

EU Deforestation Regulation Scoping Document – General Principles

Getting to grips with the EU Deforestation Regulation



German Association
of the Automotive Industry

INTRODUCTION

In the frame of the **European Deforestation Regulation (EUDR)** applying by the end of 2025, various organisations, including [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 in March 2024 to deep dive into the legislative framework and the practical implications of its due diligence requirements which is 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.

This document sets out the general principles that are discussed in more detail in the Scoping Document.

Version 1 of the Scoping Document was published on 24 June 2024.

Version 2 of the Scoping Document was prepared following the publication of the European Commission's guidance of 13 November 2024, the updated FAQ (version of 24 October 2024) and the postponement of the implementation of the EUDR with a year.

Disclaimer: *This document does not reflect the sector position of the partaking associations nor of their members. They are not liable for the positions assumed therein.*

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

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Various trade federations, including CSR Europe, CLEPA and VDA requested a report regarding the EU Deforestation Regulation (“[EUDR](#)”).¹

The report consists of two parts:

- **Part I** provides an overview of the EUDR with a focus on the automotive sector.
- **Part II** contains decision trees summarising Part I.

This report is based on the following texts:

- EUDR;
- Implementing Regulation 2024/3084 of 4 December 2024 on the functioning of the information system pursuant to the EUDR (“[Implementing Regulation](#)”);
- The Commission’s Frequently Asked Questions (“[FAQ](#)”)²; and
- The draft Commission Notice on the EUDR Guidance Document (“[Guidance](#)”)³

The Commission’s Blue Guide on the implementation of EU product rules (2022) is used to contribute to a better understanding where relevant and to the extent it is not contradicted by the abovementioned documents (“**Blue Guide**”).⁴

In addition to the above, the following documents are also worth mentioning:

- The Communication from the Commission on the Strategic Framework for International Cooperation Engagement in the context of the EUDR⁵, which describes the EU’s initiatives

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](#). The entry into force of the EUDR was postponed with 1 year by [Regulation \(EU\) 2024/3234](#).

² To be consulted at <https://circabc.europa.eu/ui/group/34861680-e799-4d7c-bbad-da83c45da458/library/e126f816-844b-41a9-89ef-cb2a33b6aa56/details>. French and German versions are available as well.

³ OJ C, C/2024/6789, 13.11.2024.

⁴ To be consulted at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2022:247:TOC>.

⁵ OJ C, 7 November 2024, 6604; <https://eur-lex.europa.eu/eli/C/2024/6604/oj/eng>

to cooperate with third countries, including general principles on the country benchmarking methodology; and

- The Commission's document concerning the creation of new TARIC codes to accommodate for the EUDR's requirements in the context of imports and exports ("**TARIC document**")⁶.

For the avoidance of doubt, **each company is allowed to go beyond the legal requirements of the EUDR (over-fulfilment)**. Each competitor must decide this independently. Competitors are not allowed to remove uncertainty about their future market conduct by agreeing how far beyond the EUDR they will or will not go. Competition authorities expect fierce competition in this field and impose heavy fines on infringements.⁷

⁶ To be consulted at <https://www.clecat.org/media/deforestation-reg-2023-1115---taric-data.pdf>

⁷ E.g., the Commission decision of 8 July 2021 in AT.40178, *Car Emissions*.

I. GENERAL OVERVIEW OF THE EUDR

A. RELEVANT SCOPE

1. Products

1. The product scope of the EUDR only concerns 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**. The correct allocation of a CN-code is key under the EUDR, as it is for the purpose of customs duties and for applying other existing legislation (e.g., relating to trade sanctions). 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 (see also the Guidance, Annex I, scenario 8) which refers explicitly to cars.
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 correct allocation of a CN-code, it is key to correctly describe the product concerned and check it against the description in Annex I to the EUDR.
5. 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**.
6. 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

7. The EUDR applies to relevant commodities and relevant products produced as of the date the EUDR enters into force – that is, **29 June 2023**.
8. Large companies are subject to the EUDR-obligations as of **30 December 2025**, and micro- and small undertakings as of **30 June 2026**. 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 as companies will already have to conduct due

diligence on relevant products and commodities to avoid lack of available information when the relevant products are (re)sold as of 30 December 2025.

