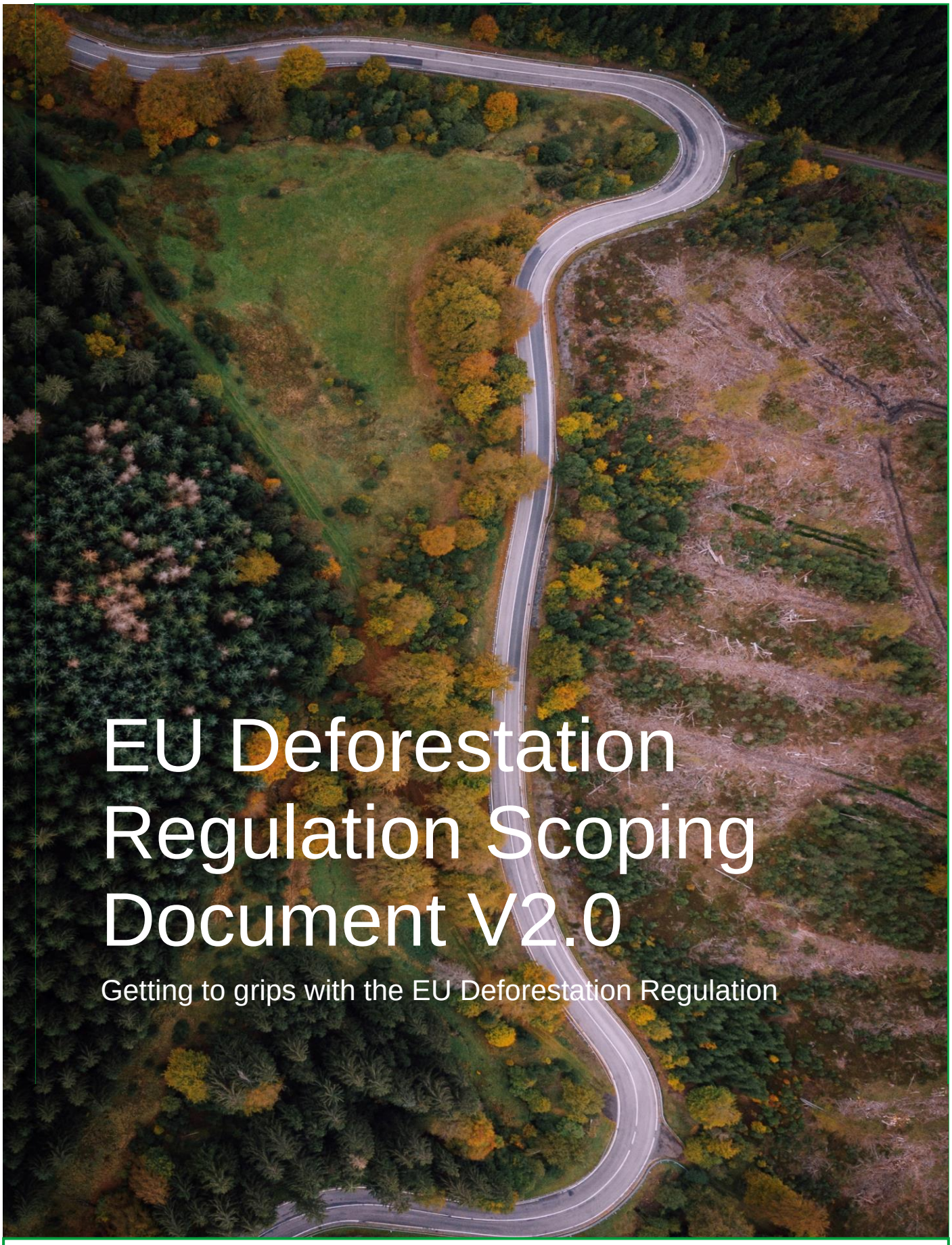

EU Deforestation Regulation Scoping Document V2.0

Getting to grips with the EU Deforestation Regulation

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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. The questions raised during the March 2024 webinar were also answered in the herewith provided Scoping Document.

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

This 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.

Versions 1 and 2 differ mainly because of the updated FAQ and additional information from the European Commission's draft guidance. Additional Q&A were also added. Importantly, version 2 sets out the clearer positioning of the Commission in the FAQ on the application of the EUDR to imports. The parts that have undergone material amendments in Version 2 are highlighted in grey.

