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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

(Text with EEA relevance)

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Deforestation and forest degradation are occurring at an alarming rate, aggravating climate change and the loss of biodiversity. The main driver of deforestation and forest degradation is the **expansion of agricultural land** to produce commodities such as cattle, wood, palm oil, soy, cocoa or coffee. A growing world population and increasing demand for agricultural products especially those of animal origin is expected to increase demand for agricultural land and put additional pressure on forests, while changing climate patterns will affect food production, necessitating a shift to a sustainable production that is not leading to further deforestation and forest degradation.

The EU is a relevant consumer of commodities associated with deforestation and forest degradation and it lacks specific and effective rules to reduce its contribution to these phenomena. The objective of this initiative is therefore to curb deforestation and forest degradation that is provoked by EU consumption and production. This, in turn, is expected to reduce GHG emissions and global biodiversity loss. The initiative 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.

• Consistency with existing policy provisions in the policy area

The proposal was first announced in the **2019 Commission Communication on Stepping up EU Action to Protect and Restore the World’s Forests**¹ (hereinafter “2019 Communication”), where the Commission committed to “*assess additional demand side regulatory and non-regulatory measures to ensure a level playing field and a common understanding of deforestation free supply chains, in order to increase supply chain transparency and minimise the risk of deforestation and forest degradation associated with commodity imports in the EU*”. This commitment was then confirmed in the European Green Deal,² as well as the 2030 EU Biodiversity Strategy³ and the Farm to Fork Strategy⁴, the latter two announcing a corresponding legislative proposal in 2021. The proposal is an integral part of and coherent with the overall objectives of the European Green Deal and all the initiatives developed thereunder. In particular, it is complementary with the other measures proposed in the 2019 Communication, notably: 1) **work in partnership with producer countries**, to address root causes of deforestation, and to promote sustainable forest management, and 2) **international cooperation with major consumer countries**, to minimise leakage and to promote the adoption of similar measures to avoid products coming from supply chains associated with deforestation and forest degradation being placed on the market.

¹ Communication from the Commission to the European Parliament, the Council, the European, Economic and Social Committee and the Committee of the Regions, *Stepping up EU Action to Protect and Restore the World’s Forests*, COM/2019/352 final.

² Communication from the Commission to the European Parliament, the Council, the European, Economic and Social Committee and the Committee of the Regions, *The European Green Deal*, COM/2019/640 final.

³ Communication from the Commission to the European Parliament, 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.

⁴ Communication from the Commission to the European Parliament, the 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.

The Commission will therefore continue to work in partnership with producer countries, offering new types of support and incentives with regard to protecting forests, improving governance and land tenure, increasing law enforcement and promoting sustainable forest management, climate-resilient agriculture, sustainable intensification and diversification, agro-ecology and agroforestry.

The existing EU legislative framework addresses deforestation only partially. The EU Forest Law Enforcement Governance and Trade (**FLEGT**) **Action Plan dating from 2003**⁵ constitutes the key EU policy against illegal logging and associated trade. While the **FLEGT Action Plan tackles illegal logging and associated trade, it does not address deforestation as such**. A key element of the FLEGT Action Plan is a voluntary scheme to ensure that only legally harvested timber is imported into the EU from countries agreeing to take part in this scheme. The internal EU legal framework for this scheme is the Forest Law Enforcement, Governance and Trade Regulation (**FLEGT Regulation**)⁶, which establishes a licensing system that is the basis for FLEGT Voluntary Partnership Agreements. Another key element of the FLEGT Action Plan is the **EU Timber Regulation (EUTR)**⁷, which prohibits the placing of illegally harvested timber and timber products on the EU market and lays down obligations for operators placing timber on the market for the first time. Both the FLEGT Regulation and EUTR have undergone a Fitness Check, and the policy options presented in this Regulation are also drawing from the findings of the Fitness Check.

Building upon the experience and lessons learned in the context of the FLEGT Action Plan and Regulation, the Commission will establish forest partnerships with relevant partner countries as appropriate. The Forest Partnerships' main objective will be to protect, restore and/or ensure the sustainable use of forest in a comprehensive and integrated way to deliver on the European Green Deal priorities as well as EU's development cooperation objectives like poverty alleviation, good governance, human rights. They will promote forest governance and policy reforms to pursue sustainable forest management and contribute to halting deforestation and forest degradation.

- **Consistency with other Union policies**

The 2019 Communication sets out the overall objective of protecting and improving the health of existing forests, in particular primary forests, and to increase sustainable, biodiverse forest coverage worldwide. In the context of the European Green Deal, both the EU Biodiversity Strategy for 2030 and the Farm to Fork Strategy characterise this legislative proposal and other measures to avoid or minimise the placing of products coming from supply chains associated with deforestation or forest degradation on the EU market, as important for the achievement of their objectives. Other relevant initiatives include, for instance, the Communication "A long-term Vision for the EU's Rural Areas"⁸.

The new **EU Forest Strategy** confirms that the measures already identified in the 2019 Communication set the basic framework for the EU's global action, including the present

⁵ Communication from the Commission to the Council and the European Parliament - Forest Law Enforcement, Governance and Trade (FLEGT) - Proposal for an EU Action Plan (COM(2003) 251 final).

⁶ Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community

⁷ Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.

⁸ 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.

legislative initiative, and will be properly and consistently taken into consideration when shaping domestic policies.

This Regulation will be complementary with the legislative initiative on **Sustainable Corporate Governance (SCG)**, which aims to improve the EU regulatory framework on company law and corporate governance. The SCG initiative is based on a horizontal approach addressing adverse human rights and environmental impacts acting upon the behaviour of companies in their own operations and in their value chains. While the SCG regime will address business operations and value chains in general, the deforestation approach is focusing on specific products and product supply chains. Therefore, while the overall objectives of the two initiatives may be shared and are mutually supportive, specific objectives are different.

The SCG initiative's due diligence obligation is planned to apply to a range of large EU companies across sectors (with a more targeted regime for certain medium-sized companies), and non-EU companies are planned to be covered as well. The legislative initiative on deforestation has a very specific objective to limit the placing of deforestation-linked products on the EU market and its requirements will, in some areas, be more specific compared to the general duties under the SCG initiative. It also includes a prohibition, which will apply to all operators placing the relevant products on the market, including EU and non-EU companies, irrespective of their legal form and size. Where the requirements of the SCG initiative go beyond the requirements of the deforestation regulation, they apply in conjunction.

The present initiative will not specifically target the **financial sector and investments**. Existing initiatives in the area of sustainable finance, such as the implementation of the EU Taxonomy Regulation and the future Corporate Sustainability Reporting Directive, CSRD (current Non-Financial Reporting Directive, NFRD) are well suited to address the deforestation impacts of the finance and investment sectors, thereby complementing and supporting this legislative initiative on deforestation.

The CSRD and taxonomy impose disclosure obligations also on non-financial undertakings: the CSRD foresees the publication of sectoral reporting standards by October 2023; under the EU Taxonomy Regulation, technical criteria have already been established under the delegated act for climate mitigation and adaptation for forestry, while the publication of criteria for agriculture has been delayed. Both economic activities can be covered under the delegated acts for the other four environmental objectives.

This Regulation proposal is also expected to be applied together with the Renewable Energy Directive⁹ as regards some commodities used as biofuels or to produce biofuels, such as wood pellets or derivatives of soy and palm oil. The objectives of the two sets of EU rules are complementary, as they both address the overarching objectives of fighting climate change and biodiversity loss. This legislative initiative sets requirements for commodities and products linked to deforestation and forest degradation to be placed on the EU market, with the aim of curbing EU-driven deforestation. The Renewable Energy Directive sets, among others, sustainability criteria rules for biofuels, bioliquids and biomass to be considered sustainable and specifies targets for the EU to achieve a renewable energy target of at least 32% by 2030.

⁹ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources, (OJ L 328/82 of 21.12.2018, p. 82–209).

As regards their practical interplay, commodities and products that fall within the scope of both acts will be subject to requirements for general market access and for being accounted for as renewable energy. These requirements are compatible and mutually reinforcing. In the specific case of certification systems for low Indirect Land Use Change (ILUC) according to Commission Regulation (EU) 2019/807 supplementing Directive (EU) 2018/2001¹⁰, “as regards the determination of high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high carbon stock is observed and the certification of low indirect land use change-risk biofuels, bioliquids and biomass fuels”, these certification systems may also be used by operators and traders within their due diligence systems to obtain information as required by this Regulation to meet some of the traceability and information requirements set out in Article 9 of this Regulation. As with any other certification system, their use is without prejudice to the legal responsibility and obligations under this Regulation for operators and traders to exercise due diligence.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

EU competence to act in the area of deforestation and forest degradation stems from the articles of the Treaty on the Functioning of the European Union (TFEU) related to the protection of the environment. According to 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*” are defined as objectives of the Union policy on the environment. The adoption at Union level of measures aiming at combatting deforestation and forest degradation will contribute to reducing the emissions of greenhouse gas (GHG), increasing climate change resilience and reducing the human impact on biodiversity and thus will provide a significant contribution to each of the objectives of the environmental policy. Article 192 TFEU should thus be used as a legal basis of the proposal.

As many environmental issues, the consequences of deforestation in one area can have global impacts. It is thus appropriate that both domestic products and products released for free circulation or exported are covered by the proposal under the proposed legal basis. This will allow to comply with Article 191(2) TFEU which requires the Union policy on the environment to aim at a high level of protection and with Article 3(3) of the Treaty on European Union (TUE) according to which promoting a high level of protection and of improvement of the quality of the environment is defined as one of the objectives of the Union.

Article 192 (1) TFEU states that “*the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191*”.

¹⁰ Commission Delegated Regulation (EU) 2019/807 of 13 March 2019 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council as regards the determination of high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high carbon stock is observed and the certification of low indirect land-use change-risk biofuels, bioliquids and biomass fuels (OJ L 133, 21.5.2019, p. 1–7).

- **Subsidiarity (for non-exclusive competence)**

The main drivers of deforestation and forest degradation are linked to both the EU market and international trade. Action at EU level is required to address the EU consumption footprint and international trade issues in a coordinated and harmonised way while providing the legal certainty and clarity, necessary for the proper functioning of the EU market. In the absence of a harmonised approach, measures restricting internal trade would be taken by several Member States, hence disrupting the functioning of the internal market. This would have a serious impact on the functioning of the EU market, jeopardize the ability of European operators to source products/commodities in the scope of this Regulation as well as undermine the credibility of EU measures. Other Member States might decide not to adopt any measure limiting the potential impact of the measures undertaken by others on deforestation.

The supply chains for the products covered by the initiative are international and very often global. The EU experience in dealing with complex supply-chain issues (e.g. stemming from the illegal logging related legislation) shows that it is instrumental to ensure a level playing field for operators in terms of requirements to be met before placing products (commodities and derived products) on the EU market for the first time.

The absence of applicable rules at the European level puts responsible business operators that are ready to clean up their supply chains at a competitive disadvantage and rewards unsustainable behaviour. Therefore, while environment is a competence shared between the EU and the Member States, EU-wide measures are necessary to ensure a common understanding of deforestation and forest degradation-free supply chains, to increase the transparency of such supply chains as well as to allow, by the scale of the action, a significant impact on deforestation.

In so far as the present initiative covers both goods released for free circulation or exported from the Union market, action at Union level would be more effective than action at national level as it would prevent possible adverse impact on the functioning of the internal market and on trade aspects. EU action can therefore complement and strengthen national efforts of Member States. Were the EU not to act, the problem of deforestation and forest degradation related to EU consumption would persist and further deteriorate. This could negatively affect the EU's efforts in the field of global biodiversity protection and climate change.

- **Proportionality**

With this legislative initiative the EU steps up its action against deforestation and forest degradation by establishing a regulatory framework which aims to be ambitious and implementable, and which incentivises the transition to sustainable supply chains in all producing countries, within or beyond the EU. This would make the EU a credible global standard-setter. The minimum monetised benefits clearly offset the costs. The initiative is also in line with the gravity and urgency of the problem it aims to tackle, as well as with the priorities of the European Green Deal.

This legislative initiative aims at minimising the EU's contribution to deforestation and forest degradation. This objective will be achieved by establishing a tiered, mandatory due diligence system, relying on a deforestation-free definition, combined with a benchmarking system. As analysed in the *“Impact Assessment related to minimizing the risk of deforestation and forest degradation associated with products placed on the EU market”* (hereinafter “Impact Assessment”), it is expected that these measures will be the most effective in curbing EU-driven deforestation and the most efficient among those screened in preparation of this initiative. The findings of the Impact Assessment, demonstrate that legally binding options

(like deforestation-free requirement, mandatory due diligence, etc.) would be more effective than voluntary measures (like voluntary due diligence, voluntary labelling or voluntary private certification). These findings were corroborated by the outcome of the Open Public Consultation, where the overwhelming majority of stakeholders — businesses associations and NGOs — supported a mandatory due diligence regime.

- **Choice of the instrument**

The proposed instrument is a ‘Regulation’ because it is necessary to ensure the highest level of harmonization to avoid the coexistence of different standards between Member States, which would undermine the fundamental principle of free movement of goods. A Regulation will **set direct requirements for all operators**, thus providing the necessary legal certainty and enforcement possibility of a fully integrated market across the EU. A Regulation also **ensures that the obligations are implemented at the same time and in the same way in all 27 Member States**. The Regulation will also **reduce uncertainties over timelines** during the transposition process typically associated with a Directive in an area where time and legal certainty are critically important due to forecasted increases in market size and changes in market dynamics more generally.

The instrument has also been designed as a future-proof dynamic system to be able to **adapt to market developments and new data and scientific evidence**. For this purpose, **a number of empowerments are foreseen for the Commission**, which will allow the development of implementing measures, among others to publish the result of the country benchmarking and to revise the commodities in scope of the Regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The present initiative builds on the findings of the Fitness Check of the EUTR and FLEGT Regulations, which has been carried out concomitantly to the Impact Assessment for this Regulation.

