EU Deforestation Regulation Scoping Document V1.0

Getting to grips with the EU Deforestation Regulation

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German Association of the Automotive Industry

INTRODUCTION

In the frame of the **European Deforestation Regulation** (EUDR) applying by the end of 2024, Drive Sustainability, Drive +, CLEPA and VDA are working together to ensure their understanding of the EUDR and that of their members is thorough.

A first joint webinar was delivered last March to deep dive into the legislative framework and the practical implications of its due diligence requirements high on the agenda of car- and truck makers and their suppliers.

To further our collaborative efforts, we have commissioned the law firm contrast for initial insights into key elements of the EUDR, particularly those pertaining to the automotive sector. The questions raised during the March webinar were also answered in the herewith provided Scoping document.

Disclaimer: *This document resembles a legal interpretation by the law firm contrast, not a sector position. Neither the partaking associations nor their members are liable for the legal positions assumed therein.*

Opinions and information provided are made as of the date of the document issue and are subject to change with new EU guidance and/or needed actions without notice.

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MEMORANDUM

To: Stefan Crets
Executive Director
CSR Europe

From: Filip Tuytschaever
Mathieu Vancaillie

Subject: **Getting to grips with EU Deforestation Regulation**

Date: Version 17 June 2024

CSR Europe, CLEPA and VDA requested a report summarising a presentation given on 15 March 2024 regarding the EU Deforestation Regulation ("**EUDR**").[1]

The report consists of three parts:

- **Part I** provides an overview of the EUDR with a focus on the automotive sector.
- **Part II** answers the questions raised during and after the presentation of 15 March 2024.
- **Part III** contains decision trees summarising Part I.

This report is based on the text of the EUDR itself and on the Commission's frequently asked questions ("**FAQ**") document (version 22 December 2023)[2]. The Blue Guide on the implementation of EU product rules (2022), a guidance document published by the Commission, is used where relevant to contribute to a better understanding.[3]

For the avoidance of doubt, **CSR Europe, CLEPA, VDA and their members are in principle allowed to go beyond the EUDR and to agree on minimum standards in this respect**. CSR Europe, CLEPA, VDA and their members are not allowed however to agree fixed or maximum standards or to signal to each other how far beyond the EUDR they will or will not go. Agreements between competitors on over-fulfilment of legislative requirements are prohibited by competition

[1] Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010

[2] https://circabc.europa.eu/ui/group/34861680-e799-4d7c-bbad-da83c45da458/library/e126f816-844b-41a9-89ef-cb2a33b6aa56/details

[3] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2022:247:TOC

law. Competition authorities expect fierce competition in these fields and impose heavy fines on infringements.[4]

I. GENERAL OVERVIEW OF THE EUDR

A. RELEVANT SCOPE

1. Products

1. The product scope of the EUDR is limited to the **relevant commodities** and **relevant products**. Relevant commodities are cattle, cocoa, coffee, palm oil, rubber, soya, and wood. Relevant products are exhaustively listed in Annex I to the EUDR.

2. The listed relevant products are linked to **CN-codes**.[5] The correct allocation of a CN-code is key under the EUDR, as it is already for the purpose of applying other existing legislation relating to e.g. Russia sanctions and generally to customs duties.

> For example, while tyres (ex 4011 New pneumatic tyres, of rubber) are subject to the EUDR, wheels (8708 70 Road wheels and parts and accessories thereof) are not.

3. **If a product is not listed in Annex I to the EUDR**, it is not subject to the EUDR even if it contains relevant commodities and/or relevant products. This is confirmed in the FAQ which refers explicitly to cars:

> **(28) What products are included in the Regulation?**
>
> The Regulation applies only to products listed in Annex I. Products not included in Annex I are not subject to the requirements of the Regulation, even if they contain relevant commodities in the scope of the Regulation. For example, soap will not be covered by the Regulation, even if it contains palm oil.
>
> Likewise, products with an HS code not included in Annex I, but which might include components or elements derived from commodities covered by the Regulation – such as cars with leather seats or natural rubber tyres – are not subject to the requirements of the Regulation.

4. **If a product is listed in Annex I to the EUDR but does not contain any of the relevant commodities**, it is not subject to the EUDR. In addition to the abovementioned correct allocation of the CN-codes, it is therefore key to correctly describe the product concerned and check it against the description in Annex I to the EUDR.

5. For instance, Annex I to the EUDR lists the following products:

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[4] E.g., the Commission decision of 8 July 2021 in AT.40178, *Car Emissions*.

[5] These CN-codes are the same as HS-codes but with more detail (HS-codes consist of 6 figures whereas the CN-codes consist of 8 figures).

ex 9401 Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof, of wood:

- the 'ex' in this description means that only an extract of the CN-category is relevant, which means in this case that only seats that contain wood are subject to the EUDR, excluding therefore for example seats made entirely out of metal, rubber, etc. The description does not suggest that the seats in question need to be made *entirely* out of wood.

ex 4011 New pneumatic tyres, of rubber:

- The EUDR does not clarify that only the directly linked commodity used for a relevant product needs to be deforestation-free. In other words, it is not clear whether only the rubber contained in the tyre or also the palm oil contained in the stearic acid in the tyre needs to be checked.

  The EUDR does not distinguish between the commodities natural rubber or synthetic rubber (while synthetic rubber – with CN-code 4002 – is not a relevant product, it is not explicitly ruled out as a relevant commodity). The EUDR therefore does not clarify whether relevant rubber products made from synthetic rubber are outside the EUDR's scope. The FAQ only indirectly refers to natural rubber.[6]

  It is expected that the Commission will clarify this issue in its FAQ in a later stage.

2915 70 Palmitic acid, stearic acid, their salts and esters

- The EUDR does not indicate that stearic acid made from animal fat instead of palm oil is outside the EUDR's scope. However, in the FAQ, it is confirmed explicitly that products included in Annex I "that do not contain, or are not made of, the commodities listed in Annex I are not covered by the Regulation".

4415 Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood (not including packing material used exclusively as packing material to support, protect or carry another product placed on the market):

- The description of this product explicitly excludes packing material that is used as packing material to support another product. The EUDR and FAQ (question 32) do not explain whether this means that packing material that is transferred after its use (e.g. for re-use or for sending it back to the producer of the packaging), falls under this exception. For example, pallets used to export cargo outside the EU may be returned

[6] See the quote above in no. 3: "products with an HS code not included in Annex I, but which might include components or elements derived from commodities covered by the Regulation – such as cars with leather seats or **natural rubber** tyres – are not subject to the requirements of the Regulation."

to the EU with a view to their re-use for cargo transport. There are good arguments to support that these pallets are excluded from the scope of the EUDR, as their sole purpose is to support, protect or carry other products being placed on the market or being exported, but the EUDR and FAQ lack guidance on the matter.

6. The EUDR does not apply to relevant commodities and products that are produced entirely from material that has completed its lifecycle and would otherwise have been discarded as **waste**. This is stated explicitly in Annex I to the EUDR:

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

7. Finally, the EUDR applies to relevant commodities and relevant products **irrespective of whether these were produced in- or outside the EU**.

2. Dates of application

8. The EUDR applies to relevant commodities and relevant products produced on or after **29 June 2023**.

9. Large companies are subject to the obligations of the EUDR as of **30 December 2024**, and micro- and small undertakings as of **30 June 2025**. Accordingly, any relevant commodities or relevant products that have been manufactured but will be subject to a relevant transaction (as set out below) after these dates, must comply with the EUDR. In practice, therefore, the EUDR already applies to some extent.

10. To mitigate this and to allow companies to fully benefit from the transition period between 29 June 2023 and the dates of application, the FAQ indicate that limited obligations apply in such circumstances. The various scenarios can be summarised as follows:

Relevant products manufactured before 30 June 2023	The EUDR does not apply. In practice, the operator or trader should have documents to prove the date of production, and therefore the non-application of the EUDR.[7]
Relevant products manufactured after 30 June 2023 and placed on the EU market before 30 December 2024	These products are in-scope of the EUDR but the placing on the EU market of these products is not yet subject to the EUDR's obligations.

[7] The FAQ state the following in this respect: "The operator bears the burden of proof for this exception and must be able to provide relevant information as reasonable proof … While in this case the operator is not obliged to submit a due diligence statement, the operator should save necessary documents proving non-applicability of the Regulation and its obligations."