9. 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 (question 9.1) indicate that limited obligations apply in such circumstances. The various scenarios can be summarised as follows:

Relevant products manufactured before 29 June 2023	The EUDR does not apply.
Relevant products manufactured as of 29 June 2023 and placed on the EU market before 30 December 2025	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-obligations.
Relevant products placed on the EU market as of 30 December 2025	
1. Relevant products manufactured as of 29 June 2023 entirely from relevant commodities placed on the market before 30 December 2025	The EUDR-obligations do not apply to the placing of the relevant products on the market as of 30 December 2025 if there is adequately conclusive and verifiable evidence that the relevant commodities used were placed on the market before 30 December 2025.
2. Relevant products manufactured as of 30 June 2023 from relevant commodities placed on the market as of 30 December 2025	The EUDR applies.
3. Relevant products manufactured as of 29 June 2023 partially from relevant commodities placed on the market as of 30 December 2025 and partially from relevant commodities placed on the market before 30 December 2025	The EUDR-obligations apply to the relevant product but only in relation to the relevant commodities placed on the market as of 30 December 2025. There must be adequately conclusive and verifiable evidence that the other relevant commodities were placed on the market before 30 December 2025.

3. Persons

10. The EUDR applies to the following natural or legal 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.
11. Persons can be operators or traders irrespective of whether they are established inside or outside the EU.

12. The EUDR imposes obligations on each operator and trader in the supply chain, including manufacturers, importers, wholesalers, retailers and exporters. In other words, there is no limit to the number of actors in a supply chain that can be subject to these obligations.

a. The concept of “placing on the market”

13. 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.

14. 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”

15. **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.

16. **Transactions in the same company.** Transactions within the same company are not subject to the EUDR (see also FAQ question 2.11), unless in case of exports (see below no. 19ff) or imports (see below no 23ff.).
17. **Transactions between group companies.** Transactions between companies belonging to the same group *are* subject to the EUDR. This is confirmed by the FAQ (question 3.13).
18. **No need for physical handover.** Supply does not necessarily require the physical handover of the product. The concept includes any agreement for distribution, consumption or use on the Union market which will result in actual supply in relation to products already produced (see also FAQ question 5.20).

c. The concept of “export”

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

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

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

21. Therefore, according to article 269(2) EU Customs Code, export does not 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.

22. 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 Union market.

d. Imports into the EU

23. Importers are operators when the import-procedure "release for free circulation" applies. The only exception concerns imports intended for private use or consumption.

24. The abovementioned exception relating to private use or private consumption concerns use by consumers only. A company importing relevant products to use in the context of its activities is considered an operator by the Commission irrespective of whether this use is only of marginal importance for the company's business.

25. In case of imports, the buyer is an operator even when the supplier takes on the importer-responsibilities. For the avoidance of doubt, the Commission considers that an importing buyer is an operator even if the non-EU supplier has already submitted a DDS.

B. SUBSTANTIVE EUDR-OBLIGATIONS

26. Article 3 EUDR provides that operators and traders cannot offer or sell relevant commodities or relevant products that are:
- a) 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
 - b) 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 (“**UNDRIP**”); and
 - tax, anti-corruption, trade and customs regulations.

C. FORMAL EUDR-OBLIGATIONS

1. Due diligence

27. The due diligence requirement (article 8 EUDR) consists of three steps, namely:
- a) information collection (article 9 EUDR);
 - b) risk assessment (article 10 EUDR); and
 - c) risk mitigation (article 11 EUDR).
28. These three steps must be completed *before* the product concerned is placed on the market, made available on the market or exported.
29. 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.

a. Information collection

30. The **information** that must be collected and kept for at least 5 years from the date of the placing on the EU market or export is listed in the EUDR as follows:

- a description, including the trade name and type of the relevant products;
- the quantity of the relevant products;
- the country of production and, where relevant, parts thereof;
- 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;
- the name, postal address and email address of any business or person from whom they have been supplied with the relevant products;
- the name, postal address and email address of any business, operator or trader to whom the relevant products have been supplied;
- adequately conclusive and verifiable information that the relevant products are deforestation-free; and
- 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

31. The risk assessment aims to establish whether there is no or only a negligible risk that the relevant products are non-compliant. The **risk assessment** must be based on various criteria of which some are listed explicitly in the EUDR. The Guidance (chapter 4 b)) indicates that this list is not exhaustive, and that operators and traders may apply other criteria as well.

c. **Risk mitigation**

32. 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..
33. 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 (DDS)**