With regard to the EUTR, the Fitness check has shown that the EUTR resulted in an improved situation in third countries, including in countries that have chosen not to engage in VPA processes. Main EU trade partners have taken steps to strengthen their forest governance systems and reduce illegal logging to meet the requirements of the EUTR. The EUTR – even if hampered by a number of weaknesses in its design and enforcement challenges – has shown some positive results in terms of both effectiveness and efficiency. Its worldwide coverage has provided the EU with a basis to work closely together with other consumer countries. Other consumer countries and trade partners worldwide have adopted legislative approaches similar to the EUTR. In the broader deforestation context, this is particularly important to bear in mind, as it shows that the EU, even with a decreasing market share, can have an impact and lead the way globally.

Despite the challenges experienced in its implementation, the findings of the Fitness Check show that the approach adopted for the EUTR – due diligence – allows flexibility to respond to new and emerging challenges linked to illegal logging and illegal land use change. The general requirement (due diligence) placed on all EU based operators also allows the Regulation to be flexible to changes in trade patterns and changes in country risk profiles. The

proposed option will integrate and improve upon the framework set up with the EUTR, which would therefore be repealed.

The Due Diligence procedure set up under the EUTR will be adapted and improved in the present Regulation, through the introduction of new features such as the due diligence statement (Article 4), the geographic information requirement or geo-location, linking the commodities and products to the plot of land where they were produced (article 9), increased cooperation with customs (Articles 14 and 24), minimum inspection levels (article 14) as well as the country benchmarking (Articles 25-26).

With regard to the FLEGT Regulation, the Fitness Check has confirmed the achievements of FLEGT Voluntary Partnership Agreements (VPAs) in terms of enhanced stakeholders' participation and improved forest governance frameworks in partner countries and, at the same time, highlighted a number of its shortcomings. It has also pointed out that there is limited evidence that the VPAs overall have contributed to reducing illegal logging. While the EU system established under the Regulation would be an efficient tool to lower the compliance costs for EU operators, the main instrument for its operationalisation, i.e. the VPAs, has not delivered. One of the main problems as regards the FLEGT Regulation is the fact that the main EU trade partners have not shown interest to engage in VPA processes, resulting in only 3% of timber imports to the EU covered by an operational VPA system. Over 15 years after the FLEGT Action Plan set the basis for these processes in 2003, only one country of the 15 with which the EU has engaged in a VPA process, has an operating FLEGT licensing system in place and only one country from the top 10 EU timber trading partners is engaged in a VPA process.

To respect bilateral commitments the European Union has entered into and to preserve the progress achieved with partner countries that have an operating system in place (FLEGT licensing stage), this Regulation includes a provision declaring wood covered by a FLEGT license to have fulfilled the legality requirement. Some VPA components might be integrated where feasible and agreed by the partners into specific cooperation programmes, like Forest Partnerships or others to further support forest governance.

- **Stakeholder consultations**

The Open Public Consultation (OPC) carried out by the Commission in 2020 received nearly 1.2 million responses. A majority of stakeholders agreed on the need for an EU-level intervention to reduce the EU's contribution to global deforestation and forest degradation. Most stakeholders also agreed on setting out an EU deforestation-free definition as a requirement of the policy intervention.

In terms of policy measures, the OPC showed strong support for legally binding options (deforestation-free requirement, mandatory due diligence, mandatory public certification, etc.) while soft, voluntary measures like voluntary due diligence, voluntary labelling or voluntary private certification were considered to lack in effectiveness. The overwhelming majority of stakeholders — businesses associations and NGOs — supported a mandatory due diligence regime, although the preferred details of this system vary from one respondent to another. The detailed conclusions from the stakeholder consultations, including the Feedback on the inception impact assessment, the findings of the OPC and the outcome of targeted stakeholder consultation, are included in Annex 2 of the Impact Assessment.

In line with the announcement made in the 2019 Communication, the European Green Deal, the 2030 EU Biodiversity Strategy and the Farm to Fork Strategy, this initiative focuses on

forests. The European Parliament and NGOs advocated for an inclusion of other ecosystems. Based on the experience with existing legislation, such an expansion of the scope was considered premature as the lack of practical experience would be detrimental to the effectiveness and enforceability of the policy measures hereby assessed. However the need and feasibility to expand its scope to cover also other ecosystems will be evaluated as part of an early review.

- **Collection and use of expertise**

To support the analysis of the different options, the Commission awarded a **support contract** to external experts, to carry out two studies “*Impact assessment on demand side measures to address deforestation*”, and “*Support study for a Fitness Check of the EUTR and FLEGT Regulation*”. These studies provided part of the analysis and data underlying the policy options presented in the Impact Assessment and, in turn, in the present Regulation. This initiative also builds on the findings of a third study focusing on “*Certification and Verification Schemes in the Forest Sector and for Wood-based Products*” which has been carried out concomitantly to the Impact Assessment.

The Commission also availed itself of inputs provided during the meetings of the Commission Expert Group/Multi-Stakeholder Platform on Protecting and Restoring the World’s Forests, including the EUTR and the FLEGT Regulation. Since the launch of the roadmap for this legislative initiative in February 2020, the group has met nine times in different configurations — and included four specific workshops to gather inputs on policy options studied in the Impact Assessment.

Alongside the above-mentioned support studies, Expert Group meetings, and stakeholder consultations, the Commission also paid close attention to the 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)), as well as the positions expressed by the Council of the EU, in particular the Council Conclusions on the 2019 Communication.¹¹

- **Impact assessment**

A total of 17 policy measures were considered in the initial viability screening carried out in the preparatory Impact Assessment. This initial list of potential measures covered a wide range of possible interventions, including both regulatory and non-regulatory instruments. The viability screening assessed each policy measure against a number of criteria such as the legal, technical, political feasibility and proportionality, their potential effectiveness and efficiency as well as feedback received from stakeholders, EU Member States and third countries.

On the basis of the viability screening, five policy options were retained and studied in further detail: 1) An improved mandatory due diligence procedure; 2) a benchmarking system and a list of contravening operators combined with a tiered improved mandatory due diligence system; 3) a mandatory public certification combined with an improved due diligence requirement; 4) mandatory labelling combined with an improved due diligence requirement; 5) a deforestation-free requirement for placing on the EU market supported by benchmarking and country card systems.

¹¹ Conclusions of the Council and of the Governments of the Member States sitting in the Council on the Communication on Stepping Up EU Action to Protect and Restore the World’s Forests - Council conclusions (15151/19 of 16 December 2019)

All policy options considered build on common elements: 1) A deforestation-free definition, based on the FAO definition, with which products need to comply; and an additional requirement for products to be legal according to the laws of the country of production; 2) A product scope, which is regularly reviewed and updated, focusing on commodities with the highest EU embodied deforestation (beef, palm oil, soy, wood, cocoa, and coffee) and related products; 3) A prohibition to place commodities and products on the EU market that are associated with deforestation and forest degradation and which have not been produced in compliance with applicable and relevant legislation of the producer countries. Options 2 to 4 are combined with a mandatory due diligence requirement as proposed under option 1.

The preferred option was number 2. It combines a due diligence requirement with a country benchmarking system that will categorise countries taking into account deforestation and forest degradation linked to the relevant commodities alongside criteria related to the countries' engagement in fighting deforestation and forest degradation. There will be three categories of countries — low, standard and high risk. The obligations for operators and Member States' authorities will vary according to the level of risk that the country of production represents, with simplified due diligence duties for low risk and enhanced scrutiny for high risk countries.

It is expected that the preferred option would prevent deforestation driven by EU consumption and production of the six commodities included in the scope, with projected benefits well above 71,920 hectares of forest less affected by EU-driven deforestation and forest degradation annually by 2030. This would also mean a reduction of at least 31.9 million metric tons of carbon emissions to the atmosphere every year due to EU consumption and production of the relevant commodities, which could be translated into economic savings of at least 3.2 billion EUR annually. In addition, this option is expected to decisively contribute to protecting biodiversity which is on its turn also strongly linked to preventing climate change.

This option should also contribute to achieving the specific objectives of the EU intervention, namely creating a level playing field for companies operating in the EU market; minimising the consumption of products coming from supply chains associated with deforestation or forest degradation; and increasing EU demand for and trade in legal and 'deforestation-free' commodities and products. Smallholders producing the relevant commodities may face adaptation challenges. All these factors are expected to be mitigated by the proposed cut-off date of 2020, as most products currently in trade would be sourced from land put into production prior to 2020.

- **Regulatory fitness and simplification**

This Regulation is expected to create a level playing field for companies operating in the EU market. Producers implementing more sustainable production and transparent supply chains are expected to gain share in the EU market and increase their competitiveness compared to producers causing deforestation independent of their size. The main driver for costs of due diligence obligations is the complexity of supply chains and the risks associated with the sourcing country, not the companies' size.

While implementing due diligence procedures (and, where required, shifting supply chains) may be more challenging for SMEs, the due diligence requirement combined with benchmarking would allow SME operators and traders to benefit from lower costs of the simplified due diligence by opting for products stemming from low-risk supply chains.

The proposal includes an “Information and communication system” (Article 29) that would enable the electronic processing of information both among competent authorities and between those and the economic operators. This system will facilitate and streamline the duties of operators and the enforcement by competent authorities.

- **Fundamental rights**

The proposed policy option will require products to have been produced in compliance with the deforestation-free definition and with the laws of the country of production. This entails that labour, environmental and human rights laws applicable in the country of production (both national and international) will need to be taken into account when assessing the compliance of products with this initiative. This includes the rights of indigenous peoples, which is expected to contribute to protecting the rights of vulnerable local communities.

At Union’s level, the proposal respects the Charter of Fundamental rights of the EU and in particular its Article 2 (right to life), Article 8 (protection of personal data), Article 16 (freedom to conduct a business), Article 17 (right to property) and Article 37 (environmental protection).

In accordance with Article 52(1) of the Charter, any limitation on the exercise of the rights and freedom recognised by the Charter by this legislative proposal are provided by the law and respects the essence of those rights and freedoms. Subject to the principle of proportionality, limitation are made only if they are necessary and genuinely meet the objectives of general interest recognised by the Union or the need to protect the rights of freedoms of others. Ensuring a high level of environmental protection and the improvement of the quality of the environment constitutes, in particular, an objective of general interest recognised by the Charter which might justify limitations to other fundamental rights.

4. BUDGETARY IMPLICATIONS

The legislative financial statement attached to this proposal sets out the implications for budgetary, human and administrative resources.

A total budget of EUR 16,519,000 is foreseen for the setting up and implementation of the Regulation during the first five years of operation (provisionally foreseen from 2023 to 2027.) This includes a budget of EUR 6,650,000 under Heading 7 of the Multiannual Financial Framework (MFF) for human resources (five additional staff in DG ENV implementing the Regulation and international cooperation, two additional staff in DG INTPA for the related cooperation and development and 1 staff in DG TAXUD for implementing customs’ obligations) and other administrative expenses. It also includes a budget of EUR 9,869,000 under Heading 3 of the MFF. The latter is linked to support various implementation tasks related to the legislative provisions that will be carried out by Commission services from 2022 to 2027, including procurement and potential administrative arrangements.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Member States’ authorities (notably competent authorities as described in Chapter 3) are responsible for the enforcement of the present Regulation. For that purpose they shall draw up inspection plans based on a risk-based approach, taking into account the risk level assigned through the country benchmarking system. The reporting framework established in Article 20

builds on the experience of the EUTR and aims at strengthening the review of Member States' monitoring activity, the content and the quality of checks as well as their follow up.

The system should be reviewed after three years of full operation to identify any issues and potential improvements, and every five years thereafter. Article 32 specifically envisages that the first review should include an assessment of the need and feasibility of extending the scope of the Regulation to other ecosystems. In addition, at the latest two years after the entry into force the Commission will carry out a first review of Annex I, following indications provided by scientific evidence.

- **Detailed explanation of the specific provisions of the proposal**

- *Article 1 : Subject matter and scope*

Article 1(1) lays out the scope of application *rationae materiae* of the Regulation by defining “relevant commodities” (i.e. cattle, cocoa, coffee, oil palm, soya and wood) and relevant products, (i.e. those listed in Annex I, that contain, have been fed with or have been made using relevant commodities), to which this Regulation will apply. It also clarifies that the Regulation will apply equally to the placing and making available on the Union market, as well as to the export from the Union.

Paragraph 2 clarifies the application *rationae temporis* of this Regulation, establishing that it will not be applicable to relevant commodities and products placed on the Union market or exported therefrom that were produced before the date of the entry into force, as foreseen in Article 36.

- *Article 2 : Definitions*

Article 2 establishes the definitions used throughout the rest of the operative part of the Regulation. These include definitions [paragraphs (1) to (8)] required to make operational the core objective of the instrument, e.g. deforestation, forest, plantations, deforestation-free and produced. The definitions rely to the extent possible in concepts developed at international level, in particular within Food and Agriculture Organization of the United Nations (FAO).

The establishment of a deforestation-free definition is one of the major innovations of the proposed Regulation in relation to the EU Timber Regulation. The results of the Impact Assessment show that setting a common requirement for products and commodities, regardless of their country of production, is expected to increase the effectiveness of the policy intervention by preventing loopholes associated with legal deforestation and by facilitating implementation via remote monitoring. In addition, the deforestation-free definition is expected to prevent the creation of wrong incentives for partner countries, who might otherwise be tempted to lower environmental standards to facilitate the access of their products to the EU if only legality controls were established in the proposal.

The definition of deforestation-free sets a cut-off date of 31 December 2020. This means that no commodities and products in the scope of the regulation would be allowed to enter or exit the EU market if they were produced on land subject to deforestation or forest degradation after that date. The proposed date minimises disruption of supply chains and potential negative impacts in partner countries. It corresponds to international commitments to halt deforestation as for example included in the Sustainable Development Goals (Goal 15.2.)

The rest of the definitions [paragraphs (9) to (30)] refer to the duty holders and the activities regulated, such as operator, trader, placing on the market, making available on the market, etc. To the extent possible, they are based on concepts already existing in EU law in relevant internal market and customs legislation, and also addresses specific issues emerged in the

implementation of the EUTR. The definitions have slightly been changed with regard to the Impact Assessment with the aim of increasing their legal precision and of accommodating the new developments in related EU legislation.

- *Article 3: Prohibition*

Article 3 serves as a cornerstone of the Regulation by clearly outlining the prohibition of placing or making available on the Union market, or exporting from the Union market, the relevant commodities and products in scope that are not compliant with this Regulation, accompanied by the clarification that a due diligence statement is always necessary when carrying out such commercial activities. The reference to deforestation (a) and legality (b) is necessary to allow addressing comprehensively the main objectives of this Regulation.