***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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To: Stefan Crets
Executive Director
CSR Europe

Date: Version 14 March 2025

Various trade federations, including CSR Europe, CLEPA and VDA requested a report 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 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 EUDR[5], 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**.[8] 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:

> 2.1. **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 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. For instance, Annex I to the EUDR lists the following products:

> 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,

[8] 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). The CN-codes can be found in Annex I to Regulation 2024/2522 of 23 September 2024 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.

excluding therefore for example seats made entirely out of metal, leather, etc. The description does not suggest that the seats in question need to be made *entirely* out of wood.

The corresponding TARIC document code for the declaration of imports and exports of such out-of-scope products is Y129.

Such out-of-scope products are not subject to the EUDR-obligations so no actions (such as the submission of a due diligence statement or "**DDS**") are required under the EUDR. It may be advisable to document the reasons and supporting evidence for not applying the EUDR (e.g., because the seats do not contain wood) to be ready in case of an investigation. Certain authorities have moreover indicated to require such evidence.

ex 4011 New pneumatic tyres, of rubber:

- Only the directly linked commodity is subject to the EUDR-obligations (FAQ question 1.3). This means for tyres that the due diligence requirements must cover only natural rubber, irrespective of whether these tyres also contain stearic acid (and therefore palm oil).

  The EUDR-obligations do not apply to synthetic rubber, balata, gutta-percha, guayule, chicle and similar natural gums produced with other species (Guidance, chapter 7 and FAQ question 2.2).

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, the FAQ (question 2.2) confirm 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 Guidance (chapter 7 a)) and FAQ (question 2.6) stress that the exemption applies only to packing material used *exclusively* to support, protect or carry another product. This could be taken to mean that the Commission is of the opinion that returned packing material as such does not benefit from this exemption and is in-scope of the EUDR, e.g., pallets used to export

cargo outside the EU that return to the EU with a view to their re-use for cargo transport would therefore be subject to the EUDR.

Nevertheless, 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. The FAQ (question 2.6) indicates that *"once the concerned packaging becomes a packaging material used exclusively as packaging material to support, protect or carry a product, it is then not covered by the scope of the Regulation."* This may mean that once packaging material is used to support, carry or protect another product, it is *permanently* excluded from the scope of the EUDR, including upon return.

However, absent explicit confirmation by the Commission, no firm position can be taken in this report on this point and each company will have to make its own risk-assessment.

Packaging under HS code 4819 is also covered by the EUDR. This code is itself not explicitly mentioned but Annex I to the EUDR includes *"Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products"*. The Guidance (at chapter 7 a)) indicates that such packaging material is also not covered by the EUDR if it is used to support, protect or carry another product.

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**. 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[9], 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.

This exemption applies to used products only in so far as such products have completed their lifecycle and would otherwise have been disposed as waste as defined in Article 3, point (1), of Directive 2008/98/EC (FAQ question 2.7). This indicates a strict application of this exemption which may cause practical issues for the reuse or recycling of post-consumer products that do not qualify as waste.

[9] Article 3(1) Directive (EC) 2008/98: *"'waste' means any substance or object which the holder discards or intends or is required to discard".* More information on how waste is defined, can be found in the Commission's guidance of 2012 at https://ec.europa.eu/environment/pdf/waste/framework/guidance_doc.pdf.

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**. The Commission indicates in the FAQ (question 8.3) that the operator or trader should prove the non-application of the EUDR and should therefore provide evidence (documents) that a relevant product was produced before 29 June 2023 (see below at no. 10). The corresponding TARIC document code for the declaration of imports and exports of such products is Y132.

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.

10. In the FAQ (question 9.2), the Commission provides examples of adequately conclusive and verifiable evidence of a product having been placed on the Union market before the date of entry into application:

> **9.2. What evidence is necessary to prove that the product was placed on the market before the date of entry into application (i.e. what documents are accepted as evidence of 'placing on the market')? (NEW)**
>
> In case of imported products, the customs declaration of the relevant commodities or relevant products in question will be accepted as evidence of having placed on the market before the date of application. For EU produced goods, other documentation should be accepted as evidence, for example documentation relating to the production e.g. felling tickets, ear tag of cattle, bill of lading, proforma invoice accompanying the delivery to the customer, CMRs (Convention on the Contract for the International Carriage of Goods by road), delivery notes, and any other documents showing evidence that goods are transferred between 2 parties which can be linked directly to the relevant product in question.