34. Any relevant product placed or made available on the market or exported from the EU must be accompanied by a DDS. In other words, all traders and operators need to submit DDSs **prior** to the placing or making available on the market or prior to exporting relevant products.
35. Many SMEs will be exempted from the obligation to submit DDSs:
- **SME traders** do not need to submit a DDS; and
 - **SME operators** do not need to submit a DDS in so far as the relevant product concerned is already fully covered by a previously submitted DDS. The SME operator is then only required to provide the competent national authorities with the reference number of this DDS upon request.
36. If an operator or trader uses relevant commodities or products from a variety of sources, it is acceptable to include in the DDS information (in particular geolocation) on all these sources.
37. A DDS is in principle required **each time** an operator or trader intends to place, make available on the market, or export (a shipment or batch of) a relevant commodity or a relevant product. However, the FAQ (question 5.19) indicates that **a DDS can cover multiple shipments/batches** over a period of up to 1 year in so far as the related, relevant commodities have already been produced and have been subject to due diligence. As a DDS must contain information regarding the quantities, a new DDS is required if the previously reported quantities are exceeded. Moreover, overinclusive DDS may cause practical issues relating to the upload-limitations of the Information System discussed below.

38. The DDSs have to be uploaded to the **Information System**. The Information System can be accessed at <https://eudr.webcloud.ec.europa.eu/tracesnt/login>. Companies can familiarise themselves with it at <https://acceptance.eudr.webcloud.ec.europa.eu/tracesnt/login>.
39. Operators or traders may refer in their own DDS to **DDSs 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 DDS has done a proper due diligence. Importantly, however, operators or traders will **retain responsibility** for non-compliance.
40. It is acceptable for operators or traders to mandate an EU-based **authorised representative**, although the operator or trader retains responsibility for the relevant commodities and products' compliance as discussed above.
41. Operators and traders must **keep a record** of the submitted DDSs for five years.

3. Customs

42. 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 will be required to provide the reference number of the DDS to the customs authority in question.
43. 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.

D. PUBLIC ENFORCEMENT

44. **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.
45. 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 the competent national authorities.
46. 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 on 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).
47. 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 consolidated⁸ EU turnover of the operator or trader concerned;
 - 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.
48. 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.

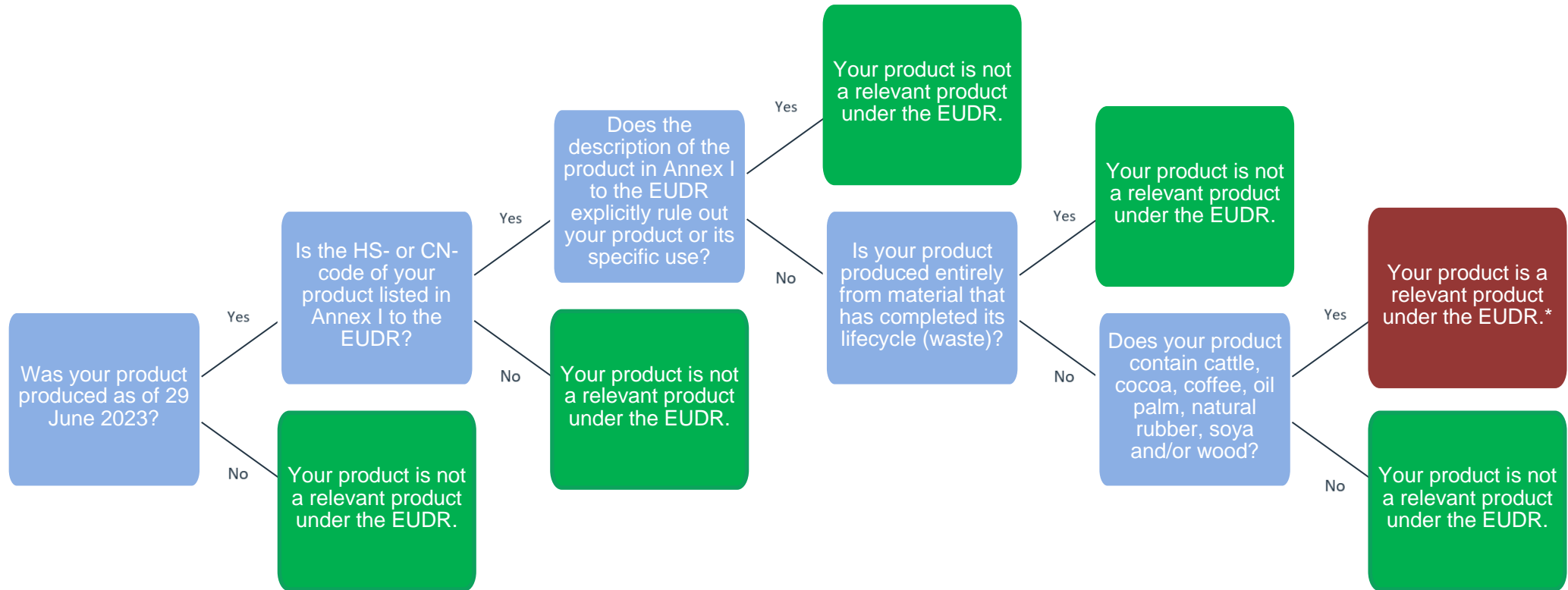
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⁸ Including 100% of the turnover of companies that are under direct or indirect sole control of the company that ultimately controls the operator or trader in question, 50% of turnover of companies under joint control together with one other controlling parent, 33% of turnover of companies under joint control together with two other controlling parents, etc.