The prohibition in (c) complements the others by creating a general obligation to submit due diligence statements when placing relevant commodities and products on the market. This prohibition ensures that operators become aware of their duties to exercise due diligence and are discouraged from omitting due diligence procedures. Based on the experience of the EUTR, this requirement will facilitate enforcement and where necessary legal action to remedy or sanction such infringements.

- *Article 4: obligations of operators*

Article 4 defines the obligations for operators under the Regulation. It describes the due diligence procedure and thus serves as the general rule on obligations of operators. Paragraph 1 places on operators the obligation to perform due diligence for all relevant commodities and products to ensure their compliance with the prohibition of Article 3(a) and (b) and to submit a due diligence statement prior to placing them on the Union market or exporting therefrom. The necessary information required by the due diligence statement is spelled out in Annex II.

Paragraph 2 outlines the specific procedure that governs the submission of due diligence statements. After reaching the conclusion that the relevant commodity or product is compliant with the Regulation, the operator must submit a due diligence statement to the information system (see Article 31) before the commodity or product is placed on the market. For relevant commodities and products which are placed under release for free circulation or export, reference must be made in the customs declaration to the due diligence statement, which will allow the necessary close cooperation between customs authorities and competent authorities. According to paragraph 3, operators assume responsibility for the compliance of products by drawing up a due diligence statement. Paragraph 4 explicitly requires operators to refrain from placing on the market or to export without prior submission of a due diligence statement. Paragraph 5 establishes the same obligation where (1) relevant products or commodities do not fulfil the “deforestation-free” or “legality” requirements, or (2) where the due diligence has come to the conclusion that the risk of being non-compliant is not negligible or (3) where due diligence procedure has not been completed. Paragraph 6 obliges operators to take action and inform the competent authorities if new information becomes available after the due diligence procedure has been concluded and the statement submitted.

- *Article 6: Obligations of traders*

For the purpose of this Regulation, like in the EUTR a trader can be defined as “any natural or legal person who, in the course of a commercial activity, makes available on the Union market relevant commodities and products” [Article 2(j)]. In general, traders are subjected to lighter obligations than operators since by the time a trader can dispose of relevant commodities or products, these have already been placed on the market. However, traders,

especially large traders have a significant influence on supply chains and play an important role in ensuring that relevant commodities and products are deforestation-free.

That is why this Article differentiates between obligation applicable to large traders that are not small and medium-sized enterprises (SMEs) and obligations applicable to traders which are SMEs. According to paragraphs 2 and 3, traders which are SMEs are required to collect a record of their suppliers and customers, keep that information for at least five years and make such information available to competent authorities upon request. This requirement is estimated to involve only negligible costs, as such information can be expected to be part of normal business operation. Traders which are SMEs are also expected to take action and inform the competent authorities if new information becomes available regarding the non-compliance of their commodities and products (paragraph 4)

Conversely, large traders that are not SMEs are subject to the same obligations as operators (paragraph 5). Therefore, large traders have to submit a due diligence statement according to Article 4, thereby becoming liable for compliance of the relevant commodity or product with this Regulation. Moreover, they are subject to the same due diligence procedure than operators: in addition to the gathering of information, they have carry out risk assessment according to Article and, where necessary, risk mitigation according to Article 10. Traders that are SME are dispensed from these obligations. Likewise, large traders are subject to the same checks on operators as foreseen in Article 15, whereas traders that are SME are subject to checks referred to in Article 16.

- *Article 8: Due diligence*

Article 8 outlines the due diligence procedure that constitutes the obligation of operators according to Article 4(1) and traders that are not SMEs according to Article 6(5). Any due diligence procedure should ensure that the risk of non-compliant relevant commodities or products being placed or exported from the EU market is negligible. To do so, operators and non SMEs traders shall gather all relevant information (as indicated in Article 9) – step one of due diligence process. On the basis of that information they shall identify and assess the risk of possible non-compliance of relevant commodities and products with the requirements of this Regulation [Article 10(1) to (4) and 10(6)] – step two of due diligence process. Where necessary, they shall adequately mitigate such risks to a negligible level [Article 10(5)] – step three of the due diligence process.

Due diligence needs to be carried out prior to any placing of relevant commodities and products on the EU market or prior to exporting from the EU market. If the conclusion of the risk assessment is that the risk of non-compliant commodities or products entering the EU market is non-negligible, the operator needs to take risk mitigation measures that are adequate to lower the risk to a negligible level. If there is no access to the applicable legislation or other relevant information, the risk cannot be fully assessed and thus not mitigated to a negligible level. If the risk cannot be mitigated to a negligible level, the operator shall not place the relevant commodities or products on the EU market [Article 10(1)].

- *Article 9: Information requirement*

A major innovation compared to the EUTR, is the geographic information obligation contained in Article 9, which requires operators to collect the geographic coordinates (or geo-location via latitude and longitude) of all the plot(s) of land where the relevant commodities and products were produced. As deforestation is linked to land-use change, monitoring deforestation requires a precise link between the commodity or product placed on or exported from the EU market and the plot of land where it was grown or raised.

Requiring the plot of land or farm where the commodity has been produced allows for the use of satellite images and positioning – widely available and free-to-use digital tools – to check whether a product or commodity is compliant or not. Geographic information on the plot of land and satellite monitoring is a field-tested combination that has proven in the past to be able to curb deforestation in a given area and is expected to boost the effectiveness of the policy intervention, while also making fraud in supply chains more complicated and easily detected. The Union has developed its own satellite Positioning, Navigation and Timing (PNT) technology (EGNOS/Galileo) and its own Earth observation and monitoring system (Copernicus). Both EGNOS/Galileo and Copernicus offer advanced services, which provide important economic benefits to public and private users. Therefore, satellite images and positioning stemming from the use of EGNOS/Galileo and Copernicus can be part of the information used for compliance checks.

Geographic information linking products to the plot of land is already used by industry and certification organizations, as well as on relevant EU legislation. Directive (EU) 2018/2001 requires information on the “sourcing area” for problematic countries. A series of EU rules ensures the traceability of beef “from birth to death,” including via means such as ear tags, bovine passports and a computerised database.

- *Article 10: Risk assessment and mitigation*

Article 10 outlines the steps to be undertaken to assess and mitigate the risk that relevant commodities and products associated with the deforestation and forest degradation are placed on the market. As such, this Article describes in detail the criteria and the modalities to carry out risk assessment and risk mitigation – respectively step 2 and step 3 of due diligence procedure as introduced in Article 8. Paragraph 1 of Article 10 clarifies the purpose of risk assessment, that is to identify possible non-compliance of relevant commodities and products with this Regulation, and establishes the central obligation for operators not to place the relevant commodity or product on the market unless they cannot demonstrate that the risk of non-compliance is negligible. The notion of negligible risk is defined in Article 2(18) as when a full assessment of both the product-specific and the general information on compliance with Articles 3(a) and 3(b) by relevant commodities or products shows no cause for concern.

While building on risk assessment criteria established in the EUTR, paragraph 2 further qualifies them and provides additional indications to the operators about the elements to be taken into account, reflecting the fact that this Regulation focuses on both legality and sustainability (i.e. deforestation-free). Beyond the risk level set by the country benchmarking system, the list includes information on the country/area of production, features of the relevant commodity and product and of the supply chain, as well as other relevant complementary information such as certification or other third-party verification tools, provided that they meet the information requirements set out in Article 9.

- *Article 12: Simplified due diligence*

Article 12 describes the obligations stemming from sourcing relevant commodities and products from a country or parts thereof that has been assessed as low risk according to the country benchmarking outlined in Chapter 4. When the country of production or parts thereof is low-risk under the benchmarking, operators are still under the obligation foreseen in Article 9 – step 1 of due diligence procedure, i.e. to collect information, documents and data demonstrating that the relevant commodities and products are compliant with Article 3 of this Regulation. However they are dispensed from carrying out the second and third step of the due diligence process, i.e. the risk assessment and risk mitigation as described in Article 10. Therefore, in this case operators are in principle not required to demonstrate that the risk of non-compliance is negligible.

However, should the operator be made aware, for example through the collection of information, of any information regarding specific risk of non-compliance, all obligations of Article 8, and therefore all the three steps of due diligence procedure, have to be fulfilled [Article 12(2)].

- *Article 14: obligations to perform checks*

Article 14 lays down the general obligations of competent authorities under the Regulation. Its paragraphs 1 and 2 establish the central obligation of competent authorities to carry out checks on operators and traders to assess their compliance with due diligence requirements, and also to establish whether the relevant commodities and products placed or made available on the Union market or exported from it are compliant with the Regulation. Paragraph 3 refers to the risk-based plan, a key tool that should guide the checks conducted by the competent authority. The plans for checks should include risk criteria to carry out risk analysis of the due diligence statements. The plans should be regularly reviewed in light of the results of its implementation. Those operators and traders showing a consistent track-record of compliance should be subject to a reduced frequency of checks.

Paragraph 4 requires competent authorities to carry out the risk analysis of due diligence statements by electronic data processing techniques integrated in the information system set up in Article 31.

Paragraph 5 sets out that the risk analysis should allow the competent authorities to identify the operators or traders, or relevant commodities and products, to be checked.

Paragraph 6 requires competent authorities to take immediate action in case the risk analysis reveals that certain commodities and products present high risk of non-compliance. Such action may entail interim measures to suspend the placing or making available on the market of the commodities and products. In case of goods entering or leaving the Union market, and once the electronic interface set out in Article 26(1) is in place, the competent authorities can request customs authorities to suspend the release for free circulation or the export of the high risk goods.

The temporary suspensions of high-risk commodities and products should allow competent authorities to perform the necessary checks on the compliance of the commodities and products. Paragraph 7 establishes an initial period of suspension of 3 working days, which can be extended if competent authorities require additional time.

Paragraph 8 requires the competent authorities to exchange information and coordinate the development of the risk criteria included in the plans for checks. This should foster a uniform application of the Regulation and improve its effectiveness.

Paragraph 9 establishes an important obligation for Member States to ensure effective checks through their competent authorities. The two parameters in use guarantee that a certain number of operators and traders is checked, whilst also requiring a certain percentage of the market value in each category of commodities and products. One dimensional approaches such as checking few operators and traders with a vast market share or checking larger numbers of small operators and traders with a negligible market share would not give this Regulation the necessary effectiveness and are therefore ruled out in paragraph 5. The percentages of coverage are necessary to enable a comprehensive control of the market that dissuades potential infringements.

Paragraph 10 refers to the country benchmarking system and establishes the necessity of enhanced scrutiny (Article 20) carried out by the competent authorities with regard to commodities and products produced in high-risk countries or parts thereof. It thus connects

the duties of the competent authorities with the three-tier system of benchmarking (as described in Article 27).

Notwithstanding the importance of checks conducted in accordance with their risk-based plan, paragraph 11 clarifies that competent authorities shall also carry out checks outside the scope of such plans, when they come in possession of evidence or other relevant information, concerning potential non-compliance with this Regulation.

- *Article 15: Checks on operators*

This Article lays down the obligation of competent authorities with regard to checks to be carried out on operators. It builds on Article 10(3) of the EUTR, though it provides additional clarity and guidance on specific criteria for checks to be conducted by Competent Authority to better analyse relevant documentation of due diligence system in use, and to better assess the risk of non-compliance. Clear standards for compliance checks for competent authorities are an essential element to ensure an effective and uniform application of this Regulation across the Union.

Paragraph 2 distinguishes between mandatory and facultative measures. The mandatory measures referred to in letters (a) to (d) include checks on due diligence documentation and procedures that do not require technical analyses of products or other on-site activities by competent authorities. Facultative measures in letters (e) to (h) include on-site inspection and technical and scientific checks adequate to determine the exact place where the relevant commodity or product was produced and whether it was deforestation free.

- *Article 19: Reporting*

Article 19 outlines Member States' reporting obligations regarding the implementation of the proposed Regulation. This Article builds on Article 20 of the EUTR (Reporting), as subsequently amended by Regulation 2019/1010, which aligned reporting obligations in environmental legislation¹². Therefore, Article 19 confirms that Member States shall report on the application of this Regulation on an annual basis (paragraph 1) and that the Commission services will make publicly available, on an annual basis, a Union-wide overview on the basis of the data submitted by the Member States (paragraph 3).

Paragraph 2 further qualifies the information Member States are to provide so to strengthen reporting obligations and to enable the Commission to analyse more accurately the quality of Member States' monitoring activity. This in line with the findings the European Court of Auditors Special Report 21/2021 which highlighted the shortcomings of the reporting system under the EUTR¹³, and will allow the Commission to address effectively the Court's recommendation to strengthen its review of Member State checks¹⁴.

- *Article 20: Enhanced scrutiny*

¹² Regulation (EU) 2019/1010 of the European Parliament and of the Council of 5 June 2019 on the alignment of reporting obligations in the field of legislation related to the environment, and amending Regulations (EC) No 166/2006 and (EU) No 995/2010 of the European Parliament and of the Council, Directives 2002/49/EC, 2004/35/EC, 2007/2/EC, 2009/147/EC and 2010/63/EU of the European Parliament and of the Council, Council Regulations (EC) No 338/97 and (EC) No 2173/2005, and Council Directive 86/278/EEC (OJ L170/126 of 25.6.2019).

¹³ ECA Special Report 21/2021: "EU funding for biodiversity and climate change in EU forests: positive but limited results". See notably paragraph 36, where the Court: "*Reporting under the Timber Regulation does not provide the information with which the Commission can analyse the quality of Member States' monitoring activity, the national rules defining illegal logging or the procedures used for checks. Nor does it require Member States to substantiate their replies with supporting documents that would allow it to verify the accuracy or completeness of the information*".

¹⁴ See Recommendations 2.a: "*The Commission should: (a) assess the potential for making legislative proposals with the aim of strengthening its review of Member State checks on the Timber Regulation*".

When relevant commodities and products are sourced from a country or parts thereof that has been assessed as high risk according to the country benchmarking system outlined in Chapter 5 they are subject to enhanced scrutiny by the relevant competent authorities. Unlike Article 12, Article 20 does not qualify a different set of due diligence obligations for operators or traders.

