalties

FRC Reg, Article 23 – Interim measures:

Member States must ‘provide for the possibility’ to seize the non-compliant products, suspend their placing on the market or exporting of commodities and products where there is potential non-compliance.

FRC Reg, Article 24 – Corrective action in the event of non-compliance:

Authorities shall ‘without delay require the operator or trader to take appropriate and proportionate corrective action’ such as preventing or recalling products or rectifying formal non-compliance

FRC Reg, Article 25 – Penalties:

Member States must lay effective, proportionate and dissuasive penalties such as fines, confiscation of products or revenues gained, temporary exclusion from market, etc.



Relationship with customs

- Customs plays a key role in controlling imports of CITES protected timber products
- In the context of FRC Reg, a reference number must be made available to customs prior to ‘release for free circulation’, and customs must suspend said release if the related status indicate that the product must still be checked by the competent authority for compliance with the regulation.
- If the competent authority concludes that the product is non-compliant, customs must not allow for release.



V. Conclusions