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Relevant products placed on the EU market after 30 December 2024	
1. Relevant products manufactured on or after 30 June 2023 entirely from relevant commodities placed on the market before 30 December 2024	The obligations of the EUDR do not apply to the placing of the relevant products on the market after 30 December 2024 if there is adequately conclusive and verifiable evidence that the relevant commodities used were placed on the market before 30 December 2024.
2. Relevant products manufactured after 30 June 2023 from relevant commodities placed on the market on or after 30 December 2024	The EUDR applies.
3. Relevant products manufactured after 30 June 2023 partially from relevant commodities placed on the market after 30 December 2024 and partially from relevant commodities placed on the market before 30 December 2024	The obligations of the EUDR apply to the relevant product but only in relation to the relevant commodities placed on the market after 30 December 2024. There must be adequately conclusive and verifiable evidence that the other relevant commodities were placed on the market before 30 December 2024.

3. Persons

11. The EUDR applies to the following persons:

- Any person that **places** relevant products **on the market** or **exports** them. These persons are called "**operators**".
- Any person that **makes** relevant products **available on the market**. These persons are called "**traders**" unless they are the first person in the supply chain that is established in the EU in which case they are also an operator pursuant to article 7 EUDR.

12. The distinction between operators and traders is in practice limited and relevant only for SMEs. Indeed, article 5(1) of the EUDR explicitly indicates that traders that are not SMEs shall be considered as non-SME operators and shall be subject to obligations and provisions in Articles 3, 4 and 6, Articles 8 to 13, Article 16(8) to (11) and Article 18 with regard to the relevant commodities and relevant products that they make available on the market.

13. Persons can be operators or traders irrespective of whether they are established inside or outside the EU. The legal definitions of operator and trader refer to "any natural or legal person" and not to "person established in the Union" as defined by article 2(21) EUDR. Article 7 EUDR moreover refers to "operators established in third countries".[8]

It remains to be seen whether in practice the EUDR will be effectively enforced on operators and traders established outside the EU. If not, any downstream operator or trader established in the EU

[8] Blue Guide, chapter 2.4, confirms (in relation to distance sales and online sales) that non-EU persons can place on the market or make available on the market.

will likely not be able to rely on a previously submitted due diligence statement (as explained below at paragraph 44).

a. The concept of "placing on the market"

14. Article 2(16) EUDR defines the concept of placing on the Union market as "the first making available of a relevant commodity or relevant product on the Union market".

15. Accordingly, there is no difference between "placing on the market" and "making available on the market", besides the fact that placing on the market occurs when a product is first made available on the Union market (and so only occurs once). Subsequently, a product is made available on the Union market.

b. The concept of "making available on the market"

16. **General.** The concept of "making available on the market" is defined as follows (article 2(18) EUDR):

> any supply of a relevant product for distribution, consumption or use on the EU market in the course of a commercial activity, whether in return for payment or free of charge.

The concept of 'in the course of a commercial activity' in turn is defined as follows (article 2(19) EUDR):

> for the purpose of processing, for distribution to commercial or non-commercial consumers, or for use in the business of the operator or trader itself.

This excludes instances where a product is manufactured for one's own use or transferred for testing or validating pre-production units considered still in the stage of manufacture. [9]

17. **Supply**. Making available a product supposes the supply for distribution, consumption or use on the Union market of a relevant product. The Blue Guide states in this respect that making available supposes an offer or agreement (written or verbal) between two or more legal or natural persons for the transfer of ownership, possession or any other right concerning the product in question after the stage of manufacture has taken place.

On this basis, transactions within a company are not subject to the EUDR. However, transactions between companies belonging to the same group *do* lead to products being supplied and therefore being made available on the Union market. This distinction may have uncommon results as it means that purchasers of relevant products may or may not be subject to the EUDR depending on whether there is a dedicated purchasing company in their corporate structure.

[9] Blue Guide, chapter 2.3.

18. **No need for physical handover.** Supply does not necessarily require the physical handover of the product. The concept includes any offer for distribution, consumption or use on the Union market which could result in actual supply in relation to products already produced (e.g., an invitation to purchase, or advertising campaigns).

19. **No need for physical entry in the EU.** Supplying a product is only considered as making available on the Union market if the product is intended for end use on the Union market. "Use" refers to the intended purpose of the product as defined by the manufacturer under conditions which can be reasonably foreseen. For this reason and also because a physical handover is not required, a physical entry in the EU is not required if it is intended that this will ultimately happen.[10]

c. The concept of "export"

20. Article 2(37) EUDR provides as follows:

> 'export' means the procedure laid down in Article 269 of Regulation (EU) No 952/2013.

21. So, the concept of export is linked to the export customs procedure as set out in the EU Customs Code.

22. Pursuant to article 269(1) EU Customs Code:

> Union goods to be taken out of the customs territory of the Union shall be placed under the export procedure.

This means that an export does not require a transfer between two or more companies: placing under the export procedure is the decisive factor.

23. Therefore, according to article 269(2) EU Customs Code, export does not (yet) take place under the following circumstances:

- products placed under the outward processing procedure;
- products taken out of the customs territory of the Union after having been placed under the end-use procedure;
- products delivered, VAT or excise duty exempted, as aircraft or ship supplies, regardless of the destination of the aircraft or ship, for which a proof of such supply is required;
- products placed under the internal transit procedure; and
- products moved temporarily out of the customs territory of the Union in accordance with article 155 EU Customs Code.

[10] Blue Guide, chapter 2.2.

24. For the avoidance of doubt, a company that exports a relevant product is an operator. It does not matter in this respect that this relevant product was previously placed on the market.

d. Imports into the EU

25. Importers are operators or traders if they place relevant commodities or relevant products on the Union market, or make them available on the Union market.

26. There are instances where imports may not always lead to placing or making available on the Union market:

- Only the import-procedure “release for free circulation” means that the end-use of a product is in the EU. This is confirmed by the FAQ:

> **(55) Which customs procedures are affected?**
>
> Relevant products placed under other customs procedures than the ‘release for free circulation’ or ‘export’ (e.g. customs warehousing, inward processing, temporary admission etc.) are not subject to the EUDR.

- The import-procedure ‘release for free circulation’ does not necessarily imply that a product is placed on the Union market[11]:

> Placing on the market is considered not to take place where a product is: … — **in the stocks of the manufacturer** (or the authorised representative established in the Union) **or the importer**, where the product is not yet made available, that is, when it is not being supplied for distribution, consumption or use, unless otherwise provided for in the applicable Union harmonisation legislation.

> Before they can reach the end-user in the EU, products from countries outside the EU will be presented to customs and declared for the release for free circulation procedure. The purpose of release for free circulation is to fulfil all import formalities so that the goods can be made available on, and circulate freely in the EU market like any product made in the EU. **Therefore, when products are presented to customs and declared for the release for free circulation procedure, it can generally be considered that the goods are being placed on the EU market;** the products will thus need to be compliant with the applicable Union harmonisation legislation. **However, in practice, the release for free circulation and the placing on the market may not take place at the same time.** The placing on the market is the moment in which the product is supplied for distribution, consumption or use for the purposes of compliance with Union harmonisation legislation. **Placing on the market can take place before the release for free circulation, for example, in the case of online or distance sales by economic operators located outside the EU, even if the physical check of the compliance of the products can take place at the earliest when they arrive at the customs in the EU. Placing on the market can also take place after release for free circulation.**

[11] Blue Guide, chapters 2.3 and 2.5.

27. In line with the above, it could be argued that if an OEM imports a relevant product into the EU without subsequently supplying it for distribution, consumption or use (but e.g. putting it in its stocks), the OEM would not be an operator or trader in the sense of the EUDR. If this OEM would afterwards install the relevant product on a car and sell this car, the OEM would still not be an operator or trader in the sense of the EUDR as cars are outside the scope of the EUDR. This is similar to how relevant products incorporated in cars made outside the EU are also not subject to the EUDR even when those cars are imported in the EU.

28. Having said this, the customs procedure under the EUDR (discussed below at no. 47-48) does not take into consideration the possibility that not all releases for free circulation may be subject to the EUDR. Article 26(1) indeed states that “relevant products placed under the customs procedure ‘release for free circulation’ or ‘export’ shall be subject to the controls of chapter 4 of the EUDR.