II. SIMPLIFIED DECISION TREES

A. SCOPE: PRODUCT

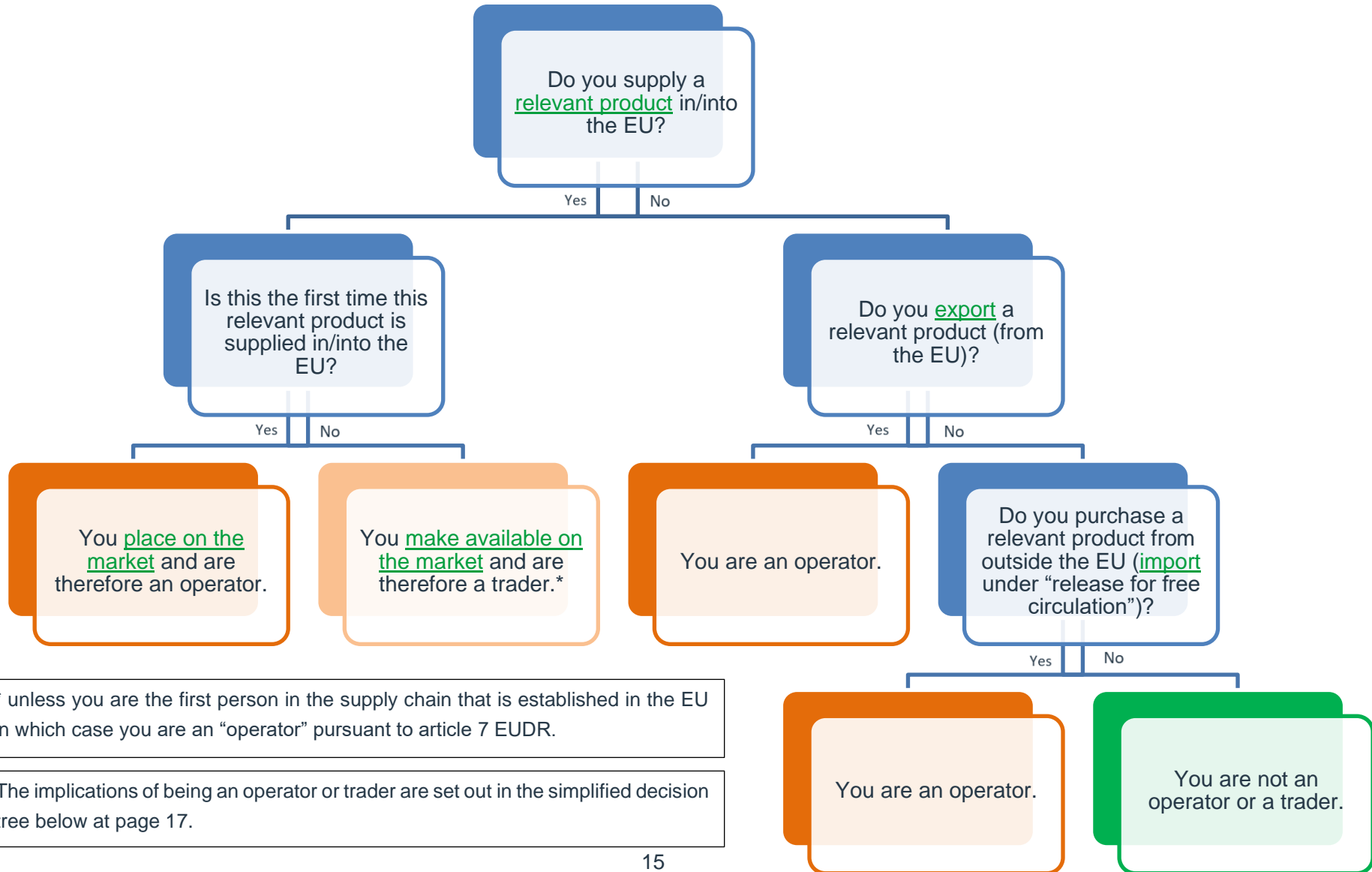


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depending on the date of placing on the market, the EUDR provisions may not apply fully, as explained above at nos. 8 and 9.

For the avoidance of doubt, the EUDR applies even if the products are made entirely from commodities that were produced or harvested before the deforestation cut-off date (31 December 2020).