Competent authorities shall ensure that the checks they carry out on an annual basis cover at least 15% of the operators, as well as 15% of the quantity of relevant commodities and products produced in high-risk countries or parts thereof.

It should be highlighted that according to Article 27 at the entry into force of the Regulation, all countries will be assigned a standard level of risk. Therefore, the above obligations will arise for competent authorities as soon as a high-risk country or parts thereof will feature in the list to be published by the Commission according to Article 27(1), and as long as relevant commodities and products produced in a high risk country or parts thereof are placed or made available in their market.

- *Article 22: Market surveillance measures*

Article 22 sets the obligation for competent authorities to act without delay once they have established that a relevant commodity or product is not compliant with this Regulation. In this case competent authorities shall require that the relevant operator or trader takes appropriate and proportionate corrective action to bring the non-compliance to an end.

Paragraph 2 outlines the possible corrective measures the operator or trader can be required to undertake. This provision draws specifically from Article 16 of the Market Surveillance Regulation¹⁵; according to Article 3 of this Regulation ‘recall’ means “*any measure aimed at achieving the return of a product that has already been made available to the end user*”; whereas ‘withdrawal’ means “*any measure aimed at preventing a product in the supply chain from being made available on the market*”.

- *Article 23: Penalties*

Article 23 establishes the obligation of Member States to lay down rules on penalties applicable to infringements of this Regulation. The existence and the application of effective proportionate and dissuasive penalties in the national systems is a critical element to element the effective and uniform implementation of this Regulation across the Union.

Therefore, paragraph 2 provides the list of penalties to be established in national legal systems. This list includes fines, the confiscation of the relevant commodities and products as well as the confiscation of revenues, the suspension or prohibition of relevant economic activities and the exclusion from public procurement processes for the operators and traders that violate the Regulation. Member States legislation must provide for a variable amount of fines in dependence on the annual turnover of the operator or trader that violated the Regulation. This is especially relevant as a disincentive for large operators and traders that are not SMEs to violate the Regulation. It thus serves the purpose of establishing effective, proportionate and dissuasive penalties.

- *Article 24: Controls*

Article 24 provides the rules for controls on relevant commodities and products placed under the customs procedure ‘release for free circulation’ or ‘export’.

¹⁵ 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 (OJ L 169/1 of 25.6.2019).

Paragraph 2 establishes that the competent authorities are responsible for verifying compliance with this Regulation, including for commodities or products entering or leaving the Union. It also clarifies the interaction with the provisions of Regulation (EU) 952/2013 and Regulation (EU) 2019/1020. Paragraph 3 identifies customs' core role consisting in controlling the correct declaration of relevant commodities and products entering or leaving the Union market.

The due diligence statement in relation to a relevant commodity or product entering or leaving the Union shall be registered in the Information System referred to in Article 31. According to paragraph 4, the said Information system will then assign a reference number to the due diligence statement, which shall be made available to customs when lodging the customs declaration for release for free circulation or export of that relevant commodity or product, except where the due diligence statement is lodged pursuant to Article 26(2).

Paragraph 5 requires that when a customs declaration for release for free circulation or export of a relevant commodity or product entering or leaving the Union market is lodged, customs authorities shall verify the status of the due diligence statement related to that relevant commodity or product using the electronic interface referred to in Article 26(1).

Paragraph 6 sets out that where the risk analysis carried out by competent authorities according to Article 14(4) establishes that a relevant commodity or product presents a high risk of non-compliance with the requirements of this Regulation, the status of the due diligence statement related to that relevant commodity or product is modified accordingly in the Information System. In such circumstances, customs authorities should suspend the release for free circulation or export of that relevant commodity or product.

Paragraph 7 indicates the conditions under which customs authorities should allow a relevant commodity or product to be released for free circulation or exported.

Paragraph 8 establishes the course of action in case the competent authorities conclude that a relevant commodity or product entering or leaving the Union market is not compliant with this Regulation. In that case competent authorities should change the status of the corresponding due diligence statement accordingly in the Information System and may also indicate in the Information System that they object to placing the relevant commodity or product under other customs procedures.

Upon notification of that status, customs authorities should not allow the release for free circulation or export of that relevant commodity or product and should include a notice in the customs data-processing system and, where possible, on any document accompanying the relevant commodity or product.

Where the relevant commodity or product is subsequently declared for other customs procedures and provided that the competent authorities did not object to such placement, the notice shall be included in the customs declarations by the operators and registered, under the same conditions, in the customs data-processing system and, where possible, on the accompanying documents used in connection with any such procedures.

According to paragraph 10, customs authorities may destroy or otherwise render inoperable a non-compliant relevant commodity or product upon the request of the competent authorities or where they deem it necessary and proportionate. The cost of such measure shall be borne by the holder of the relevant commodity or product.

- *Article 25: Exchange of information and cooperation among authorities*

This Article sets out an obligation for competent authorities, customs authorities and the Commission to cooperate in implementing the Regulation (paragraph 1).

Paragraphs 2 and 3 establish a link to the cooperation and exchange of information mechanisms under Regulation (EU) No 952/2013.

- *Article 26: Electronic interfaces*

Paragraph 1 requires the Commission to set up an electronic interface to connect the EU Single Window Environment to the information system established under Article 31. Paragraph 2 establishes the basic functionality of such interface and paragraph 3 empowers the Commission to adopt implementing acts to define the detailed data and functioning of the interface.

- *Article 27: Assessment of countries*

Article 27 introduces the country benchmarking system, which is a key feature of this Regulation. The objective of the benchmarking is to incentivise countries to ensure stronger forests protection and governance, to facilitate trade and to better calibrate enforcement efforts by helping competent authorities to focus resources where they are most needed, and to reduce companies' compliance costs.

Through the benchmarking system, the Commission will assess the risk that countries or parts thereof produce relevant commodities and products that are not deforestation-free. The benchmarking system will assign each country or parts thereof one of three possible levels of risk: low, standard and high risk. At the entry into force of the Regulation, all countries will be assigned a standard level of risk. The assessment will be based on the criteria outlined in paragraph 2.

Paragraph 3 outlines the procedure to be followed by the Commission prior to changing the existing risk category for a country or parts thereof. This will include the invitation to the country to respond within adequate time and to provide information deemed useful, including on measures taken by the country to remedy the situation.

The Commission would make the country risk categorisation publicly available by the adoption of Commission implementing acts and will update the list where necessary, when the emergence of new scientific evidence requires it. The obligations for operators and Member States competent authorities are differentiated according to the level of risk of the country of production or parts thereof, with simplified due diligence duties for operators sourcing from low risk countries or parts thereof (Article 12) and enhanced scrutiny for competent authorities operating checks on relevant commodities and products produced in high risk countries or parts thereof (Article 20).

- *Article 29: Natural or legal persons' substantiated concerns*

According to Article 15 and 16, a competent authority may carry out checks on operators and traders when it is in possession of relevant information, including on the basis of substantiated concerns provided by third parties. As per Article 2(21) 'substantiated concern' means "*well-founded claim based on objective and verifiable information regarding non-compliance with the present Regulation and which may require the intervention of competent authorities*".

The substantiated concerns may refer to specific shipments, suppliers, operators, traders or any situation in specific countries of production that generate risks of relevant commodity or product being placed on the market and which, as a result, may require the intervention of competent authorities. Substantiated concerns were also part of the system established in the EUTR [(Article 10(2))]. Article 29 builds on that experiences and clarifies the obligations of Competent Authority to assess the substantiated concerns and take the necessary operational steps that may be required to detect breaches and to prevent the further placing and circulation on the internal market.

Substantiated concerns are also relevant to operators and traders. Article 4(6) of this Regulation states the obligation for an operator who has been made aware, through a substantiated concern, of the non-compliance of the relevant commodity or product, to inform immediately the relevant competent authority of the country where the product has been placed on the market or exported from. The same obligation applies to traders, regardless of their size [Article 6 (4 and 5)]. Article 10(2)(i) also requires that the existence of a substantiated concern should be taken in to account as a risk assessment criteria.

- *Article 31: “Register” Information system*

Article 31 requires the Commission to establish an information system, through which due diligence statements foreseen under Article 4(2) need to be made available to competent authorities.

Paragraph 2 lays down the minimum required functions of the system, including *inter alia* its connection with customs via the EU Single Window Environment for Customs. Paragraph 3 confers upon the Commission the task to establish the rules on the functioning of the system via implementing act.

Paragraphs 4 and 5 concern access to the information system. As a central data base for the implementation of the Regulation, operators and traders as well as competent authorities shall have access, the details of which will depend on their obligations. A wider public shall also have access to the data, in an anonymised way.

- *Article 32: Review*

Article 32 establishes the rules governing the revision of the Regulation. Paragraph 1 provides for a first review process taking place no later than two years after the entry into force that results in a report and potential legislative proposals to amend the Regulation. This first review will focus on the need for and feasibility of expanding the scope of the Regulation to other ecosystems beyond forests and further commodities.

The general review foreseen in paragraph 2 will take place five years after the date foreseen in Article 32(2), i.e. 12 months from the entry into force. This provision also anticipates the content of this first general review, which will include an assessment of the opportunity to introduce further trade facilitation tools and the impact of the first years of application of this Regulation on farmers.

Finally, paragraph 3 focuses on the review of relevant products listed in Annex 1. This review will take place two years from the entry into force of the Regulation and thereafter, at regular interval thereby allowing a progressive product scope. The amendment of the list of products included in Annex 1 will be carried out through delegated act (paragraph 4).

- *Article 36: Entry into force and date of application*

This Regulation shall apply from the date of the entry into force. However, paragraph 2 establishes that Articles 3 to 12, 14 to 22, 24, 29 and 30 shall apply 12 months from the entry into force of this Regulation. Paragraph 3 however stipulates that these Articles shall apply 24 months from the entry into force of this Regulation for operators that are microenterprises established by December 31, 2020, except for products covered by the Annex to EU Regulation 995/2010 (EUTR).

These delays in application create a transition period in which the obligations of operators and traders, as well as the obligations of competent authorities to conduct checks do not apply. Such a transition period, which is longer for microenterprises, will give operators and traders adequate time to adapt to their obligations under the Regulation.

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

(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 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,

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. 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 and increase the likelihood of new diseases spreading from animals to humans.
- (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

¹ OJ C , , p. .

² OJ C , , p. .

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

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

biodiversity loss — the two most important environmental challenges of our time. Yet every year the world continues to lose 10 million hectares of forest.

- (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. Deforestation alone accounts for 11 % of greenhouse gas emissions⁵.
- (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 helps mitigate climate change. 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 is 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.
- (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 intergenerational equity.
- (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 consumption and production of the six commodities included in the scope (wood, cattle, soy, palm oil, cocoa and coffee) 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 report⁶ 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%. However, less than 5% of European forest areas are considered undisturbed, or natural, according to the European Environment Agency's State of the Environment 2020 report⁷.

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/>.

⁶ Forest Europe - Ministerial Conference on the Protection of Forests in Europe, State of Europe's Forests 2020, <https://foresteurope.org/state-europes-forests-2020/>.

⁷ European Environment Agency, State of the Environment 2020, <https://www.eea.europa.eu/soer/publications/soer-2020>.

- (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’⁸, 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’⁹, 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, 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. To that end, the EU Biodiversity Strategy for 2030¹⁰, the Farm to Fork Strategy¹¹, the EU Forest Strategy¹², the EU Zero pollution action plan¹³ and other relevant strategies¹⁴ 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 Strategy¹⁵ 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.
- (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 and forest degradation, 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

⁸ COM(2019) 352 final.

⁹ 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.

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, EU Biodiversity Strategy for 2030 Bringing nature back into our lives, COM/2020/380 final.

¹¹ 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.

¹² 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.

¹³ 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.

¹⁴ 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.

¹⁵ 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.

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 proposals.¹⁶

- (11) The European Parliament highlighted that ongoing destruction of the world’s forests is 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 resolution¹⁷ 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”.
- (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 Change¹⁸, and with the legally binding commitment under the EU Climate Law to reach climate neutrality by 2050 and reduce greenhouse gas emissions by at least 55 % below 1990 levels by 2030.
- (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 loss¹⁹.
- (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 with producer and consumer countries are fundamental in that respect.
- (15) Halting deforestation and forest degradation 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 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>.

¹⁷ 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.

¹⁸ Ratified by the EU on 5 October 2016, and entered into force on 4 November 2016.

¹⁹ FAO new Global Remote Sensing Survey, 6 Nov. 2021 - FAO Remote Sensing Survey reveals tropical rainforests under pressure as agricultural expansion drives global deforestation.

- (16) This Regulation should also respond to the New York Declaration on Forests²⁰, 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, 2017-2030²¹, 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.
- (17) This Regulation should also respond to the 2021 Glasgow Leaders' Declaration on Forests and Land Use²² 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 also stressed in that Declaration 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, and that do not drive deforestation and land degradation.
- (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.
- (19) This Regulation also follows the Commission's **Communication on "An Open, Sustainable and Assertive Trade Policy"**²³ 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.
- (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'²⁴, in particular: 1) working in partnership with producer countries, to

²⁰ <https://unfccc.int/news/new-york-declaration-on-forests>.

²¹ https://www.un.org/esa/forests/wp-content/uploads/2016/12/UNSPF_AdvUnedited.pdf.

²² <https://ukcop26.org/glasgow-leaders-declaration-on-forests-and-land-use/>.

²³ 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.

²⁴ COM(2019) 352 final.

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, to promote the adoption of similar measures to avoid products coming from supply chains associated with deforestation and forest degradation being placed on their markets.

- (21) The Commission should continue to work in partnership with producer countries, and more generally in cooperation with international organisations and bodies, and should be reinforcing its support and incentives with regard to protecting forests and transition to deforestation-free production, acknowledging the role of indigenous people, improving governance and land tenure, increasing law enforcement and promoting sustainable forest management, climate-resilient agriculture, sustainable intensification and diversification, agro-ecology and agroforestry. In doing so it should acknowledge the role of indigenous people in protecting forests. Building upon the experience and lessons learned in the context of the already existing initiatives, the Union and the Member States should work in partnership with producer countries, upon their request, to exploit the multi-functionalities of forest, support them in the transition to sustainable forest management, 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 in protecting, restoring and sustainably using forest, hence contributing to the objective of this Regulation to reduce deforestation and forest degradation.
- (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. Moreover, building on already existing monitoring tools, including Copernicus products, the EU Observatory will 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 will thus directly support the implementation of this Regulation by providing scientific evidence in regard to global deforestation and forest degradation and related trade. The EU Observatory will cooperate closely with relevant international organisations, research institutes, and third countries.
- (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 market²⁵, 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 Community²⁶. 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

²⁵ OJ L 295, 12.11.2010, p. 23.