11. For the avoidance of doubt, the EUDR applies even if the relevant products are made entirely from commodities that were produced or harvested before the deforestation cut-off date (31 December 2020). The importance of this cut-off date is set out below at no. 35.

3. Persons

12. 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.

13. 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.

14. Persons can be operators or traders irrespective of whether they are established inside or outside the EU. This is confirmed by the FAQ (question 3.7):

> **3.7. What happens if a non-EU based operator places a relevant product or commodity on the EU market? Under which circumstances will non-EU based operators have access to the Information System? (NEW)**
>
> If a natural or legal person established outside the EU places relevant products on the market, according to Art. 7 EUDR the first person established in the Union who makes such products available on the market should be deemed to be an operator within the meaning of the Regulation.
>
> This means that in this case, there will be two operators within the meaning of the Regulation – one established outside and one inside of the EU.
>
> Non-EU based operators will only have access to the Information System if they have a valid EORI number, as only in this case they will need to submit a due diligence statement after having conducted due diligence prior to lodging a customs declaration. They will have access to the system in the role of an operator and not as an authorised representative, as according to Art. 2(22) of the Regulation, the authorised representative must be established in the Union.

The FAQ (question 2.10) and the Guidance (Annex I, scenario 3a)) suggest that non-EU suppliers are subject to the EUDR only if they take on the importer-responsibilities but this is not confirmed explicitly. *[Commission input is pending]*.

15. It remains to be seen whether in practice the EUDR will be effectively enforced on operators and traders established outside the EU. If not, in reference to no. 50 below, any downstream operator or trader established in the EU will likely not be able to rely on a previously submitted DDS.

16. Natural or legal persons that do not place relevant products on the market, make such products available on the market or export these products are not subject to the EUDR. However, in practice, they may nevertheless be impacted by it. For instance, non-EU farmers will need to provide their customers with a lot of information, OEMs that purchase relevant products from EU-based suppliers may be confronted with supply chain disruptions, etc.

a. The concept of "placing on the market"

17. 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.

18. 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"

19. **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.

20. **Transactions in the same company**. Making available a product supposes the supply for distribution, consumption or use on the Union market of a relevant product. The FAQ (question 2.10) 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 the same company are not subject to the EUDR (see also FAQ question 2.11), unless in case of exports (see below no. 23ff) or imports (see below no 28ff.).

21. **Transactions between group companies**. Transactions between companies belonging to the same group *do* lead to products being supplied and therefore being made available on

the Union market. This is confirmed by the FAQ (question 3.13). 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 (or on whether they import, as discussed below).

22. **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. <u>The concept of "export"</u>

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

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

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

25. 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.

26. 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.

27. 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

28. Importers are operators when the import-procedure "release for free circulation" applies. This is so "*irrespective of a 'supply' or irrespective of an agreement (written or verbal) between two or more legal or natural persons for the transfer of ownership or an equivalent right concerning the product in question*" (FAQ, question 2.10).[10] The only exception concerns imports intended for private use or consumption.

This is illustrated in the FAQ by some examples which also show the different treatment between imported relevant products and EU-produced relevant products (see also the Guidance, Annex I, scenarios 1 to 4):

> **2.10. When is there a "supply" of a relevant product, meaning it is placed or made available on the market in the course of a commercial activity? To what extent are companies in scope when they use relevant products in their own business or process them (NEW)?**
>
> … These situations may be explained by a few examples:
>
> 1) Car company B buys leather of cattle (relevant product) from EU tannery T to manufacture a car using the leather of cattle for the car seats. Car company B places the car (non-relevant product) on the market by selling it to end consumers. Car company B is not an operator, as the car it is supplying on the market is not a relevant product in Annex I, nor a trader, as it is not supplying the leather of cattle (individually) on the market.
>
> 2) Car company B imports (i.e., place under customs procedure "release for free circulation") leather of cattle to manufacture cars. Car company B is an operator when importing the leather for its own business operations. B needs to exercise due diligence and submit a DDS prior to the release for free circulation. …

29. 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 (question 5.5):

> **5.5. Which customs procedures are affected?**

[10] In respect of the Commission's view as set out in the FAQ and Guidance, it can be pointed out that based on a literal reading of the EUDR's definition of 'placing on the market', the import-procedure 'release for free circulation' arguably does not necessarily imply that a product is placed on the Union market in the sense of the EUDR. In line with the Blue Guide (sections 2.3 and 2.5), if an OEM imports a relevant product without 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. It is important to keep this line of reasoning in mind, although we do not address it in more detail in this Scoping Document.