29. Such non-application of the EUDR is moreover not what the Commission intended when it proposed the EUDR. The Commission had originally proposed that the first natural or legal person established in the Union **who buys or takes possession of relevant commodities and products** would be considered operator within the meaning of the EUDR. The EUDR deviates from this proposal in providing that the first natural or legal person established in the Union **who makes such relevant products available on the market** shall be deemed to be an operator within the meaning of the EUDR (article 7). In so doing, the EUDR leaves room for the reasoning that not all releases for free circulation of relevant products lead to placing or making available on the market of such relevant products. There was no such room under the Commission’s proposal.

30. Therefore, discussions with customs authorities can be expected if an importer would want to argue that the imports of the relevant products do not lead to the relevant products being placed or being made available on the market. To avoid such discussions, importers will have to comply with the EUDR as if they are operators or traders. In such cases, if possible, importers could consider caveating the application of the EUDR in their due diligence statement.

e. Overview

31. The EUDR imposes obligations on each operator and trader in the supply chain, including manufacturers, importers, wholesalers, retailers and exporters.

32. This can be best summarised by way of an overview example.

A Moroccan manufacturer sells tyres in Morocco to a local Moroccan garage (**transaction 1**).	**Transaction 1** is **not subject to the EUDR**. It is not reasonably foreseeable for the Moroccan manufacturer that the tyres will have an end-use in the EU, so this transaction factually and logically does not constitute placing on the Union market.

The Moroccan manufacturer also sells tyres to a Spanish distributor (**transaction 2**).	**Transaction 2** is **subject to the EUDR**, and the Moroccan manufacturer is an operator. It remains to be seen whether in practice the EUDR will be effectively enforced on the Moroccan manufacturer.
The Spanish distributor in turn sells tyres to the Belgian procurement company of a car manufacturer (**transaction 3**).	**Transaction 3** is **subject to the EUDR**, and the Spanish distributor is an operator. While the tyres were already placed on the market, article 7 EUDR requalifies the first EU-based trader in the supply chain as an operator.
The Belgian procurement company then sells it to the manufacturing company of this car manufacturer (**transaction 4**)	**Transaction 4** is **subject to the EUDR**, and the Belgian procurement company is a trader. It does not matter in this respect that the tyres were sold to a company that belongs to the same group.
This manufacturing company of the car manufacturer: (i) puts some of the tyres on cars in Belgium which are then sold (**transaction 5**); (ii) transfers some tyres to a plant in Germany owned by the same manufacturing company (**transaction 6**); (iii) transfers some tyres to a plant in the UK owned by the same manufacturing company (**transaction 7**); and (iv) resells some tyres to a Belgian garage (**transaction 8**).	**Transaction 5** is **not subject to the EUDR**. Cars are not listed in Annex I to the EUDR. **Transaction 6** is **not subject to the EUDR** as the tyres are not sold or offered to another person or company for distribution, consumption or use, but are instead used by the manufacturing company itself (albeit in another plant). **Transaction 7** is **subject to the EUDR**, and the Belgian manufacturing company is an operator as it exports tyres. **Transaction 8** is **subject to the EUDR**, and the Belgian manufacturing company is a trader.

B. SUBSTANTIVE OBLIGATIONS

33. Article 3 EUDR provides that operators and traders cannot offer or sell relevant commodities or relevant products that are:

- not **deforestation-free** – that is, not made from commodities that were produced on land that was a forest on or after 31 December 2020; or
- not **produced in accordance with the relevant legislation of the country of production**. This refers to local laws and regulations regarding:
  - land use rights;
  - environmental protection;
  - forest-related rules, including forest management and biodiversity conservation, where directly related to wood harvesting;
  - third parties' rights;
  - labour rights;
  - human rights protected under international law;

- the principle of free, prior and informed consent (FPIC), including as set out in the UN Declaration on the Rights of Indigenous Peoples; and
- tax, anti-corruption, trade and customs regulations.

C. FORMAL OBLIGATIONS

1. Due diligence

34. The due diligence requirement (article 8 EUDR) consists of three steps, namely:

- information collection (article 9 EUDR);
- risk assessment (article 10 EUDR); and
- risk mitigation (article 11 EUDR).

35. Operators or traders sourcing commodities entirely from areas classified as low risk will be subject to **simplified due diligence** obligations pursuant to article 13 EUDR. Those operators or traders will only need to collect information and to assess (i) the complexity of the supply chain, (ii) the risk of circumvention (e.g., goods coming from standard-risk or high-risk countries that are masked as coming from low-risk countries) and (iii) the risk of mixing with products of unknown origin or origin in high-risk or standard-risk countries.

They will therefore not be required to assess and mitigate risks of non-compliance, unless they obtain or are made aware of any relevant information that would point to a risk that the relevant products do not comply with the EUDR.

The classification of low-risk and high-risk countries will be made by the Commission no later than 30 December 2024. Absent such decision, all countries are assigned a standard level of risk, and a simplified due diligence is not possible.

a. Information collection

36. The **information** that needs to be collected and to be kept for at least 5 years is listed in the EUDR as follows:

a) a description, including the trade name and type of the relevant products;
b) the quantity of the relevant products;
c) the country of production and, where relevant, parts thereof;
d) the geolocation of all plots of land where the relevant commodities that the relevant product contains, or has been made using, were produced, as well as the date or time range of production;
e) the name, postal address and email address of any business or person from whom they have been supplied with the relevant products;

f) the name, postal address and email address of any business, operator or trader to whom the relevant products have been supplied;
g) adequately conclusive and verifiable information that the relevant products are deforestation-free; and
h) adequately conclusive and verifiable information that the relevant commodities have been produced in accordance with the relevant legislation of the country of production, including any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity.

b. Risk assessment

37. The **risk assessment** needs to be based on various criteria of which the following are listed explicitly in the EUDR:

- Whether the country in question is designated as low-risk, medium-risk of high-risk. In many cases, if a country is designated as low risk, there will be no need to do a risk assessment at all.
- The presence of forests in the country of production or parts thereof.
- The presence of indigenous peoples in the country of production or parts thereof.
- The consultation and cooperation in good faith with indigenous peoples in the country of production or parts thereof.
- The existence of duly reasoned claims by indigenous peoples based on objective and verifiable information regarding the use or ownership of the area used for the purpose of producing the relevant commodity.
- Prevalence of deforestation or forest degradation in the country of production or parts thereof.
- The source, reliability, validity, and links to other available documentation of the collected information.
- Concerns in relation to the country of production and origin or parts thereof, such as level of corruption, prevalence of document and data falsification, lack of law enforcement, violations of international human rights, armed conflict or presence of sanctions imposed by the UN Security Council or the Council of the European Union.
- The complexity of the relevant supply chain and the stage of processing of the relevant products, in particular difficulties in connecting relevant products to the plot of land where the relevant commodities were produced.
  This arguably includes an assessment of the professionalism of suppliers. This can be assessed by requesting insight from suppliers on the specifics of their due diligence exercise. This can range from a superficial check to conducting a due diligence, depending on the supplier’s risk profile, the risk appetite of the operator or trader in question and their trust in their suppliers.

- The risk of circumvention of the EUDR or of mixing with relevant products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring.
- Conclusions of the meetings of the Commission expert groups supporting the implementation of the EUDR, as published in the Commission's expert group register.
- Substantiated concerns submitted by third parties, and information on the history of non-compliance of operators or traders along the relevant supply chain with the EUDR.
- Any information that would point to a risk that the relevant products are non-compliant.
- Complementary information on compliance with the EUDR, which may include information supplied by certification or other third-party verified schemes, including voluntary schemes recognised by the Commission provided that the information meets the EUDR requirements.

c. Risk mitigation

38. If the risk assessment shows that there is a non-negligible risk of non-compliance, the operator or trader is **required to adopt risk mitigation procedures and measures** such as requiring additional information/documentation, carrying out independent surveys or audits, helping suppliers to comply, etc...

39. Operators and traders are required in this context to adopt adequate and proportionate policies, controls and procedures which need to include:

- model risk management practices, reporting, record-keeping, internal control and compliance management;
- the appointment of a compliance officer at management level; and
- an independent audit function to check the internal policies, controls, and procedures.

2. Due diligence statement

40. Any relevant product or commodity placed or made available on the market or exported from the EU must be accompanied by a due diligence statement. In other words, all traders and operators need to submit due diligence statements. However:

- **SME traders** do not need to submit a due diligence statement; and
- **SME operators** do not need to submit a due diligence statement in so far as the relevant product concerned is already fully covered by a previously submitted due

diligence statement (e.g. in case of exporting a relevant product that was previously placed on the market). The SME operator is then only required to provide the competent national authorities with the reference number of this due diligence statement upon request.