²⁶ OJ L 347, 30.12.2005, p. 1.

been met²⁷ 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 report²⁸ 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 signalling that leaving out deforestation that is legal in the country of production undermines the effectiveness of policy measures.
- (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. 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 both deforestation and forest degradation, it should provide legal clarity, and it should be measurable based on quantitative, objective and internationally recognised data.
- (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 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. The list of the commodities was then further reduced via an efficiency analysis in the Impact Assessment. This efficiency analysis compared the hectares of deforestation linked to EU consumption, as estimated in a recent research paper²⁹, for each of those commodities with their average value of EU imports. According to the research paper used for the efficiency analysis, six commodities represent the largest share of EU-driven deforestation among the total of eight commodities analysed in that research paper: palm oil (33,95%), soy (32,83%), wood (8,62%), cocoa (7,54%), coffee (7,01%) and beef (5,01%).
- (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, forest degradation, and to promote deforestation-free supply chains.

²⁷ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11630-Illegal-logging-evaluation-of-EU-rules-fitness-check-_en

²⁸ https://www.forest-trends.org/wp-content/uploads/2021/05/Illicit-Harvest-Complicit-Goods_rev.pdf.

²⁹ Pendrill F., Persson U. M., Kastner, T. 2020.

- (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.
- (31) 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 in the scope of this Regulation would be allowed to enter the Union market or be exported if they were produced on land subject to deforestation or forest degradation after that date. It should allow for the appropriate verification and monitoring, correspond to existing international commitments, such as the SDGs and the New York Declaration on Forests, thus minimising sudden disruption to supply chains while removing any incentive to accelerate activities leading to deforestation and forest degradation in view of the entry into force of this Regulation.
- (32) To strengthen the Union's contribution to halting deforestation and forest degradation, and to ensure that commodities and products from supply chains related to deforestation and forest degradation are not placed on the Union market, relevant commodities and 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 commodities and 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. 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 and area of production, 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 commodity or product is not compliant with this Regulation, should the operator be allowed to place the relevant commodity or product on the Union market or to export it.
- (34) Operators should formally assume responsibility for the compliance of the relevant commodities or 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 commodities and 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 they are deforestation-free and should therefore have the same obligations as operators.
- (37) In order to foster transparency and facilitate enforcement, operators which are not SMEs should, on an annual basis, publicly report on their due diligence system, including on the steps taken to implement their obligations.
- (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.
- (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 commodities and 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 commodities and 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. The information system should also be accessible for a wider public, with the anonymised data provided in an open and machine-readable format in line with the Union's Open Data Policy.
- (42) For the relevant commodities entering or leaving the Union market, competent authorities are tasked with the verification of the compliance of relevant commodities

and products with the obligations under this Regulation, 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 commodities and products entering or leaving the Union market, it is necessary to set up 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 additional burden for customs authorities should be limited. 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 commodity or 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 commodities and products being placed on the Union market varies depending on the commodity and product as well as on its country of origin and production. 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. 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 commodities and 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 commodities and 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 commodities and products that are not compliant with this Regulation.
- (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. For a comprehensive coverage of the relevant commodities and products, 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 commodities and products. Such percentages should be higher for relevant commodities and products from high-risk countries or parts thereof.
- (49) The checks of operators and traders by competent authorities should cover the due diligence systems and the compliance of the relevant commodities and 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 and products in the country of production, the history of 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 commodities and products to be checked, and should be carried out using electronic data processing techniques in the information system which collects the due diligence statements.
- (50) In case the risk analysis of the due diligence statements reveals a high risk of non-compliance of specific relevant commodities and products, the competent authorities

should be able to take immediate interim measures to prevent their placing or making available on the Union market. In case such relevant commodities and 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 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 commodities and 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 should 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 commodities and 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.
- (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.
- (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 products as listed in Annex I of this Regulation by way of a delegated act.
- (55) In order to ensure that information requirements with which operators have to comply and which are set out in this Regulation remain relevant and in line with 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 supplementing the information requirements necessary for the due diligence procedure, the information and criteria of risk assessment and risk mitigation with which operators have to comply which are set out in this Regulation and the list of 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 commodities and 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.
- (57) Regulation (EC) No 2173/2005 lays down Union procedures for the implementation of a FLEGT licensing scheme through bilateral Voluntary Partnership Agreements (VPAs) with timber-producing countries. To respect bilateral commitments that the European Union has entered into and to preserve the progress achieved with partner countries that have an operating system in place (FLEGT licensing stage), this Regulation should include a provision declaring wood and wood-based products covered by a valid FLEGT license as fulfilling the legality requirement under this 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 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. An evaluation of the need and the feasibility of extending the scope of this Regulation to other ecosystems than forests should therefore be undertaken within 2 years of the entry into force of this Regulation.
- (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 Council³⁰ and Regulation (EU) 2018/1725 of the European Parliament and of the Council³¹, as applicable.
- (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,

³⁰ 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).

³¹ 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).

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

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 cattle, cocoa, coffee, oil palm, soya and wood (“relevant commodities”) and products, as listed in Annex I, that contain, have been fed with or have been made using relevant commodities (“relevant products”), with a view to

- (a) minimising the Union’s contribution to deforestation and forest degradation worldwide
- (b) reducing the European Union’s contribution to greenhouse gas emissions and global biodiversity loss.

The Regulation shall not apply to relevant commodities and products placed on the Union market that were produced before the date established in Article 36(1).

Article 2

Definitions

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

- (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 meters and a canopy cover of more than 10%, or trees able to reach those thresholds in situ, excluding agricultural plantations and land that is predominantly under agricultural or urban land use;
- (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 commodities in Annex I other than wood;
- (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 harvesting operations that are not sustainable and cause a reduction or loss of the biological or economic productivity and complexity of forest ecosystems, resulting in the long-term reduction of the overall supply of benefits from forest, which includes wood, biodiversity and other products or services;
- (7) 'sustainable harvesting operations' means harvesting that is carried out considering maintenance of soil quality and biodiversity with the aim of minimising negative impacts, in a way that avoids harvesting of stumps and roots, degradation of primary forests or their conversion into plantation forests, and harvesting on vulnerable soils; minimises large clear-cuts and ensures locally appropriate thresholds for deadwood extraction and requirements to use logging systems that minimise impacts on soil quality, including soil compaction, and on biodiversity features and habitats;
- (8) 'deforestation-free' means
 - (a) that the relevant commodities and products, including those used for or contained in relevant products, were produced on land that has not been subject to deforestation after December 31, 2020, and
 - (b) that the wood has been harvested from the forest without inducing forest degradation after December 31, 2020;
- (9) 'produced' means grown, harvested, raised, fed from or obtained on relevant plot of land;
- (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 commodity or 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;
- (12) 'operator' means any natural or legal person who, in the course of a commercial activity, places relevant commodities and products on the Union market or exports them from the Union market;
- (13) 'trader' means any natural or legal person in the supply chain other than the operator who, in the course of a commercial activity, makes available on the Union market relevant commodities and 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 Council³²;
- (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;
- (16) 'negligible risk' means a full assessment of both the product-specific and the general information on compliance with Articles 3(a) and 3(b) by relevant commodities or products showing no cause for concern;

³² 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).

- (17) ‘authorised representative’ means any natural or legal person established within the Union who has received a written mandate from an operator to act on its behalf in relation to specified tasks with regard to the operator's obligations under this Regulation;
- (18) ‘non-compliant products’ means relevant commodities and products that were not produced in a ‘deforestation-free’ manner, or were not produced in accordance with the relevant legislation of the country of production, or both;
- (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;
- (20) ‘SMEs’ mean micro, small and medium-sized enterprises as defined in Directive 2013/34/EU³³;
- (21) ‘substantiated concern’ means well-founded 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;
- (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 commodities and products entering the Union market’ means relevant commodities and products from third countries placed under the customs procedure ‘release for free circulation’ and intended to be placed on the Union market or intended for commercial use or consumption other than private within the customs territory of the Union;
- (27) ‘relevant commodities and products leaving the Union market’ means relevant commodities and products placed under the customs procedure ‘export’;
- (28) ‘relevant legislation of the country of production’ means the rules applicable in the country of production concerning the legal status of the area of production in terms of land use rights, environmental protection, third parties’ rights and relevant trade and customs regulations under legislation framework applicable in the country of production;

Article 3

Prohibition

³³ 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).

Relevant commodities and products may be placed or made available on the Union market, or exported from the Union market only if 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 as laid down in Article 4(2).

Chapter 2

Obligations of operators and traders

Article 4

Obligations of operators

1. Operators shall exercise due diligence prior to placing relevant commodities and products on or prior to their export from the Union market in order to ensure their compliance with Article 3(a) and (b). To that end, they shall use a framework of procedures and measures, hereinafter referred to as a ‘due diligence’, as set out in Article 8.
2. Operators that by exercising due diligence as referred to in Article 8 have come to the conclusion that the relevant commodities and 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 commodities and products. That 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 commodities and products.
3. By making available the due diligence statement, the operator assumes responsibility for the compliance of the relevant commodity or product with the requirements of this Regulation. Operators shall keep record of the due diligence statements for 5 years from the date of making available via the information system referred to in Article 31.
4. Operators may not place relevant commodities and products on the Union market nor export them without prior submission of a due diligence statement.
5. The operator shall not place the relevant commodities and products on the market nor export them if one or more of the following cases apply:
 - (a) the relevant commodities and 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 commodities and products are not compliant with Article 3(a) or (b);
 - (c) the operator was unable to complete a due diligence procedure according to paragraphs 1 and 2.
6. Operators that have received new information, including substantiated concerns, that the relevant commodity or product that they have already placed on the market is not in conformity with the requirements of this Regulation shall immediately inform the

competent authorities of the Member States in which they placed the relevant commodity or product on the market. In the case of exports from the Union market, the operators shall inform the competent authority of Member State which is the country of production.

7. Operators shall offer all assistance necessary to competent authorities to facilitate the performance of the checks under Article 15, including as regards access to premises and the presentation of documentation or 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 commodity or 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.

Article 6

Obligations of traders

1. Traders which are SMEs may only make available on the market relevant commodities and products if they are in possession of the information required under paragraph 2.
2. Traders which are SMEs shall collect and keep the following information relating to the relevant commodities and 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 relevant commodities and products to them;
 - (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 commodities and products.
3. Traders which are SMEs shall keep the information referred to in this Article for at least 5 years and shall provide that information to the competent authorities upon request.
4. Traders which are SMEs that have received new information, including substantiated concerns, that the relevant commodity or product that they have already made available on the market is not 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 commodity or product on the market.
5. Traders which are not SMEs shall be considered operators and be subject to obligations and provisions in Articles 3, 4, 5, 8 to 12, 14(9), 15 and 20 of this Regulation with regard to the relevant commodities and products that they make available in the Union market.

6. Traders shall offer all assistance necessary to competent authorities to facilitate the performance of the checks under Article 16, including as regards access to premises and the presentation of documentation or records.

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 commodities and products, the first natural or legal person established in the Union who buys or takes possession of such relevant commodities and products shall be considered operator within the meaning of this Regulation.

Article 8

Due diligence

1. Prior to placing relevant commodities and products on the market or before exporting them, operators shall exercise due diligence with regard to all relevant commodities and 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 10.

Article 9

Information requirements

1. Operators shall collect information, documents and data demonstrating that the relevant commodities and products are compliant with Article 3. For this purpose, the operator shall collect, organise and keep for 5 years the following information relating to the relevant commodities or products, supported by evidence:
 - (a) description, including the trade name and type of relevant commodities and products as well as, where applicable, the common name of the species and its full scientific name;
 - (b) quantity (expressed in net mass and volume, or number of units) of the relevant commodities and products;
 - (c) identification of the country of production;
 - (d) geo-localisation coordinates, latitude and longitude of all plots of land where the relevant commodities and products were produced, as well as date or time range of production;
 - (e) name, email and address of any business or person from whom they have been supplied with the relevant commodities or products;
 - (f) name, email and address of any business or person to whom the relevant commodities or products have been supplied;

- (g) adequate and verifiable information that the relevant commodities and products are deforestation-free;
 - (h) adequate and verifiable information that the production has been conducted in accordance with 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.
 3. The Commission may adopt delegated acts in accordance with Article 33 to supplement paragraph 1 concerning further relevant information to be obtained that may be necessary to ensure the effectiveness of the due diligence system.

Article 10

Risk assessment and risk mitigation

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 commodities and products intended to be placed on or exported from the Union market are non-compliant with the requirements of this Regulation. If the operators cannot demonstrate that the risk of non-compliance is negligible, they shall not place the relevant commodity or 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 or parts thereof in accordance with Article 27;
 - (b) the presence of forests in the country and area of production of the relevant commodity or product;
 - (c) prevalence of deforestation or forest degradation in the country, region and area of production of the relevant commodity or product;
 - (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 of production and origin, such as level of corruption, prevalence of document and data falsification, lack of law enforcement, 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, in particular difficulties in connecting commodities and/or products to the plot of land where they were produced;
 - (g) the risk of mixing with products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring;
 - (h) the conclusions of the relevant Commission expert group meetings published in the Commission's expert group register;
 - (i) substantiated concerns submitted under Article 29;

- (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) 2018/2001³⁴, 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.
- 4. Except where the analysis undertaken in accordance with paragraph 1 allows the operator to ascertain that there is no or negligible risk that the relevant commodities or products are not compliant with the requirements of this Regulation, the operator shall adopt prior to placing the relevant commodities and 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.
- 5. Operators shall be able to demonstrate how the information gathered was checked against the risk assessment criteria set out in paragraph 2, how a decision on risk mitigation measures was taken and how the operator determined the degree of risk.
- 6. Operators shall have in place adequate and proportionate policies, controls and procedures to mitigate and manage effectively the risks of non-compliance of relevant commodities and 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.
- 7. The risk assessments shall be documented, reviewed at least on an annual basis and made available to the competent authorities upon request.
- 8. The Commission may adopt delegated acts in accordance with Article 33 to supplement paragraphs 2, 4 and 6 as regards relevant information to be obtained, risk assessment criteria and risk mitigation measures that may be necessary to supplement those referred to in this Article to ensure the effectiveness of the due diligence system.