> 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.

30. 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.

This is illustrated in the FAQ (question 2.10) by some examples which, again, show the different treatment between imported relevant products and relevant products that are already in the EU:

> **2.10. When is there a "supply" of a relevant product, meaning it is placed or made available on the market in the course of a commercial activity? To what extent are companies in scope when they use relevant products in their own business or process them (NEW)?**
>
> … In the examples below, the persons process or use relevant products in their business. They are only subject to the Regulation in those cases in which they are supplying relevant products on the market:
>
> 4) Company A buys from retailer B in a third country and imports (i.e., places under customs procedure "release for free circulation") wooden tables and seats (relevant products). The furniture will be used by A's own employees during working hours. A is an operator and needs to exercise due diligence and submit a DDS prior to the release for free circulation of the wooden tables and seats.
>
> 5) Company D buys wooden tables and seats (relevant products) from EU operator B who has imported them from a third country and who has already carried out due diligence and submitted a DDS. Company D will use the furniture for its own employees during working hours. The furniture is not supplied, hence D is not subject to the EUDR. …

31. In case of imports, the buyer is an operator even when the supplier takes on the importer-responsibilities, as demonstrated by the following examples set out in Annex I to the Guidance:

> Scenario 3a
>
> EU-established manufacturer F (non-SME operator) buys raw hides of cattle [HS ex 4101] from supplier H, who is established outside the EU. Under the contract, ownership is immediately transferred to manufacturer F while the hides are still outside the EU and manufacturer F imports them into the EU. After the import in the EU, manufacturer F processes the hides into tanned hides [HS ex 4104] and sells them to EU-established non-SME retailer I (trader).
>
> — Manufacturer F is an operator when importing into the EU (declare for the customs procedure 'release for free circulation') raw hides of cattle, as raw hides of cattle are a relevant product covered by Annex I of the EUDR. …

[In this scenario, ownership is transferred from a non-EU person to an EU person before the product physically enters the EU.]

Scenario 3b

An EU-established manufacturer F (non-SME operator) buys tanned hides of cattle [HS ex 4104] online from supplier H, who is established outside the EU. Under the contract, ownership is only transferred to manufacturer F when the hides are delivered to their factory in the EU. Shipping agent G imports the hides into the EU on behalf of supplier H and delivers them to manufacturer F's factory.

— Supplier H is an operator when importing the tanned hides of cattle into the EU (i.e., declare for the customs procedure 'release for free circulation'), as they are a relevant product covered by Annex I of the EUDR. …

— Manufacturer F is the first natural or legal person to make the relevant products available on the EU market and is also deemed to be an operator pursuant to Article 7, i.e. although it is actually not an operator pursuant to the definition laid down in Article 2(15), Article 7 establishes that it is subject to the same obligations as an operator. …

[In this scenario, ownership is only transferred from the non-EU person to the EU person after the product has physically entered the EU.]

32. 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.

e. Overview

33. 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.

34. 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 *[Commission input is pending]*. Moreover, based on the FAQ and on the Guidance, the Spanish distributor would be an operator even if the Moroccan manufacturer would act as importer. For the avoidance of doubt, in this situation, *both* would be subject to the EUDR-obligations and *both*, therefore, would have to submit a DDS (see FAQ, question 3.7). In practice, one of the two