SMEs are defined by the EUDR in reference to article 3 of Directive 2013/34/EU which contains thresholds based on the balance sheet total, net turnover, and number of employees (and which is amended from time to time). On this basis, SMEs are legal entities that do not exceed at least two of the following three criteria:

- balance sheet total: EUR 25.000.000;
- net turnover: EUR 50.000.000;
- average number of employees during the financial year: 250.

These criteria apply to each company separately and are not applied on a consolidated basis.

41. If an operator or trader uses relevant commodities or products from a variety of sources, it is acceptable to include in the due diligence statement information (in particular geolocation) on all these sources. This is confirmed by the FAQ:

> **(15) Can operators include land that did not produce the commodity?**
>
> The thrust of the regulation requires a correspondence between the commodities/products placed on the market and the plots of land where they are effectively produced. However, an operator can, in specific circumstances, provide geolocation coordinates for a number of plots of land higher than those where the commodities were produced.
>
> If the operator declares 'in excess' in the due diligence statement, the operator assumes full responsibility for compliance of ALL plots of land for which geolocation is provided, regardless of whether such plots of land are concerned by the production of commodities/products eventually placed on the market. If one plot of land 'geolocalised' in the due diligence statement is not compliant, the entire set of plots of land 'geolocalised' is non-compliant. In these cases the operator declaring plots of land in excess has also to carry out full due diligence in compliance with articles 9, 10 and 11, for ALL plots of land declared (including those in excess) and has to provide evidence that 1) the risk of non-compliance has been assessed in accordance with article 10.2 for ALL plots of land, and 2) that, in such assessment, the operator has taken particular account of criteria (i) and (j), of article 10 and 3) that such risk is negligible for ALL plots of land.

42. A due diligence statement is required **each time** an operator or trader intends to place, make available on the market, or export a relevant commodity or a relevant product.[12] It will not be possible to instead report at regular intervals. This follows from the fact that the concepts of placing on the market and making available on the market refer to *"each individual product, not to a type*

[12] As indicated above at no. 12, non-SME traders are subject to the same obligations when they make relevant products available on the market as non-SME operators that place relevant products on the market or export them.

of product, and whether it was manufactured as an individual unit or in series."[13] This is also made explicit in the FAQ:

> **(11) Should due diligence be repeated for products from the same land?**
>
> The geolocation information obligation to be provided in the due diligence statements, via the Information System, is connected to each relevant product. Operators (or traders that are not SMEs) will thus need to indicate this information each time they intend to place, make available on the market or export a relevant product. The due diligence must be repeated (i.e. updated) for each relevant product, including providing the geolocation coordinates accordingly.

43. The due diligence statements will have to be uploaded to the **information system**. This information system will be established and maintained by the Commission by 30 December 2024 (there will therefore not be a separate system per EU Member State). Customs authorities, competent national authorities, operators, and traders will have access to it. The wider public will also have access to it, but the data therein will be anonymised.

44. Operators or traders may refer in their own due diligence statement to **due diligence statements that have already been submitted** (e.g. by suppliers). In that case, the due diligence will essentially consist of ascertaining that the submitter of the previous due diligence statement has done a proper due diligence. In their own due diligence statements, operators or traders will need to include the reference numbers of the upstream due diligence statements that have already been submitted.

45. Importantly however, operators or traders will retain responsibility for non-compliance. The parts of a product that are not yet covered by a previously submitted due diligence statement will moreover not benefit from the possibility to refer to previously submitted due diligence statements. Operators and traders will therefore need to decide if and to what extent they are willing to rely on the due diligence conducted by operators or traders upstream.

46. Finally, it is acceptable for operators or traders to mandate an **authorised representative**, although the operator or trader retains responsibility for the relevant commodities and products' compliance as discussed above.

3. Customs

47. Pursuant to article 26 EUDR, customs authorities will carry out controls on the customs declarations lodged in relation to imports and exports. The person lodging the customs declaration for release of free circulation or export – which may or may not be an operator or trader in the sense of the EUDR (see nos. 25-28 above in this respect) – will be required to provide the reference

[13] Commission Notice – the 'Blue Guide' on the implementation of EU product rules 2022, chapter 2.2.

number of the due diligence statement to the customs authority in question. This implies that a due diligence statement will need to have been uploaded *before* the customs declaration.

48. Customs authorities can only suspend imports or exports for review by the competent national authority in case competent national authorities have indicated that there is a high risk of non-compliance. Such suspension can last for a maximum of three working days but can be extended with additional periods of three working days by interim decision of the competent national authority. Absent an indication of high risk of non-compliance by the competent national authority or after the suspension-period, customs authorities should not block imports or exports (at least not for EUDR-related reasons).

D. PUBLIC ENFORCEMENT

49. **Competent national authorities and customs authorities** are tasked with enforcing the EUDR. Their checks and controls will be based on a risk-based approach according to a given country's risk level (low, standard, or high). Authorities must conduct checks on 9 per cent of operators and traders trading products from high-risk countries and only 1 per cent from low-risk countries. Absent a decision designating risk to countries, all countries are designated as standard-risk countries.

50. The abovementioned risk-based approach may depend also on whether the competent national authority has received **substantiated concerns**. Anyone can submit such substantiated concerns to competent national authorities. The EUDR does not impose any mandatory forms or procedures on the authorities in this respect, other than the need to provide for measures to protect the identity of the submitter.

51. Relevant commodities or relevant products placed or made available on the Union market or exported in breach of article 3 EUDR can be subject to mandatory **corrective measures**, such as:

- preventing relevant products from being placed or made available on the market or exported.
- Withdrawing or recalling the relevant products, and/or
- the donation of the relevant products to charitable or public interest purposes (and, if not possible, the disposal).

52. In addition, **penalties** for infringements of the EUDR can be imposed based on national law. According to article 25 EUDR, Member States must provide potential penalties that will include at least the following:

- fines of at least 4% of the consolidated EU turnover of the operator or trader concerned;[14]
- confiscation of the relevant products;
- confiscation of the revenues gained from transactions with relevant products;
- exclusion up to 12 months from public procurement processes and from access to public funding;
- temporary prohibition from placing or making available on the market or exporting relevant commodities and relevant products in case of serious infringements or repeated infringements; and
- prohibition from exercising the simplified due diligence (as discussed below) in the event of a serious infringement or of repeated infringements.

53. The Commission will, pursuant to article 25(3) EUDR, **publish a list of final judgments** on its website mentioning:

- the name of the operator or trader in question;
- the date of the final judgment;
- a summary of the activities that caused the infringement; and
- the nature and amount of the penalty imposed.

II. Q&A[15]

1. Related to the entity (operator/trader):

a) How to understand the "operator" in the context of a parts supplier/OEM relationship? Which company is considered as placing the product on the market?

b) Who is the operator, the entity outside the EU that sells the commodity to an EU company, or the EU company that buys the commodity?

It is the supplier of the parts – that are listed in Annex I to the EUDR – that makes available on the EU market or places on the EU market because of selling to the OEM (assuming the OEM is located in the EU). As a result, it is the supplier that is the operator.

The OEM itself, in its role as purchaser, is not an operator. This point may however be contested by authorities in the case of imports, as discussed above at no. 28.

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[14] Including 100% of the turnover of companies that are under direct or indirect sole control of the company that ultimately controls the operator or trader in question, 50% of turnover of companies under joint control together with one other controlling parent, 33% of turnover of companies under joint control together with two other controlling parents, etc.

[15] The answers are provided by contrast.

If the OEM passes on these parts (e.g. by selling it to a customer/distributor or to another company in its group), the OEM would be a trader or, in case of imported parts, an operator (because of being the first in the supply chain that is established in the EU).

If the OEM puts these parts on a car and subsequently sells this car, the OEM would not be making available on the market or placing on the market in the sense of the EUDR as cars are not listed in Annex I to the EUDR.

2. Related to the products in scope:

a) Is a leather seat considered within the scope of the regulation?

Leather seats are not listed in Annex I to the EUDR; only seats "of wood" are listed in Annex I to the EUDR and therefore subject to the EUDR.

b) Are packaging materials such as cardboard boxes or pallets in scope of the regulation?