Article 11

Maintenance of due diligence systems and record keeping

- 1. In order to exercise due diligence in accordance with Article 8, operators shall establish and keep up to date a due diligence system to ensure that they can guarantee compliance with the requirements set out in Article 3(a) and (b). 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

³⁴ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328/82, 21.12.2018, p. 82–209).

diligence. Operators shall keep record of updates in the due diligence system(s) for 5 years.

2. Unless otherwise provided by other EU legislative instruments that lay down requirements regarding sustainability value chain due diligence, operators which are not SMEs 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.
3. Operators shall keep for at least 5 years all 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 commodities or products on the Union market or exporting them from it, operators are not required to fulfil the obligations under Article 10 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.
2. However, if the operator obtains or is made aware of any information that would point to a risk that the relevant commodities and products may not fulfil the requirements of this Regulation, all obligations of Article 9 and 10 have to be fulfilled.

Chapter 3

Obligations of Member States and their competent authorities

Article 13

Competent authority

1. Member States shall designate one or more competent authorities responsible for carrying out the obligations arising from this Regulation.
2. By [three months after the date of entry into force of this Regulation], Member States shall notify the Commission of the names, addresses and contact details of the competent authorities designated pursuant to 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. 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 and resources to perform the obligations set out in Chapter 3 of this Regulation.
5. 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, taking into account the situation of SMEs, in order to facilitate compliance with the requirements of this Regulation.
6. Member States, may facilitate the exchange and dissemination of relevant information, in particular with a view to assisting operators in assessing risk as set out in Article 9, and on best practices regarding the implementation of this Regulation.
7. Assistance shall be provided in a manner which does not compromise the independence, legal obligations and responsibilities of competent authorities in enforcing this Regulation.

Article 14

Obligation to perform checks

1. The competent authorities shall carry out checks to establish whether operators and traders comply with their obligations under this Regulation and whether the relevant commodities and 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.
3. To carry out the checks referred to in paragraph 1, the competent authorities shall establish a plan based on a risk-based approach. The plan shall contain at least risk criteria to carry out the risk analysis under paragraph 4 and thereby inform the decisions on checks. In establishing and reviewing the risk criteria, the competent authorities shall take into account in particular the assignment of risk to countries or parts thereof in accordance with Article 27, the history of compliance of an operator or trader with this Regulation and any other relevant information. Based on the results of the checks and the experience on implementation of the plans, the competent authorities shall review those plans and risk criteria on a regular basis in order to improve their effectiveness. When reviewing the plans, the competent authorities shall establish a reduced frequency of checks for those operators and traders who have shown a consistent record of full compliance with the requirements under this Regulation.
4. In order to implement the risk-based plans of checks established under paragraph 3, the competent authorities shall carry out risk analysis of the information contained in the due diligence statements made available to them according to Article 4(2). The risk analysis shall use the risk criteria included in the plans established under paragraph 3, and shall be carried out by means of electronic data-processing techniques integrated in the information system set out in Article 31.
5. Based on the risk analysis under paragraph 4 and any other relevant information, the competent authorities shall identify the operators and traders to be checked according to Articles 15 and 16.
6. Based on the risk analysis under paragraph 4, competent authorities shall also identify relevant commodities and products that call for immediate action because

they present such high risk of non-compliance with the provisions of this Regulation that require to be checked before they are placed or made available on the Union market or exported. Such identification shall be flagged in the information system established under Article 31 and shall result in competent authorities taking immediate interim measures under Article 21 to suspend the placing or making available on the Union market of the relevant commodities and products or, in the case of relevant commodities or products entering or leaving the Union market and once the electronic interface referred to in Article 26(1) is in place, in the request to customs authorities for suspension under Article 24(6) of their release for free circulation or export.

7. The suspensions referred to in paragraph 6 shall end within 3 working days unless 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 commodities and products comply with the requirements of this Regulation. In such case, the competent authorities shall extend the period of suspension by means of additional interim measures taken under Article 21 or, in the case of relevant commodities or products entering or leaving the Union market, by notifying the customs authorities of the need to maintain the suspension under Article 24(6).
8. 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 cover at least 5% of the operators placing, making available on or exporting from the Union market each of the relevant commodities on their market as well as 5% of the quantity of each of the relevant commodities placed or made available on or exported from their market.
10. For relevant commodities and products produced in a country or parts thereof listed as high risk in accordance with Article 27 or if there is a risk of relevant commodities or products produced in such countries or parts thereof entering the relevant supply chain, the competent authority shall carry out enhanced scrutiny specified in Article 20.
11. Without prejudice to the checks under paragraphs 5 and 6, competent authorities shall conduct checks referred to in paragraph 1 when they are in possession of evidence or other relevant information, including based on substantiated concerns provided by third parties under Article 29, concerning 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 5 years.

Article 15

Checks on operators

1. The checks on operators shall include:
 - (a) examination of the due diligence system, including risk assessment and risk mitigation procedures;
 - (b) examination of documentation and records that demonstrate the proper functioning of the due diligence system;
 - (c) examination of documentation and records that demonstrate the compliance of a specific product or commodity that the operator has placed, intends to place on or export from the Union market with the requirements of this Regulation;
 - (d) examination of due diligence statements;and, where appropriate,
 - (e) on the ground examination of relevant commodities and products with a view to ascertaining their conformity to the documentation used for exercising due diligence;
 - (f) any technical and scientific means adequate to determine the exact place where the relevant commodity or product was produced, including isotope testing;
 - (g) any technical and scientific means adequate to determine whether the relevant commodity or product are deforestation-free, including Earth observation data such as from Copernicus programme and tools, and
 - (h) spot checks, including field audits, including where appropriate in third countries through cooperation with the administrative authorities of third countries.

Article 16

Checks on traders

1. The checks on traders shall include:
 - (a) examination of documentation and records that demonstrate the compliance with Article 6(2);
 - (b) where appropriate, 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, with 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.
2. For the application and enforcement of this Regulation, competent authorities shall establish administrative arrangements with the Commission concerning the transmission of information and the conduct of investigations.
3. Competent authorities shall exchange information necessary for the enforcement of this Regulation. This shall include giving access to and exchange of data on operators and traders including due diligence statements 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 infringement 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 commodity or product on the market that is not compliant with this Regulation, to enable the withdrawal or recall of such commodity or product from sales in all Member States.
5. At the request of a competent authority, Member States shall provide to it the necessary information 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 their plans for checks, the number and the results of the controls carried out on operators and traders, including the contents of these checks, the volume of relevant commodities and products checked in relation to the total quantity of relevant commodities and products placed on the market, the countries of origin and of production of relevant commodities and products as well as the measures taken in case of non-compliance and the costs of controls recovered.
2. The Commission services shall make publicly available, on an annual basis, a Union-wide overview of the application of this Regulation based on the data submitted by the Member States under paragraph 1.

Article 20

Enhanced scrutiny

Where relevant commodities or products were produced in a country or part thereof listed as high risk in accordance with Article 27, or there is a risk of relevant commodities or products produced in such countries or parts thereof entering the relevant supply chain, each Member State shall ensure that the annual checks carried out by their competent authorities cover at least 15% of the operators placing, making available on or exporting from the Union market each of the relevant commodities on their market as well as 15% of the quantity of each of the relevant commodities placed or made available on or exported from their market from high risk countries or parts thereof.

Article 21

Interim measures

Where, following the checks referred to in Article 15 and 16, possible serious shortcomings have been detected, or risks have been identified pursuant to Article 14(6), the competent authorities may 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.

Article 22

Market surveillance measures

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 commodity or product is not compliant with 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.
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:
 - (a) rectifying any formal non-compliance, in particular with the requirements of Chapter 2 of this Regulation;
 - (b) preventing the relevant commodity or product from being placed, made available on or exported from the Union the market;
 - (c) withdrawing or recalling the relevant commodity or product immediately;
 - (d) destroying the relevant commodity or product or donating it to charitable or public interest purposes.
3. If the operator or trader fails to take corrective action referred to in paragraph 2 or where the non-compliance referred to in paragraph 1 persists, competent authorities shall ensure that the product is withdrawn or recalled, or that its being made available on or exported from the Union market is prohibited or restricted.

Article 23

Penalties

1. 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 shall be effective, proportionate and dissuasive. Penalties shall include as a minimum:
 - (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; the maximum amount of

such fines shall be at least 4 % of the operators or trader's annual turnover in the Member State or Member States concerned;

- (b) confiscation of the relevant commodities and 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 commodities and products concerned;
- (d) temporary exclusion from public procurement processes.

Chapter 4

Procedures for relevant commodities and products entering or leaving the Union market

Article 24

Controls

1. Relevant commodities and 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 Council³⁵ shall however not apply to controls on relevant commodities and products entering the Union market in so far as the application and enforcement of this Regulation is concerned.
2. Competent authorities shall be responsible for the overall enforcement of this Regulation with regard to a relevant commodity and product entering or leaving the Union market. In particular, competent authorities shall be responsible of establishing, through the checks under Article 14(1), whether any such relevant commodity or 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. Customs authorities shall control the correct declaration of relevant commodities and products entering or leaving the Union market. Such controls shall be based primarily on risk analysis, with the purpose of identifying and evaluating the risks and developing the necessary countermeasures, and shall be performed within a common risk management framework on the Union level.
4. The reference number of the due diligence statement assigned by the information system referred to in Article 31 in relation to a relevant commodity or product entering or leaving the Union shall be made available to customs authorities when lodging the customs declaration for release for free circulation or export of that

³⁵ 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.

relevant commodity or product, except where the due diligence statement is lodged pursuant to Article 26(2).

5. Upon receipt of a customs declaration for release for free circulation or export of a relevant commodity or product entering or leaving the Union market, customs authorities shall verify the status of the due diligence statement using the electronic interface referred to in Article 26(1). Any change of status in the Information System referred to in Article 31, which takes place before the release for free circulation or export of that relevant commodity or product, shall be notified automatically to the customs authorities supervising that relevant commodity or product.
6. Where following the risk analysis under Article 14(4) the status of the corresponding due diligence statement indicates in the information system established under Article 31 that a relevant commodity or product requires to be checked before placed or made available on the EU market or exported, customs authorities shall suspend the release for free circulation or export of that relevant commodity or 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 commodity or product to be released for free circulation or exported in any of the following circumstances:
 - (a) Following the risk analysis under Article 14(4), competent authorities have not indicated in the information system established under Article 31 that relevant commodity or product as requiring the suspension of release for free circulation or of the export pursuant to paragraph 6;
 - (b) Where the release for free circulation or export has been suspended in accordance with paragraph 6, the competent authorities have not requested, within the 3 working days indicated in Article 14(7), the need to maintain the suspension of the release for free circulation or export of that relevant commodity or product;
 - (c) Where competent authorities have notified customs authorities through the information system established under Article 31 that the suspension of the release for free circulation or export of the relevant commodities and products can be lifted.

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

8. Where the competent authorities conclude that a relevant commodity or product entering or leaving the Union market is not compliant with this Regulation, they shall notify the customs authorities accordingly through the information system established under Article 31. Competent authorities may also indicate in the information system that they object to placing the relevant commodity or product under other specific customs procedures.

Upon notification of that status, customs authorities shall not allow the release for free circulation or export of that relevant commodity or product. They shall also include the following notice in the customs data-processing system and, where possible, on the commercial invoice accompanying the relevant commodity or product and on any other relevant accompanying document: ‘Non-compliant commodity or product — release for free circulation/export not authorised — Regulation (EU) 2021/XXXX.’ *[OP to indicate reference of this Regulation]*

Where the relevant commodity or product is subsequently declared for other customs procedures and provided that the competent authorities did not object to such placement, the notice shall be included by operator in the customs declarations and registered, under the same conditions, in the customs data-processing system and, where possible, on the accompanying documents used in connection with any such procedures.

9. Notifications and requests under paragraphs 5 to 8 of this Article shall take place by means of the electronic interface referred to in Article 26(1). Paragraphs 5 to 8 shall apply once the electronic interface referred to in Article 26(1) is in place.
10. Customs authorities may destroy a non-compliant relevant commodity or product upon the request of the competent authorities or where they deem it necessary and proportionate. The cost of such measure shall be borne by the natural or legal person holding the relevant commodity or product. Articles 197 and 198 of Regulation (EU) No 952/2013 shall apply accordingly. Upon request of competent authorities, non-compliant relevant commodities and products may alternatively be confiscated and placed by customs at the disposal of the competent authorities.

Article 25

Exchange of information and cooperation among authorities

1. To enable the risk-based approach referred to in Article 14(3) for relevant commodities and 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.
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 16(1) of Regulation (EU) No 952/2013.
4. Where, in relation to relevant commodities and products subject to this Regulation that are either in temporary storage or placed under a customs procedure other than 'release for free circulation', customs authorities at the first point of entry have reason to believe that those relevant commodities or products are not compliant with this Regulation, they shall transmit all relevant information to the competent customs office of destination.

Article 26

Electronic interfaces

1. The Commission shall develop an electronic interface based on the EU Single Window Environment for Customs to enable the transmission of data, in particular the notifications and requests referred to in Article 24, paragraphs 5 to 8, between

national customs systems and the information system referred to in Article 31. This electronic interface shall be in place at the latest four years from the date of adoption of the relevant implementing act referred to in paragraph 3.