	will be able to refer in its own DDS to the DDS of the other as explained below at no. 50. 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 a trader.[11] The Belgian procurement company is not (yet) an operator or a trader as the tyres are purchased from a company established in the EU.[12]
The Belgian procurement company then sells it to the Belgian 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 Belgian manufacturing company of the car manufacturer puts some of the tyres on cars in Belgium which are then sold (**transaction 5**).	**Transaction 5** is **not subject to the EUDR**. Cars are not listed in Annex I to the EUDR, and the tyres are purchased from the Belgian procurement company, so they are not imported.
This Belgian manufacturing company of the car manufacturer transfers some tyres to a plant in Germany owned by the same Belgian manufacturing company (**transaction 6**).	**Transaction 6** is **not subject to the EUDR** as the tyres are not imported from outside the EU and 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).
This Belgian manufacturing company of the car manufacturer transfers some tyres to a plant in the UK owned by the same Belgian manufacturing company (**transaction 7**).	**Transaction 7** is **subject to the EUDR**, and the Belgian manufacturing company is an operator as it exports tyres.
This Belgian manufacturing company of the car manufacturer resells some tyres to a Belgian garage (**transaction 8**).	**Transaction 8** is **subject to the EUDR**, and the Belgian manufacturing company is a trader.

[11] See also the example mentioned in the Guidance (Annex I, scenario 3).

[12] See the example mentioned in the FAQ (question 2.10): *"Company D buys wooden tables and seats (relevant products) from EU operator B who has imported them from a third country and who has already carried out due diligence 24 and submitted a DDS. Company D will use the furniture for its own employees during working hours. The furniture is not supplied, hence D is not subject to the EUDR."*

B. SUBSTANTIVE EUDR-OBLIGATIONS

35. 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.

The Guidance (chapter 6 a)) stresses that this requirement concerns only legislation pertaining to the legal status of the area of production[13], so legislation that specifically impacts or influences the legal status of the area in which the commodities were produced. Not all potential infringements of local laws by local producers are therefore covered by article 3 EUDR.

C. FORMAL EUDR-OBLIGATIONS

1. Due diligence

36. 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).

[13] The EUDR, FAQ or Guidance do not define 'area of production'. It appears to concern the plots of land that were used to produce the relevant commodities and products in question.

37. These three steps must be completed *before* the product concerned is placed on the market, made available on the market or exported.

38. In the FAQ (question 5.16), the Commission stresses that "*due diligence is not a 'tick-the-box exercise'*". This means that sending suppliers a list of standard questions will typically serve only as a starting point of the due diligence and must be followed by more tailored investigatory actions based on the responses received.

39. 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 June 2025. Absent such decision, all countries are assigned a standard level of risk, and a simplified due diligence is not possible.

a. Information collection

40. 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

41. The risk assessment aims to establish whether there is no or only a negligible risk that the relevant products are non-compliant. The Guidance (chapter 4 b)) indicates that no or only a negligible risk means that the commodities or products show no cause for concern as being not in compliance with the EUDR.

42. 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. This list contains the following criteria:

- 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

43. 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...

44. 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)

45. 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.

46. 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, e.g. in case of exporting a relevant product that was previously placed on the market or in case of a product that is reimported after being exported. The SME operator is then only required to provide the competent national authorities with the reference number of this DDS upon request.

SMEs are defined by the EUDR with reference to article 3 of Directive (EU) 2013/34 which contains thresholds based on the balance sheet total, net turnover, and number of employees (as amended from time to time). At present, 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 on a standalone basis, so they are not applied on a consolidated basis (of the group to which such company may belong).

For the avoidance of doubt, the SME exemption does not apply to the **customers of SMEs that are themselves not SMEs**. Such customers that want to resell or export this product must submit a DDS. However, SMEs do not need to provide a DDS reference number to their customers (unless this is contractually foreseen). This may create practical issues as that customer will have to find the DDS submitted higher in the supply chain if it wants to refer to these in its own DDS (discussed below at no. 50).

47. 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. This is confirmed by the FAQ:

> **1.18. Under which circumstances can operators declare more plots of land in a due diligence statement than those actually concerned by the production of the specific commodity placed on the market? What are the implications of a "declaration in excess"? (NEW)**
>
> 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 (hence, the regulation is built on the principle of strict traceability, whereby operators need to collect the precise geolocation coordinates corresponding to the plots of land of production). 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:
>
> Operators may declare "in excess" only in situations where a bulk commodity is fully traced to the plot of land and is not being subject to mixing with commodity of unknown origin or non-compliant commodities. When such bulk commodity is mixed up along the logistical or

production process, for instance in silos for storage, onboard ships for transportation, or in mills during the production process, the operator can resort to a declaration in excess if and when only a part of the whole is placed on the market. Operators are required to obtain traceability data that is as granular as possible.