The following packaging materials are subject to the EUDR:

> 4415 Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood (not including packing material used exclusively as packing material to support, protect or carry another product placed on the market)

c) For import/export, is intercompany export in scope?

Intercompany transactions are in-scope of the EUDR, irrespective of whether they concern imports or exports.

3. Related to the due diligence requirements and how to meet them:

a) What kind of content is required in a due diligence statement?

The mandatory content of a due diligence statement is provided in Annex II to the EUDR:

> 1. Operator's name, address and, in the event of relevant commodities and relevant products entering or leaving the market, the Economic Operators Registration and Identification (EORI) number in accordance with Article 9 of Regulation (EU) No 952/2013.
>
> 2. Harmonised System code, free-text description, including the trade name as well as, where applicable, the full scientific name, and quantity of the relevant product that the operator intends to place on the market or export. For relevant products entering or leaving the market, the quantity is to be expressed in kilograms of net mass and, where applicable, in the supplementary unit set out in Annex I to Regulation (EEC) No 2658/87 against the indicated Harmonised System code or, in all other cases, expressed in net mass specifying a percentage estimate or deviation or, where applicable, volume or number of items. A supplementary unit is

applicable where it is defined consistently for all possible subheadings under the Harmonised System code referred to in the due diligence statement.

3. Country of production and the geolocation of all plots of land where the relevant commodities were produced. For relevant products that contain or have been made using cattle, and for such relevant products that have been fed with relevant products, the geolocation shall refer to all the establishments where the cattle were kept. Where the relevant product contains or has been made using commodities produced in different plots of land, the geolocation of all plots of land shall be included in accordance with Article 9(1), point (d).

4. For operators referring to an existing due diligence statement pursuant to Article 4(8) and (9), the reference number of such due diligence statement.

5. The text: 'By submitting this due diligence statement the operator confirms that due diligence in accordance with Regulation (EU) 2023/1115 was carried out and that no or only a negligible risk was found that the relevant products do not comply with Article 3, point (a) or (b), of that Regulation.'.

6. Signature in the following format:

'Signed for and on behalf of:

Date: "

Name and function: Signature:'.

b) How does the risk level of the country of production impact the due diligence required?

If the product comes from a low-risk country, a simplified procedure will apply, requiring only the collection of information without a full risk assessment and mitigation.

c) How can companies ascertain if proper due diligence was conducted upstream?

Companies can ascertain if proper due diligence was conducted upstream by requesting insight from suppliers on the specifics of their due diligence exercise. This can range from a superficial check of these suppliers' due diligence systems to conducting due diligence themselves. This depends on the company's risk profile and trust in their suppliers.

d) Can operators and traders refer to previously submitted due diligence statements?

Operators and traders can refer in their own due diligence statements to previously submitted due diligence statements. However, there is an obligation to ascertain that proper due diligence was conducted upstream. Moreover, operators and traders that refer to a previously submitted due diligence statement in their own due diligence statement continue to retain responsibility for the compliance of the relevant products with the EUDR.

4. Can the next European elections change the application of the regulation?

The EUDR is already legally in force (even if the obligations kick in only as of 30 December 2024). Therefore, the recent European elections can change the application of the EUDR only if they result in a Commission willing to amend it. This would require the usual legislative process (Commission proposal and approval by Parliament and Council).

5. Can inco terms such as DDP affect the determination of the operator?

The incoterms may be one of many relevant elements to assess to what extent a supplier/seller established outside the EU is targeting the EU and is therefore placing products on the EU market (and is therefore an operator):

EXW - Ex Works	The seller makes the goods available at their premises. The buyer is responsible for all transportation and delivery costs. This may suggest that the seller is not targeting the EU. However, other elements (e.g. language of website) need to be considered as well.
FCA - Free Carrier	The seller delivers the goods to the carrier nominated by the buyer at the seller's premises. The buyer is responsible for all transportation and delivery costs. As for EXW, this may suggest that the seller is not targeting the EU. However, other elements need to be considered as well.
FAS – Free Alongside Ship	The seller delivers the goods alongside the vessel at the agreed port of shipment. The buyer is responsible for all transportation and delivery costs. This may suggest that the seller intended the product to have an EU end use, but this is not necessarily the case.
FOB – Free on Board	The seller delivers the goods on board the vessel at the agreed port of shipment. The buyer is responsible for all transportation and delivery costs. As for FAS, this may suggest that the seller intended the product to have an EU end use, but this is not necessarily the case.
CFR – Cost and Freight	The seller delivers the goods on board the vessel at the agreed port of shipment and pays for the cost of transportation to the agreed port of destination. The buyer is responsible for all other costs, including customs clearance and delivery to their final destination. This makes it very likely that the seller has expressly chosen to supply products to EU customers.
CIF – Cost, Insurance and Freight	The seller delivers the goods on board the vessel at the agreed port of shipment and pays for the cost of transportation and insurance to the agreed port of destination. The buyer is responsible for all other costs, including customs clearance and delivery to their final destination. As for CFR, this makes it very likely that the seller has expressly chosen to supply products to EU customers.
CPT – Carriage Paid To	The seller pays for the cost of transportation to the agreed place of destination. The buyer is responsible for all other costs, including customs clearance and delivery to their final destination.

	As for CFR, this makes it very likely that the seller has expressly chosen to supply products to EU customers.
CIP – Carriage and Insurance Paid To	The seller pays for the cost of transportation and insurance to the agreed place of destination. The buyer is responsible for all other costs, including customs clearance and delivery to their final destination. As for CFR, this makes it very likely that the seller has expressly chosen to supply products to EU customers.
DAP – Delivered at Place	The seller delivers the goods at the agreed frontier, but the buyer is responsible for all transportation and delivery costs. As for CFR, this makes it very likely that the seller has expressly chosen to supply products to EU customers.
DPU – Delivered At Place Unloaded	The seller delivers the goods to the agreed port of destination, but the seller is responsible for all transportation and delivery costs. As for CFR, this makes it very likely that the seller has expressly chosen to supply products to EU customers.
DDP – Delivered Duty Paid	The seller delivers the goods at the agreed port of destination, but the buyer is responsible for all transportation and delivery costs.

6. How can the EUDR reference number be provided for EU making available on the market without customs clearance?

The reference number of the due diligence statement must be made available to customs authorities *before* the release for free circulation or export of a relevant product entering or leaving the EU. For that purpose, the legal entity lodging the customs declaration for release for free circulation or export of a relevant product must include the reference number of the due diligence statement assigned to that relevant product by the Commission's information system in the customs declaration.

7. Is screening on imports/exports according to HS code in Annex I sufficient to determine if a company falls within the scope?

This is not sufficient. The HS- or CN-codes, in combination with the description, determine to what extent a product is subject to the EUDR. If so, not only imports or exports are relevant transactions but also transactions within the EU.

8. How do suppliers preserve traceability from the farm to the final product to ensure compliance?

Suppliers must implement robust traceability systems to track the origin of materials used in the production process. This may involve documenting each step from the farm to the final product and ensuring compliance with relevant regulations at each stage (assessing risks in supply chain, country of origin, and compliance of supplier).

9. What department or group within a company is typically assigned responsibility for compliance with the regulation?

The EUDR does not prescribe which departments within companies would be responsible. It only explicitly requires a responsible compliance officer at management level.

In practice, multiple departments in a company would have to be involved. For instance:

- Sales department: they are the ones making available, placing on the market, or exporting so they need to know that in such cases a due diligence statement must be submitted.
- Purchasing department: they are the ones that need to know for which purchased products/commodities a due diligence must be done, and they need to collect the required information.
- Trade/customs: they need to know (i) which imports and exports may be subject to checks by customs authorities, (ii) how to respond to such checks and (iii) that they need to include due diligence statement reference numbers in customs declarations.
- Legal department.
- Reporting department (management reports, etc.) will need to prepare public reports on the due diligence system.

10. Are "relevant products" commodities listed in Annex 1 or products containing parts listed in Annex 1?

Relevant products are the products that are listed in Annex I to the EUDR and that contain one or more of the relevant commodities.

Products that are not listed in Annex I to the EUDR but contain relevant products are not subject to the EUDR.

11. In its FAQ, the Commission states that there are no due diligence obligations on products not included in Annex 1 but made of products included in Annex 1. How does it refer to "relevant products" as described in question 10 and what does it mean for companies in terms of liability for breaching EUDR, e.g. by tier-n suppliers?