2. The Commission may develop an electronic interface based on the EU Single Window Environment for Customs 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*] 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 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. Unless identified in accordance with this Article as presenting a low or high risk, countries shall be considered as presenting a standard risk. The Commission may identify countries or parts thereof that present a low or high risk of producing relevant commodities or products that are not compliant with Article 3, point (a). The list of the countries or parts thereof that present a low or high risk shall be published by means of implementing act(s) to be adopted in accordance with the examination procedure referred to in Article 34(2). That list shall be updated as necessary in light of new evidence.
2. The identification of low and high risk countries or parts thereof pursuant to paragraph 1 shall take into account information provided by the country concerned and be 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 products,

- (d) whether the nationally determined contribution (NDC) to the United Nations Framework Convention on Climate Change covers emissions and removals from agriculture, forestry and land use which ensures that emissions from deforestation and forest degradation are accounted towards the country's commitment to reduce or limit greenhouse gas emissions as specified in the NDC;
 - (e) agreements and other instruments concluded between the country concerned and the Union that address deforestation or forest degradation and facilitates compliance of relevant commodities and products with the requirements of this Regulation and their effective implementation;
 - (f) 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 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.
3. The Commission shall 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 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 competent authorities of inclusion or removal of a country from the list referred to in paragraph 1.

Article 28

Cooperation with third countries

1. The Commission shall engage with producer countries concerned by this Regulation to develop partnerships and cooperation to jointly address deforestation and forest degradation. Such partnerships and cooperation mechanisms will 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 structured dialogues, support programmes and actions, administrative arrangements and provisions in existing agreements or agreements that enable producer countries to make the transition to an agricultural production that facilitates the compliance of relevant commodities and products with the requirements of this regulation. Such agreements and their effective implementation will be taken into account as part of the benchmarking under Article 27 of this Regulation.

2. Partnerships and cooperation should allow the full participation of all stakeholders, including civil society, indigenous people, local communities and the private sector including, SMEs and smallholders.
3. Partnerships and cooperation shall promote the development of integrated land use planning processes, relevant legislations, fiscal 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, indigenous peoples and local communities, and ensure public access to forest management documents and other relevant information.
4. The Commission 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 forest ecosystems.

Chapter 6

Substantiated concern

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, based on objective circumstances, that one or more operators or traders are failing to comply with the provisions of this Regulation.
2. Competent authorities shall diligently and impartially assess the substantiated concerns 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 commodities and products under investigation.
3. The competent authority shall, as soon as possible and in accordance with the relevant provisions of national law, inform the natural or legal persons referred to in paragraph 1, which submitted observations to the authority, of its decision to accede to or refuse the request for action and shall provide the reasons for it.

Article 30

Access to justice

1. Any natural or legal person having sufficient interest, including those having submitted substantiated concern in accordance with Article 29, shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Regulation.
2. This Regulation shall be without prejudice to any provisions of national law 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. The information system shall provide at least for the following functionalities:
 - (a) registration of operators and traders and their authorised representatives in the EU; for operators placing relevant commodities and 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;
 - (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], in accordance with Article 26, including to allow the notifications and requests under Article 24(5) to (8);
 - (e) allow the risk profiling of operators, traders and relevant commodities and products for the purpose of identifying high risk consignments according to the risk analysis in Article 14(4);
 - (f) allow administrative assistance and cooperation between competent authorities and the Commission to exchange information and data;
 - (g) allow communication between competent authorities and operators and traders for the purposes of implementation of this Regulation.

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 33(2) of this Regulation.
4. The Commission shall provide access to that information system to customs authorities, competent authorities, operators and traders in accordance with their respective obligations under this Regulation.
5. In line with the EU's Open Data Policy, and in particular the Directive (EU) 2019/1024³⁶, 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 two years after the entry into force, the Commission shall carry out a first review of this Regulation, and shall present a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal. The report shall focus in particular on an evaluation of the need and the feasibility of extending the scope of this Regulation to other ecosystems, including land with high carbon stocks and land with a high biodiversity value such as grasslands, peatlands and wetlands and further commodities.
2. 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 to support the achievement of the objectives of the Regulation including through recognition of certification schemes;
 - (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 to sustainable supply chains.
3. Without prejudice to the general review under paragraph 1, a first review of Annex I shall be carried out by the Commission no later than two years after the entry into force of this Regulation, and thereafter at regular intervals in order to assess whether it is appropriate to amend or extend the relevant products listed in Annex I in order to ensure that all products that contain, have been fed with or have been made using

³⁶ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56–83).

relevant commodities are included in that list, unless the demand for those products has a negligible effect on deforestation. The reviews shall be based on an assessment of the effect of the relevant commodities and products on deforestation and forest degradation, and take into account changes in consumption, as indicated by scientific evidence.

4. Following a review as set out in paragraph 3, the Commission may adopt delegated acts in accordance with Article 33 to amend Annex I to include relevant products that contain or have been made using relevant commodities.

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 Articles 9(3), 10(8) and 32(4) 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 Articles 9(3), 10(8) and 32(4) 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 Articles 9(3), 10(8) and 32(4) 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 182/2011³⁷.
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.

Article 35

Repeals

Regulation (EU) No 995/2010 is repealed with effect from the date of application of this Regulation set out in Article 36(2).

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 12 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 microenterprises³⁸ 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

³⁷ 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.

³⁸ As defined in Article 3(1) 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.

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned

1.3. The proposal/initiative relates to:

1.4. Objective(s)

1.4.1. General objective(s)

1.4.2. Specific objective(s)

1.4.3. Expected result(s) and impact

1.4.4. Indicators of performance

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

1.5.3. Lessons learned from similar experiences in the past

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

1.5.5. Assessment of the different available financing options, including scope for redeployment

1.6. Duration and financial impact of the proposal/initiative

1.7. Management mode(s) planned

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

3.2.2. Estimated output funded with operational appropriations

3.2.3. Summary of estimated impact on administrative appropriations

3.2.4. Compatibility with the current multiannual financial framework

3.2.5. Third-party contributions

3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and of the Council concerning certain relevant commodities and products associated with deforestation and forest degradation

1.2. Policy area(s) concerned

09 - Environment and Climate Action

1.3. The proposal/initiative relates to:

☒ **a new action**

☐ **a new action following a pilot project/preparatory action¹**

☐ **the extension of an existing action**

☒ **a merger or redirection of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

The general objective is to curb deforestation and forest degradation that is provoked by EU consumption and production. This, in turn, is expected to reduce EU-driven greenhouse gas emissions and biodiversity loss.

1.4.2. Specific objective(s)

Specific objective No

Curbing deforestation and forest degradation that is provoked by EU consumption and production:

- Minimise consumption of products coming from supply chains associated with deforestation or forest degradation.
- Increase EU demand for and trade in legal and ‘deforestation-free’ commodities and products.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The proposed regulation will prevent deforestation driven by EU consumption and production of the six commodities included in the scope, with projected benefits well above 71,920 hectares of forest less affected by EU-driven deforestation and forest degradation annually by 2030. This would also mean a reduction of at least 31.9 million metric tons of carbon emissions to the atmosphere every year due to EU consumption and production of the relevant commodities, which could be translated into economic savings of at least 3.2 billion EUR annually. In addition, the regulation is expected to decisively contribute to protecting biodiversity, to creating a level playing field for companies operating in the EU market, as well as to achieving

¹ As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

the specific objectives of the regulation: Minimising the consumption of products coming from supply chains associated with deforestation or forest degradation and increasing EU demand for and trade in legal and ‘deforestation-free’ commodities and products.

1.4.4. *Indicators of performance*

Specify the indicators for monitoring progress and achievements.

1. At least 71,920 hectares of forest less per year will suffer deforestation or forest degradation due to EU consumption or production of the commodities in the scope.
2. At least 31.9 million metric tons of carbon per year will not be emitted to the atmosphere due to EU consumption and production of the commodities in the scope.
3. Fewer animal and plant species will be threatened by extinction through EU-driven deforestation and forest degradation.
4. Operators and traders dealing with the relevant commodities in the EU will have a clear and predictable EU legal framework that levels the playing field as regards obligations to prevent deforestation and forest degradation.
5. The quantity of products sold in the EU coming from supply chains associated with deforestation or forest degradation will be reduced.
6. EU consumption and production of ‘deforestation-free’ commodities and products will grow.

1.5. **Grounds for the proposal/initiative**

1.5.1. *Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

The proposed regulation will be directly applicable from the day of its entry into force. A series of implementing/delegated acts, as well as administrative tasks, will be deployed in a time-horizon of 5 years from the date established in Article 36 (1).

A detailed list of these envisaged actions is provided below:

1. Before the date established in Article 36(2):

- a) A public bid (or administrative arrangement) for a contract to develop the country benchmarking system according to the criteria specified in the regulation.
- b) A public bid for an impact assessment on the covering further commodities and products as well as other vulnerable ecosystems.

c) A public bid for a contract to support the Commission in the tasks mandated in the regulation.

d) A contract or administrative arrangement to develop the information system to store and exchange data on operators and self-declarations.

2. Within the first five years after the date established in Article 36(1):

- a) Commission adopts lists of low and high risk countries and parts thereof via delegated/implementing act.
- b) Commission adopts adapted product scope via delegated/implementing act.
- d) A public bid for a contract to support the first evaluation of the regulation.
- e) Commission conducts and approves first evaluation of the regulation, accompanied as appropriate by a legislative proposal proposing possible amendments.

1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

Reasons for action at European level (ex-ante)

Drivers of deforestation and forest degradation are linked to EU and international trade. Action at EU level is essential to enable international trade issues to be addressed in a coordinated and harmonised way, and to ensure a level playing field for companies, in terms of requirements to be met before placing or making products available on or exporting from Union market. Action at EU level would also benefit from previous EU experience in dealing with complex supply chains (e.g. stemming from the legislation related to illegal logging for example.)

Only action at EU level would guarantee to effectively achieve the goals of the intervention, that is, curbing EU-driven deforestation and therefore GHG emissions and biodiversity loss provoked by EU consumption and production, as well as minimising the consumption of commodities and products associated with deforestation.

Expected generated Union added value (ex-post)

The EU intervention will ensure harmonised requirements for the products and commodities in the scope of the Regulation that are being placed on the EU market, regardless of whether they are produced inside or outside the EU. This will ensure a fair playing field for companies operating in the EU, which will be subject to the same obligations, regardless of the EU country in which they are based. The intervention will significantly decrease EU-driven deforestation (see expected results above), GHG emissions and biodiversity loss.

The proposal should also contribute to minimising the consumption of products coming from supply chains associated with deforestation or forest degradation; and increasing EU demand for and trade in legal and 'deforestation-free' commodities and products.

1.5.3. *Lessons learned from similar experiences in the past*

The evaluation of the EUTR and FLEGT Regulation, focusing on the legality of timber placed on the EU market, points to a need to modernise the legislative framework. There are currently no EU rules in place aiming to reduce the impact of EU consumption on deforestation and forest degradation. The proposal builds on the lessons learnt from the Fitness Check as regards the improvement of the proposed

due diligence system (in comparison with that of the EUTR) and the lack of effectiveness of specific bilateral trade treaties (the FLEGT Voluntary Partnership Agreements of the timber sector) to tackle EU-driven deforestation.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

The European Union has approved a major recovery plan based on a reinforced long term budget for the next Multiannual Financial Framework and a new recovery instrument, Next Generation EU.

The initiative falls under the umbrella of the European Green Deal, which guides the EU's recovery strategy. It aims to make the EU climate-neutral by 2050 and to curb biodiversity loss. This includes the objective of promoting products and value chains that do not involve deforestation and forest degradation. It also advocates for more sustainable food supply chains and for the EU to set new standards for sustainable growth and use its economic weight to shape international standards that are in line with EU environmental and climate ambitions. The initiative is also part of the priorities set out in the Biodiversity strategy for 2030 and the Farm to Fork Strategy.

The initiative falls under Heading 3 (Natural Resources and the Environment), Title 9 (Environment and Climate Action) of the Multiannual Financial Framework. As detailed below, the implementation of this piece of legislation will require additional human resources and also some supporting expenditure. The supporting expenditure will be covered by the EU programme for the environment and climate action (LIFE) 2021–2027.

1.5.5. Assessment of the different available financing options, including scope for redeployment

The implementation of the Regulation will result in a large and diverse number of economic sectors falling under the scope of the Regulation, which will necessitate additional human resources, procurement resources for external contractors and administrative arrangements between Commission services.

Five additional FTEs within DG ENV will be needed to implement the Regulation, including international cooperation. Two additional FTEs within DG INTPA focusing on cooperation and development as well as 1 additional FTEs for TAXUD are needed to implement the Regulation, in particular obligations related to customs.

The needs are based on calculations of the resources assigned to the legislative tools aimed at fighting illegal logging (EUTR and FLEGT Regulation), the former of which will be replaced by the proposed initiative. The current available staff in DG ENV are 3.25 AD + 1 AST + 1 Free SND + 0.5 FTE of a contract agent. This covers: a) Implementing, monitoring and reviewing two EU regulations (EUTR and FLEGT Regulation); b) negotiating and implementing Voluntary Partnership Agreements with five countries (Indonesia, Vietnam, Laos, Thailand and Malaysia) and cooperating with other producing and consuming countries, including a permanent cooperation structure with China; c) representing the EU in multilateral fora: FAO, United Nations Forum on Forests (UNFF) and the International Tropical Timber Organization (ITTO); d) implementing the additional actions foreseen in the

Commission Communication on ‘Stepping up EU Action to Protect and Restore the World's Forests.’²

The new proposal will not only integrate existing EU legislation, but also significantly expand the scope of actions and the complexity of implementation, which entails the need for new resources. The new proposal will involve expanding the scope from one commodity (wood) to six (adding beef, palm oil, soy, cocoa and coffee) and their derived products, and it will expand its coverage to go beyond legality and include sustainability. This, in turn, is expected to increase the value of the economic sectors concerned as well as the number of stakeholders and third countries directly and strongly affected by the Regulation. There will be more Expert Group meetings (from five to six) and more members of the group (from only member states to include stakeholders and third countries.) There will be a new information system (see below), in addition to the one dedicated to the FLEGT Regulation. The country benchmarking system (see below) is expected to involve closer cooperation with dozens of countries. The political visibility and sensitiveness of the Regulation will increase in comparison with the previous situation covering only wood, as it will affect sectors that are essential for the economies of particular countries (e.g. cocoa in Ivory Coast and Ghana; palm oil in Indonesia and Malaysia; soy and cattle in Brazil and Argentina) requiring intensified bilateral engagement including at expert level. The representation duties of DG ENV in international fora will increase, too. The reporting duties of member states will increase in line with the greater scope of commodities and the value of economic sectors involved. The transition to the new Regulation, the repeal of the EUTR and the adaptation of the FLEGT Regulation will involve additional tasks over the first five years of operation.