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. In more detail, the operator has to consider the existence of a risk if connecting relevant products to the plots of land where the relevant commodities were produced is difficult according to Art. 10(2)(i) EUDR, and also if the risk of circumvention of the Regulation or of mixing with relevant products of unknown origin is non-negligible according to Art. 10(2)(j) EUDR. The operator has to mitigate these risks to negligible level before placing or making available such products on the market or exporting them.

With no prejudice to the above-mentioned case scenarios, traceability practices that aim to declare an excessive amount of plots of land (for instance, on a regional or country-wide basis) are generally not in line with the rules of this regulation. Such practices would not allow operators to comply with their core due diligence obligations, in particular mitigating risk of circumvention (i.e., it is not possible to conduct due diligence as per Art. 8 of the Regulation 15 on an entire country). It would also hinder the work of EU Member States Competent Authorities, making it difficult (or even impossible) to comply with their obligations to carry out checks as per Art. 16.

48. 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.[14] 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 of product, and whether it was manufactured as an individual unit or in series."*[15]

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.

[14] As indicated above at no. 13, 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.

[15] Blue Guide, section 2.2.

49. 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.

This Information System is established and maintained by the Commission. There is no separate system per EU Member State. Once they are submitted (as of 30 December 2025) DDSs will be accessible to all users of the Information System if they have the reference number of the DDS as well as the associated verification number (pursuant to article 10 of the Implementing Regulation). Customs authorities and competent national authorities will also have access to it. The wider public will not, but the datasets in it will be made available by the Commission on an anonymised basis.

In practice, importers and exporters will need an Economic Operators Registration and Identification (EORI) number[16] when registering in the Information System. Other EU-based operators and traders that do not have such number may use another identifier such as their VAT number, National Company Number or Taxpayer Identification Number.

50. 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. In their own DDSs, operators or traders will need to include the reference numbers of the upstream DDSs that have already been submitted and, if necessary, conduct complementary due diligence for those parts not yet covered by a previously submitted DDS.

Importantly, however, operators or traders will **retain responsibility** for non-compliance. 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.

51. 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. This is summarised in the FAQ as follows:

> **5.2. What is an 'authorised representative'?**
>
> Pursuant to Art. 6 of the Regulation, the operator and the trader may mandate authorised representatives to submit a due diligence statement on their behalf. In this case, the operator and trader will retain responsibility for the compliance of the relevant products.

[16] For more information on the EORI number, see the Commission's website on this topic at https://taxation-customs.ec.europa.eu/customs-4/customs-procedures-import-and-export/customs-procedures/economic-operators-registration-and-identification-number-eori_en.

If the operator is a natural person or microenterprise, it may mandate the next operator or trader in the supply chain to act as its authorised representative, provided it is not a natural person or micro-enterprise. In this case, the mandating operator retains responsibility for the compliance of the product.

According to Art. 2(22) of the Regulation, the authorised representative must be established in the EU and must have received a written mandate from an operator or trader.

52. Operators and traders must **keep a record** of the submitted DDSs for five years.

3. Customs

53. 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. This implies that a DDS will need to have been uploaded *before* the customs declaration (as confirmed by the FAQ, question 5.20).

54. For these customs declarations, new TARIC document codes, footnotes, TARIC measure types, import provisions and export provisions have been created by the Commission's Directorate General Taxation and Customs Union as set out in the TARIC document.

55. 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

56. **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.

57. 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. 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.

58. 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).

It is unclear whether recall measures would extend to relevant products incorporated into other products (not listed in Annex I to the EUDR). As the EUDR-obligations do not apply to products that are not listed in Annex I to the EUDR, even if they incorporate relevant products, the argument may be made that the same logic applies to a recall obligation. This is however not confirmed in the FAQ or Guidance.

59. 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[17] 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.

60. Corrective actions and penalties will be based on national law, which must as a minimum include the corrective measures and penalties listed in articles 24 and 25 EUDR.

[17] 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.

61. Articles 24 and 25 only mention the possibility for competent national authorities to impose corrective measures and penalties on *operators or traders* and not the possibility to impose such measures on *customers* of operators or traders. However, national law may go further.