The EUDR does not apply to companies that are not operators or traders, and they cannot incur liability pursuant to the EUDR.

However, other legislation may create such liability. At EU-level for instance there are the corporate sustainability reporting Directive or the corporate sustainability due diligence Directive to take into consideration.

12. Are imported products under the procedure release for free circulation, which are intended to be built into another, non EUDR -relevant product, still subject to EUDR?

As explained in nos. 25-30 above, it could be argued that if an OEM imports a relevant product into the EU without subsequently supplying it for distribution, consumption or use (but e.g. putting it in its stocks), the OEM would not be an operator or trader in the sense of the EUDR. If this OEM would afterwards install the relevant product on a car and sell this car, the OEM would still not be an operator or trader in the sense of the EUDR as cars are outside the scope of the EUDR.

Discussions with customs authorities can be expected if an OEM would want to argue that the imports of the relevant products do not lead to the relevant products being placed or being made available on the market.

13. Does a company act as a dealer/operator if a relevant product is passed on to the company as part of a service contract (e.g. a service for filling coffee machines with coffee, flooring service for wooden floors for an office building)?

This would have to be assessed on a case-by-case basis.

An assessment must be made to what extent the company in this example is placing the relevant product on the market or is making the relevant product available (or exporting). If this is not the case, this company will not be an operator or trader and will not be subject to the EUDR.

If a company merely allows another company to use its premises to supply relevant products, then the first company is arguably not placing on the market or making available on the market and is therefore not subject to the EUDR.

14. The German supplier X supplies a relevant product listed in Annex I to a German company Y. The German company Y uses this relevant product exclusively for its own use within company Y (inhouse equipment, e.g. wooden seats; No change to other company). Does this constitute a “supply” that establishes a dealer position of company Y?

In this example, company Y is not an operator or trader and therefore not subject to the EUDR. Supplier X is, however, an operator or trader and therefore needs to comply with the obligations set out in the EUDR.

15. The German supplier X supplies a relevant product listed in Annex I to a German company Y. The German company Y uses this relevant product exclusively for its own use within the production of company Y (production material, e.g. seal rings made of rubber); No change to other company). The resulting final product is not a relevant product within the meaning of Annex I. Does this constitute a "supply" that establishes a dealer position of company Y?

In this example, company Y is not an operator or trader and therefore not subject to the EUDR. Supplier X is, however, an operator or trader and therefore needs to comply with the obligations set out in the EUDR.

16. The German supplier X supplies coffee to a German company Y (HRS - code 0901). Company Y submits this coffee to its own employees and potentially external guests. Does this constitute a "supply" that establishes a dealer position of company Y?

Coffee as a drink concerns HS code 2101:

Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof.

This code is not listed in Annex I to the EUDR and the supply in the example is therefore not subject to the EUDR. Annex I to the EUDR mentions in this respect the following product which refers not to the drink but to the product used to make the drink:

0901 Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion

However, if in the example the German supplier X would provide instead e.g., "1806 Chocolate and other food preparations containing cocoa" then this transaction would in principle be subject to EUDR.

A discussion can be had on whether these products are supplied "in the course of a commercial activity" (which is a requirement for the application of the concepts 'making available on the market' and 'placing on the market').

17. For OEMs, many car parts are potentially in scope of EUDR. Art. 3 of the regulation clearly makes reference to product compliance. However, to what extent are we required to actually implement our due diligence on car part basis and to what extent can we rely on assessing the due diligence systems of our suppliers without checking each product, provided the due diligence systems cover all the car parts? This question refers to both scenarios where a company acts as importer and where it places products on the market itself.

To the extent an OEM is also an operator or trader (and not an SME) in relation to the car parts, the OEM will be liable for non-compliant car parts. This means that:

- if the supplier has submitted a due diligence statement, it is sufficient to ascertain that the supplier has done a due diligence. However, the OEM will retain liability so conducting a due diligence may nevertheless be a sensible risk-mitigating action.
- if the supplier has not submitted a due diligence statement, it will be necessary for the OEM to conduct a due diligence itself.

18. As traders, companies are required to pass on the reference numbers to their B2B-customers. Are they required to also forward information on the due diligence they have conducted automatically, or only on request? If the latter, how granular does this information have to be, in particular as companies may decide not to check every batch, but apply a risk-based approach in their due diligence?

Operators and traders are required to communicate to operators and to traders further down the supply chain all information necessary to demonstrate that due diligence was exercised and that no or only a negligible risk was found, including the reference numbers of the due diligence statements associated to those products.

This may in practice imply a requirement to share all collected information, but this is not explicitly indicated in the EUDR. Moreover, downstream companies that are not traders or operators cannot rely on this obligation.

Any such obligation and extent thereof will therefore depend on the content of the agreements concerned.

19. What happens if an OEM is notified about non-compliance of a car part that has already been built into the car? Does that very part have to be removed from the car?

The EUDR creates the possibility for competent national authorities to order operators and traders to take corrective measures which may include the recall or withdrawal of the non-compliant relevant product. The OEM is in this case, however, not an operator or trader as cars are not listed

in Annex I to the EUDR. The EUDR does not clarify what needs to be done in cases where a recall is not possible (e.g., because the tyres have been fitted onto cars).

Unless the operator or trader has contractually ensured this option, the operator or trader cannot compel the OEM to withdraw or recall non-compliant relevant products (already installed on cars or not).

As the sanctions will be based on national law, national law may expand this sanction to customers of operators or traders. It is therefore necessary to check also applicable national law.

20. What happens if an OEM notified about non-compliance of a car part (such as a tire), which it has sold to another trader as spare part? Does the OEM have to recall that tire?

The OEM in this case is an operator or a trader. Therefore, if the competent national authority has ordered this as a corrective measure, the OEM will indeed have to recall that tire.

The EUDR does not clarify what needs to be done in cases where a recall is not possible (e.g., because the tyres have been fitted onto cars).

21. In the case where an OEM acts as an operator/EU-importer: Can it task its non-EU based supplier to input the 4/6 required information into the EU system, and then the supplier provides the OEM with the reference code where the OEM can access the inputted information?

The non-EU based supplier is supplying relevant products to an EU-based OEM and is therefore placing on the market. This means that the non-EU based supplier is an operator and is in principle already under an obligation to submit a due diligence statement. However, as discussed above at no 13, it remains to be seen to what extent the EUDR will effectively be enforced on non-EU operators or traders.

The EUDR does not provide for the option for non-operators or non-traders to voluntarily submit due diligence statements (so that downstream operators or traders can refer to it). While the information system is expected to be used by operators and traders only (and the Commission is only required to provide access to them), the EUDR also does not appear to prohibit its use by others. It appears advisable to check this with the Commission as there is a risk that a due diligence statement submitted by a company that is not an operator or a trader is not a due diligence statement in the sense of the EUDR (which would mean that downstream players cannot refer to it in their own due diligence statements).

It should be noted that the EU system will contain only the information in the due diligence statement. Pursuant to article 4(7) EUDR, operators and traders will however need to provide to

operators and traders further down the supply chain *"all information necessary to demonstrate that due diligence was exercised and that no or only a negligible risk was found, including the reference numbers of the due diligence statements associated to those products."*

22. How does one have to prove the "ex" if a product has the HS code but does not contain the EUDR-relevant material?

The evidence that can be used for this is not determined or limited by the EUDR or clarified by the Commission. Examples of evidence that appear relevant are for example an ingredient list, a document describing the manufacturing process, bill of material, etc.

For the avoidance of doubt, as explained above at no. 4, all listed products need to contain relevant commodities in order to be in-scope of the EUDR (irrespective of whether the description contains an 'ex').

23. Do companies need to ensure due diligence on trace quantities on EUDR affected raw materials?

Once part of a product that is not listed in Annex I to the EUDR, the EUDR no longer applies.

24. How can we prove the risk or non-risk of mixing in the supply chain?

The evidence that can be used for this is not determined or limited by the EUDR. It appears advisable to document as precisely as possible the journey of the relevant commodities from production/harvest to arrival.

25. How can we prove the risk or non-risk of illegality in the supply chain?

The EUDR does not clarify how information can sufficiently demonstrate that a commodity was produced in accordance with the legislation of the country of production.