All these new activities and tasks will substantially increase DG ENV’s workload. The higher political and economic weight of the new Regulation will require more preparation and more analytical work to manage more interactions — at both political and working level — with other Commission departments, with the Council and the European Parliament, with stakeholders, with third countries and with international organisations. The additional reporting tasks carried out by and the added tools (the information system and the benchmarking system) managed by DG ENV will require additional oversight by DG ENV. Streamlining and improving implementation in comparison with the EUTR and FLEGT Regulations — which, as reflected in the Fitness Check, had a number of shortcomings —, taking also into account the bigger scope, will demand more resources from DG ENV dedicated to monitoring implementation in member states.

All these tasks require a high capacity of political judgement, policy knowledge, analytical skills, independence and resilience that can only be delivered by AD officials. The complex supply chains of the commodities involved, and the geographical differences across the globe, would make it advisable to aim at a certain degree of specialisation within DG ENV’s team in charge of the implementation. This can be done by commodity, by region or by task, but it will require the additional staffing resources as set out above. Outsourcing will be used as far as possible (see below), but this also requires oversight. In addition, there are core tasks that involve a high degree of political sensitivity and need to be carried out by the Commission.

²

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1565272554103&uri=CELEX:52019DC0352>

Resource needs will increase for DG ENV, DG INTPA and DG TAXUD. DG ENV will have to work on the complex exercise of country benchmarking (both technically and diplomatically), while as at the same time continuing the implementation of previous legal obligations in this new context, including international cooperation (constant work with partner countries, both consumer and producing, crucial to avoid leakage). DG INTPA will in particular focus on new cooperation programs under the frame of Forest Partnerships, which will be aimed, among other goals, at helping producing countries comply with the Regulation. The Forest Partnerships will be offered to all relevant countries, including those currently engaged in Voluntary Partnership Agreements negotiations or implementation. DG TAXUD will work on the general policy implementation of the Regulation as well as preparatory work and drafting of secondary legislation in relation to relevant commodities and products entering or leaving the Union market. These activities will require the additional human resources for DG ENV, DG INTPA and DG TAXUD.

Before the entry into force and in the first five years of operation, there will also be a need for procurement budget for external contractors that will be supporting the first review of the product scope, the first evaluation of the regulation and the general implementation of the regulation. The estimated budget for these three contracts over the first five years is EUR 3,050,000. This estimate is based on previous procurement contracts with the same characteristics.

There is also a need for developing the due diligence registry, a database linking customs authorities of member states, other competent authorities of member states and the Commission, and storing and facilitating information supplied by operators (essentially their registration and their self-declarations.) This could be done either via an external contractor or with an administrative arrangement with Commission services. DG ENV has facilitated a budget estimate of EUR 1.5 million for five years to create and maintain the database with the required functionalities. In addition, TAXUD has filed a budget of 950,000 over the first five years of operation for the IT work necessary to adapt the custom systems to the changes required by the Regulation. IT development and related procurement choices will be subject to pre-approval by the European Commission Information Technology and Cybersecurity Board.

As regards the creation and the operation of the country benchmarking, this could be done via an administrative arrangement or an external contract. A provisional budget of EUR 4,369,000 is foreseen for the first five years. This is nearly five times the amount contemplated in the Impact Assessment, which was calculated in terms of working hours. This is because the benchmarking foreseen in the Impact Assessment was a simplified version, which has been enlarged with new assessment criteria, as well as with increased cooperation duties with affected countries, in the final legal proposal. These new features are labour intensive – assessing the legislation and enforcement of legislation in every country is an ambitious endeavour – and will involve a much larger amount of working hours. The revamped amount has been calculated taking into account the experience of the country overviews of the EU Timber Regulation.

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

- ☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY
- ☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☒ **unlimited duration**

- Implementation with a start-up period from 2023 to 2027,
- followed by full-scale operation.

1.7. Management mode(s) planned³

☒ **Direct management** by the Commission

- ☒ by its departments, including by its staff in the Union delegations;
- ☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

- ☐ third countries or the bodies they have designated;
 - ☐ international organisations and their agencies (to be specified);
 - ☐ the EIB and the European Investment Fund;
 - ☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;
 - ☐ public law bodies;
 - ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;
 - ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;
 - ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

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³ Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:
<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The LFS concerns staff expenditure, procurement, and possibly administrative arrangements. Standard rules for this type of expenditures apply

2.2. Management and control system(s)

2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

The management mode for the initiative is direct management by the Commission. The Commission will be assisted by an Expert Group with member states representatives and stakeholders: The Commission Expert Group/Multi-Stakeholder Platform on Protecting and Restoring the World's Forests. The Commission will also be assisted by a Committee.

Overall, the initiative involves staff expenditure, procurement and possibly administrative arrangements. Standard rules for this type of expenditure apply.

2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

Overall, the initiative involves staff expenditure, procurement and possibly administrative arrangements. Standard rules for this type of expenditure apply.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

Overall, the initiative involves staff expenditure, procurement and possibly administrative arrangements. Standard rules for this type of expenditure apply.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

Overall, the initiative involves staff expenditure, procurement and possibly administrative arrangements. Standard rules for this type of expenditure apply.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. ⁵⁷	from EFTA countries ⁵⁸	from candidate countries ⁵⁹	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
3	09 02 01 - Nature and biodiversity	Diff.	YES	NO	NO	NO
7	20.01.02.01 - Remuneration and allowances	Non-diff.	NO	NO	NO	NO
7	20 02 06 02 - Conference and meeting costs	Non-diff.	NO	NO	NO	NO

⁵⁷ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations

⁵⁸ EFTA: European Free Trade Association

⁵⁹ Candidate countries and, where applicable, potential candidates from the Western Balkans

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

- ☐ The proposal/initiative does not require the use of operational appropriations
- ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework	3	Natural Resources and Environment
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DG: ENV			Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL (2022-2027)
• Operational appropriations									
09 02 01 - Nature and biodiversity	Commitments	(1a)	0.500	1.789	1.680	1.610	1.890	1.450	8.919
	Payments	(2a)	0.500	1.789	1.680	1.610	1.890	1.450	8.919
Appropriations of an administrative nature financed from the envelope of specific programmes ⁶⁰									
Budget line		(3)							
TOTAL appropriations for DG ENV	Commitments	=1a+1b +3	0.500	1.789	1.680	1.610	1.890	1.450	8.919
	Payments	=2a+2b +3	0.500	1.789	1.680	1.610	1.890	1.450	8.919

⁶⁰ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

DG: TAXUD			Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL (2022-2027)
• Operational appropriations									
09 02 01 - Nature and biodiversity	Commitments	(1a)	-	0.150	0.300	0.250	0.125	0.125	0.950
	Payments	(2a)	-	0.150	0.300	0.250	0.125	0.125	0.950
Appropriations of an administrative nature financed from the envelope of specific programmes ⁶¹									
Budget line		(3)							
TOTAL appropriations for DG TAXUD	Commitments	=1a+1b +3	-	0.150	0.300	0.250	0.125	0.125	0.950
	Payments	=2a+2b +3	-	0.150	0.300	0.250	0.125	0.125	0.950

• TOTAL operational appropriations	Commitments	(4)							
	Payments	(5)							
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)							
TOTAL appropriations under HEADING 3 of the multiannual financial framework	Commitments	=4+ 6	0.500	1.939	1.980	1.860	2.015	1.575	9.869
	Payments	=5+ 6	0.500	1.939	1.980	1.860	2.015	1.575	9.869

⁶¹ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

The amount reported above will be needed to support various implementation tasks related to the legislative provisions that will be carried out by DG ENV.

The procured activities include the commission of a study supporting the first review of the product scope (budgeted in 2022), a study supporting the first evaluation of the regulation (budgeted in 2026) and a support contract for the general implementation of the regulation (budgeted evenly along the first five years of operation.)

In addition, two other activities that could be developed either via an external contract or administrative arrangements with Commission services have been provisionally included in this category. These are the development and operation of the information system and the development and operation of the country benchmarking system. Both activities have been budgeted along the first five years of operation.

Finally, some amounts are included to cover the IT developments and maintenance of the electronic interfaces between national customs systems and the Information System as regards exchanges of information between customs authorities and competent authorities. These are included as part of the overall cost of the information system.

All costs except HR and Administrative								
Tasks	Resources	2022	2023	2024	2025	2026	2027	TOTAL
General implementation	General support contract	-	0.450	0.450	0.450	0.450	0.450	2.250
Benchmarking system	Support contract or administrative arrangement	-	1.009	0.840	0.840	0.840	0.840	4.369
“Register” Information System (ENV+TAXUD)	Support contract or administrative arrangement	-	0.480	0.690	0.570	0.425	0.285	2.450
Review product scope	Impact assessment support contract	0.500	-	-	-	-	-	0.500
First evaluation	Evaluation support contract	-	-	-	-	0.300	-	0.300
		0.500	1.939	1.980	1.860	2.015	1.575	9.869

Heading of multiannual financial framework	7	‘Administrative expenditure’
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This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the [Annex to the Legislative Financial Statement](#) (Annex V to the internal rules), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

		Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL (2022-2027)
DG: ENV								
• Human resources		-	0.760	0.760	0.760	0.760	0.760	3.800
• Other administrative expenditure ⁶²		-	0.114	0.114	0.114	0.114	0.114	0.570
TOTAL DG ENV	Appropriations	-	0.874	0.874	0.874	0.874	0.874	4.370

		Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL (2022-2027)
DG: INTPA								
• Human resources		-	0.304	0.304	0.304	0.304	0.304	1.520
• Other administrative expenditure		-	-	-	-	-	-	-
TOTAL DG INTPA	Appropriations	-	0.304	0.304	0.304	0.304	0.304	1.520

⁶² Article 34 envisages the establishment of a new Committee within the meaning of Regulation (EU) No 182/2011. Furthermore, the Deforestation Platform expert group that is existing already, but has not decision powers, will assist the Committee.

			Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL (2022-2027)
DG: TAXUD									
• Human resources			-	0.152	0.152	0.52	0.152	0.152	0.760
• Other administrative expenditure			-	-	-	-	-	-	-
TOTAL DG TAXUD	Appropriations		-	0.152	0.152	0.152	0.152	0.152	0.760

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	-	1.330	1.330	1.330	1.330	1.330	6.650
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EUR million (to three decimal places)

		Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL (2022-2027)
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments	0.500	3.269	3.310	3.190	3.345	2.905	16.519
	Payments	0.500	3.269	3.310	3.190	3.345	2.905	16.519

3.2.2. Estimated output funded with operational appropriations

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs			Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
	OUTPUTS							

↓	Type ⁶³	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 ⁶⁴ ...																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTALS																		

⁶³ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.)

⁶⁴ As described in point 1.4.2. 'Specific objective(s)...

3.2.3. Summary of estimated impact on administrative appropriations

- ☐ The proposal/initiative does not require the use of appropriations of an administrative nature
- ☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL (2023-2027)
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HEADING 7 of the multiannual financial framework							
Human resources	-	1.216	1.216	1.216	1.216	1.216	6.080
Other administrative expenditure	-	0.114	0.114	0.114	0.114	0.114	0.570
Subtotal HEADING 7 of the multiannual financial framework	-	1.330	1.330	1.330	1.330	1.330	6.650

Outside HEADING 7⁶⁵ of the multiannual financial framework							
Human resources							
Other expenditure of an administrative nature							
Subtotal outside HEADING 7 of the multiannual financial framework							

TOTAL	-	1.330	1.330	1.330	1.330	1.330	6.650
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The administrative appropriations required will be met by the appropriations which are already assigned to the management of the action and/or which have been redeployed, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of existing budgetary constraints.

⁶⁵ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research

3.2.3.1. Estimated requirements of human resources

- ☐ The proposal/initiative does not require the use of human resources.
- ☒ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

	Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027
• Establishment plan posts (officials and temporary staff)						
20 01 02 01 (Headquarters and Commission's Representation Offices)	0.0	8.0	8.0	8.0	8.0	8.0
20 01 02 03 (Delegations)						
01 01 01 01 (Indirect research)						
01 01 01 11 (Direct research)						
Other budget lines (specify)						
• External staff (in Full Time Equivalent unit: FTE)⁶⁶						
20 02 01 (AC, END, INT from the 'global envelope')						
20 02 03 (AC, AL, END, INT and JPD in the delegations)						
XX 01 xx yy zz⁶⁷	- at Headquarters					
	- in Delegations					
01 01 01 02 (AC, END, INT - Indirect research)						
01 01 01 12 (AC, END, INT - Direct research)						
Other budget lines (specify)						
TOTAL	0.0	8.0	8.0	8.0	8.0	8.0

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DGs who are already assigned to management of the action and/or have been redeployed within the DGs, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	<p>For DG ENV, 5 AD posts are needed for the general implementation of the regulation, including international cooperation, as well as preparatory work and drafting of secondary legislation according to the deadlines proposed in the regulation.</p> <p>For DG INTPA, 2 AD posts are needed to cope with cooperation and development related to the Regulation, in particular the setting up of Forest Partnerships.</p> <p>For DG TAXUD, 1 AD post is needed for the general policy implementation of the Regulation, preparatory work and drafting of secondary legislation in relation to relevant commodities and products entering or leaving the Union market, as well as the needs of the implementation of the interface under the Article 26.</p>
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⁶⁶ AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations

⁶⁷ Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines)

External staff	n/a
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3.2.4. *Compatibility with the current multiannual financial framework*

The proposal/initiative:

- ☒ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).
- The costs foreseen under the budget line 09 02 01 will be borne by the LIFE programme and will be planned under the annual management plan exercises of DG ENV. The human resources required shall be preferably met by an additional allocation under the annual allocation procedure of human resources.
- ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

- ☐ requires a revision of the MFF.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

The proposal/initiative:

- ☒ does not provide for co-financing by third parties
- ☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year N ⁶⁸	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

⁶⁸ Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.3. Estimated impact on revenue

- ☒ The proposal/initiative has no financial impact on revenue.
- ☐ The proposal/initiative has the following financial impact:
 - ☐ on own resources
 - ☐ on other revenue
 - please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative ⁶⁹						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article								

For assigned revenue, specify the budget expenditure line(s) affected.

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Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

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⁶⁹ As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.