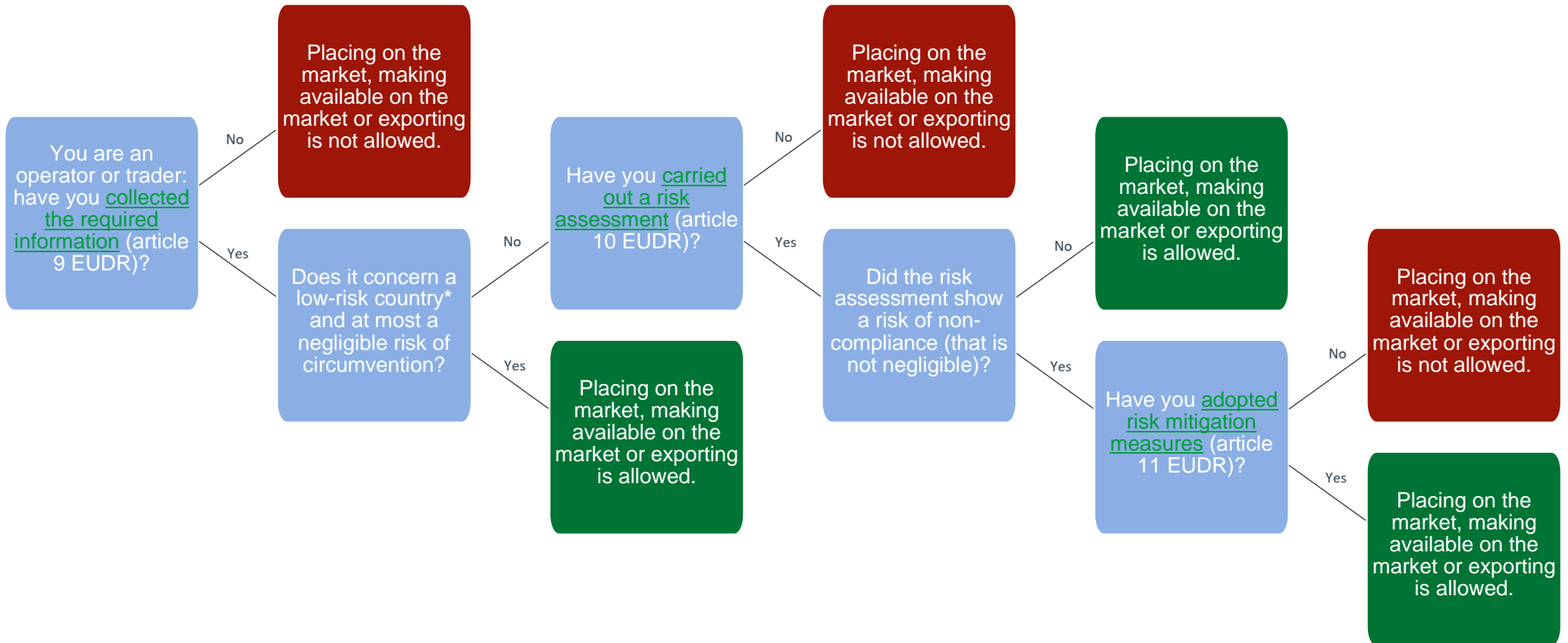
B. SCOPE: OPERATOR OR TRADER?



* 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.

The implications of being an operator or trader are set out in the simplified decision tree below at page 17.

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 responsible under the EUDR for products that they have placed on the market, made available on the market or exported.

D. DUE DILIGENCE STATEMENT