It appears insufficient to simply indicate that the producers were not convicted for breaching relevant laws. It also does not appear reasonable to require operators and traders to provide information in support of proving a negative. Absent specific guidelines in this respect (including from the Commission in relation to the Corporate Sustainability Due Diligence Directive), the OECD guidelines appear most appropriate (see in particular section 2.2 at page 26 and ff). Reference can be made as well to the sustainability reporting standards (in the context of the EU's Corporate Sustainability Reporting Directive) that are developed by EFRAG (and partially adopted by the Commission). The draft standards regarding business conduct indicate (at paras 15 and ff) what must be disclosed (in the sustainability reporting) regarding corruption or bribery. These same elements can be the objective of a due diligence exercise.

In practice, it will be a matter of balancing between collecting evidence in the due diligence exercise and accepting the risk (the less risk-averse, the more thorough the due diligence exercise will have to be). In its FAQ, the Commission indicates that supporting documentation *"may, for example, consist of official documents from public authorities, contractual agreements, court decisions or impact assessments and audits carried out. In any case, the operator has to verify that these documents are verifiable and reliable, taking into account the risk of corruption in the country of production. The Commission will issue a specific guidance document on legality in due course"*. It is not clear when exactly this guidance will be published but the Commission indicated in its FAQ that such publication is planned for before 30 December 2024.

26. Do relevant products which are used solely for internal use (e.g. rubber conveyor belts for use in the factory, coffee for employees) need to undergo the due-diligence process?

The sellers of e.g. the rubber conveyor belts, coffee, etc. would be operators or traders and would need to have done the due diligence exercise.

If these products are subsequently transferred between group companies, they would be made available and would therefore need to have undergone the due diligence process as well.

If these products are not transferred between group companies, and instead remain within the same company, they would not be made available on the market and would therefore not be subject to the EUDR.

27. Does a transfer of a relevant product from the parent company to a controlled group company trigger a due-diligence process?

Such transfer constitutes a making available on the market or a placing on the market and is therefore subject to the EUDR's obligations.

28. What kind of liability is there on downstream companies importing/exporting parts not covered by Annex 1 but made of products included in Annex 1? How can (indirectly affected) companies collect information from the supply chain – e.g. that suppliers conducted their due diligence correctly? Will the EU Information System for due diligence submissions be accessible for downstream companies even if indirectly affected by EUDR?

The EUDR does not apply to products that are not listed in Annex I to the EUDR. As a result, the EUDR does not create liabilities for such downstream companies.

Operators are only required to communicate to operators and to traders further down the supply chain all information necessary to demonstrate that due diligence was exercised and that no or

only a negligible risk was found, including the reference numbers of the due diligence statements associated to those products. Downstream companies that are not traders or operators cannot rely on this obligation and will need to ask the required information from their suppliers or, indirectly, from their suppliers' suppliers.

The information system will be accessible only to the Commission, the customs authorities, the competent national authorities, operators, and traders.

29. Does the amount of penalties apply to the respective legal entity or to the Group?

The maximum level of fine as mentioned above is calculated based on the consolidated EU turnover of the group of companies.

Article 25(2)(a) EUDR refers in this respect explicitly to the EU Merger Regulation. The Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings elaborates in detail how this turnover must be calculated.

30. What is the liability of downstream companies: Example: Tires are declared EUDR non-compliant after installation in the car. Does it cause a recall from the car?

The EUDR allows competent national authorities to order operators and traders to take corrective measures which may include the recall or withdrawal of the non-compliant relevant product. The EUDR does not create such option in relation to companies that are not operators or traders (e.g., customers of operators or traders).

Unless the operator or trader has contractually ensured this option, the operator or trader cannot compel the car-manufacturer to withdraw or recall non-compliant relevant products (already installed on cars or not).

As the sanctions will be based on national law, national law may expand this sanction to customers of operators or traders. It is therefore necessary to check also applicable national law.

31. A part is brought to the EU by the importer. He is an operator (primary distributor). The product is then bought by Trader 1, then purchased by Trader 2 from Trader 1, etc. With which trader does EUDR responsibility cease?

EUDR responsibility lies with both the operator and the traders (assuming neither of them are SMEs).

32. Is it correct to assume that the first reporting is due in 2026 only? Is it possible to integrate the EUDR reporting in the CSRD reporting?

There is a yearly reporting obligation which starts in the first year the operator or trader is subject to the EUDR. This means that the reporting obligation starts in 2026 relating to the year 2025.

It is indeed possible to integrate the EUDR reporting in the CSRD reporting.

33. On the Regulation's distinction between synthetic and natural rubber: Do companies have to report on synthetic rubber?

The EUDR does not distinguish between the commodities natural rubber or synthetic rubber (while synthetic rubber – with CN-code 4002 – is not a relevant product, it is not explicitly ruled out as a relevant commodity). The EUDR therefore does not clarify whether relevant rubber products made from synthetic rubber are outside the EUDR's scope. The FAQ only indirectly refers to natural rubber.

34. Please explain the obligations in case of intra-company sale: Subsidiary 1 sells EUDR product to subsidiary 2.

Sales between different subsidiaries are subject to the EUDR obligations both in case of export as in case of sales into (imports) or within the EU.

35. As of today, before the country benchmark has been published, what are the obligations for operators of EUDR products produced in the EU and placed on the EU market? Example: leather from Bavarian cows.

The obligations of such operators are the same as for operators of relevant products produced outside the EU.

In other words, absent any risk-qualification of countries (low-risk, standard risk, high-risk) all operators are subject to the same obligations.

36. When importing/exporting: the data is put into the EU information system, the reference number is generated and then the reference number is entered into the EU customs systems by the importer/exporter. What is the situation with pure marketing (sales in the EU)? The data is first put into the EU information system, the reference number generated and then where is the reference number entered to enable marketing?

After the due diligence is done and the due diligence statement is submitted into the EU information system, a reference number will be generated. This reference number does not need to be shared unless:

- in case of exports/imports: it needs to be included in the customs declaration;
- upon request of the competent national authority; and/or
- to operators and traders further down the supply chain (so that they can include it in their own due diligence statements).

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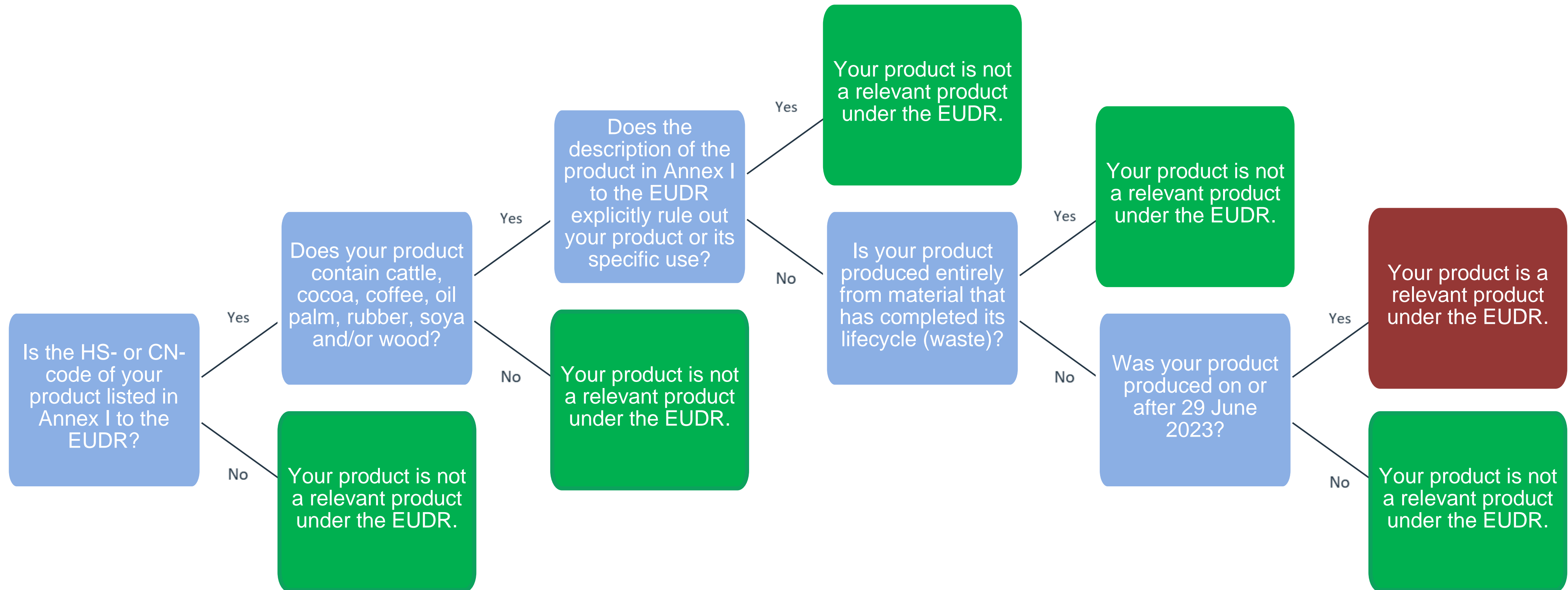
III. SIMPLIFIED DECISION TREES

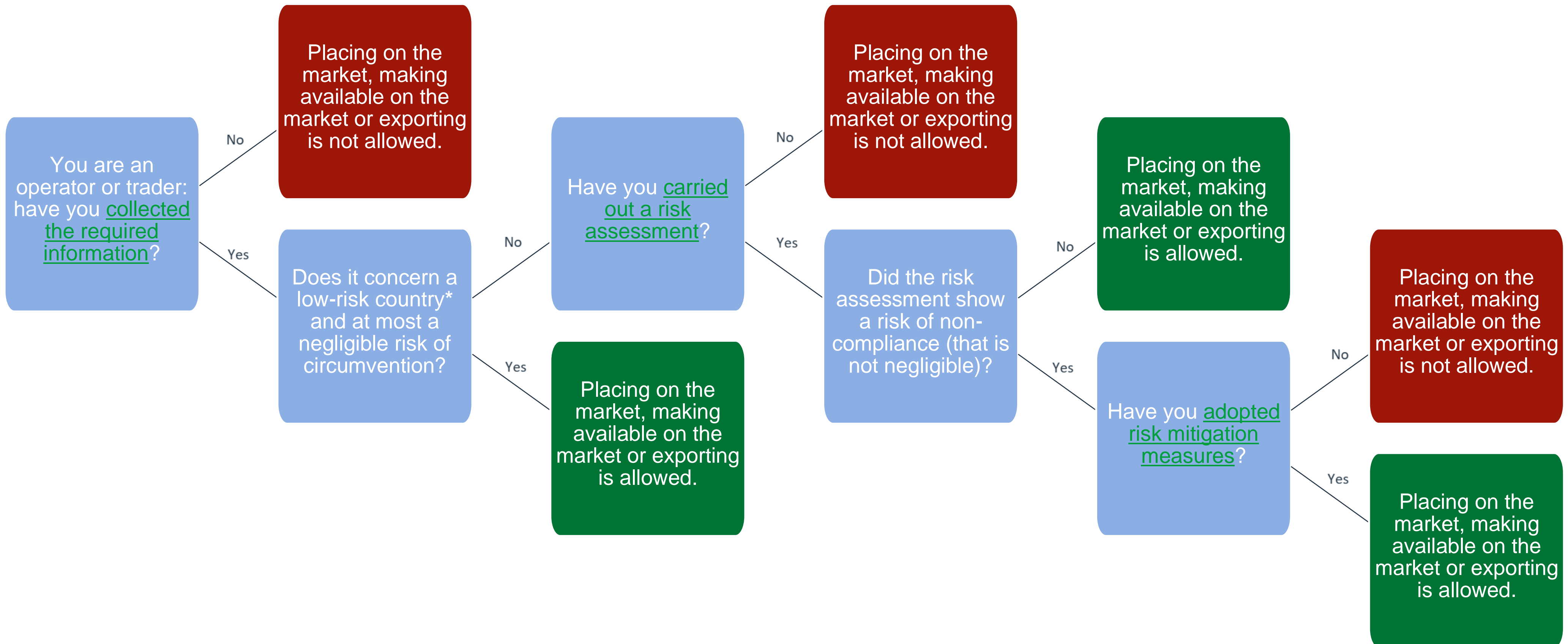
A. SCOPE: PRODUCT



B. SCOPE: OPERATOR OR TRADER?

* unless you are the first person in the supply chain that is established in the EU in which case you are an "operator" pursuant to article 7 EUDR.

C. DUE DILIGENCE SYSTEM



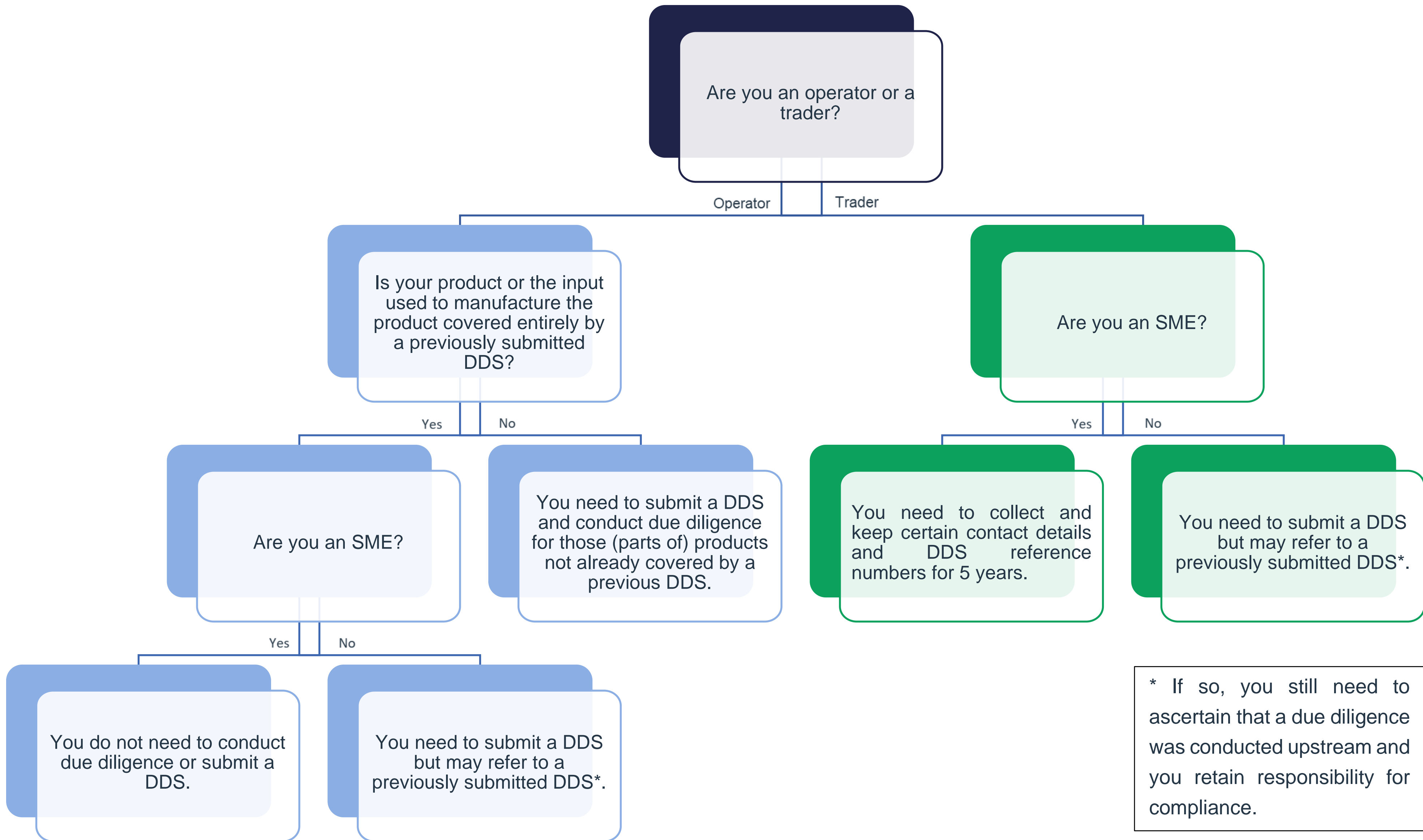
* This concerns the simplified due diligence.

Absent designation decision by the Commission, all countries are considered to have a standard risk profile.

For the avoidance of doubt, even in case of low-risk countries, companies will be liable under the EUDR for products that they have placed on the market, made available on the market or exported.

contrast CLEPA drive sustainability drive plus VDA German Association of the Automotive Industry

D. DUE DILIGENCE STATEMENT



* If so, you still need to ascertain that a due diligence was conducted upstream and you retain responsibility for compliance.