62. 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[18]

A. RELATED TO PERSONAL SCOPE (OPERATOR/TRADER):

1. 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? 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 EUDR does not distinguish between suppliers based in the EU and suppliers based outside the EU. The FAQ (question 2.10) and the Guidance (Annex I, scenario 3a)) suggest that non-EU suppliers are subject to the EUDR only if they are importing but they do not confirm this explicitly. [*Commission input is pending*]

The OEM itself, in its role as purchaser, is not an operator unless, based on the FAQ and the Guidance, it purchases from a supplier of parts established outside the EU. In that case it will be an operator.

2. Can incoterms 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.

[18] The answers are provided by contrast.

	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.

For the avoidance of doubt, in all these cases, an EU-based company purchasing/importing relevant products from a seller located outside the EU will be considered an operator by the Commission as explained above at no. 28 (at page 13). This is the case even if the contract would stipulate that ownership is transferred to the purchaser only after the product has physically entered the EU. This is reflected in the following example in the Guidance (Annex I, Scenario 3b):

> Scenario 3b
>
> An EU-established manufacturer F (non-SME operator) buys tanned hides of cattle [HS ex 4104] online from supplier H, who is established outside the EU. Under the contract, ownership is only transferred to manufacturer F when the hides are delivered to their factory in the EU. Shipping agent G imports the hides into the EU on behalf of supplier H and delivers them to manufacturer F's factory.
>
> — Supplier H is an operator when importing the tanned hides of cattle into the EU (i.e., declare for the customs procedure 'release for free circulation'), as they are a relevant product covered by Annex I of the EUDR. This means that supplier H must exercise due diligence on the hides of cattle, submit a DDS to the Information System and include the DDS reference number in the customs declaration for release for free circulation [or mandate shipping agent G as authorised representative according to Article 6(1) to submit it]. As part of their due diligence for the hides, supplier H must include geolocation information referring to all the establishments where the cattle were raised (in accordance with Article 9(1)(d)). In accordance with recital 39, supplier H determines whether the cattle used to produce those hides were fed with another relevant product, and if so, conducts also the required due diligence for the livestock feed.
>
> — Manufacturer F is the first natural or legal person to make the relevant products available on the EU market and is also deemed to be an operator pursuant to Article 7, i.e. although it is actually not an operator pursuant to the definition laid down in Article 2(15), Article 7 establishes that it is subject to the same obligations as an operator. Therefore, manufacturer F must exercise due diligence and submit a separate DDS to the Information System before selling them to consumers or other actors further down the supply chain, in which it may refer to the DDS of supplier H according to Article 4(9).
>
> [In this scenario, ownership is only transferred from the non-EU person to the EU person after the product has physically entered the EU.]

3. 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 is not an operator or trader and is not subject to the EUDR.

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

4. **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. However, supplier X is an operator or trader and must comply with the EUDR-obligations.

5. **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. However, supplier X is an operator or trader and therefore must comply with the EUDR-obligations.

6. **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

If in the example the German supplier X would provide instead e.g. "1806 Chocolate and other food preparations containing cocoa" then the supply by X to Y would be subject to the EUDR.

The FAQ and Guidance do not explicitly address whether the submission of these products by Y to its personnel or external guests is subject to the EUDR. An argument can be made that this would constitute own use by Y without a supply on the market, like how personnel (and external

guests) would be allowed to use the wooden table in the Commission's example in the FAQ (question 2.10):

> In the examples below, the persons process or use relevant products in their business. They are only subject to the Regulation in those cases in which they are supplying relevant products on the market:
>
> 5) Company D buys wooden tables and seats (relevant products) from EU operator B who has imported them from a third country and who has already carried out due diligence and submitted a DDS. **Company D will use the furniture for its own employees during working hours. The furniture is not supplied, hence D is not subject to the EUDR.**

If company Y would have purchased the relevant products from a non-EU supplier, based on the FAQ and the Guidance, company Y would be subject to the EUDR in any event, as evidenced by the Commission's example in the FAQ (question 2.10):

> In the examples below, the persons process or use relevant products in their business. They are only subject to the Regulation in those cases in which they are supplying relevant products on the market:
>
> 4) Company A buys from retailer B in a third country and imports (i.e., places under customs procedure "release for free circulation") wooden tables and seats (relevant products). **The furniture will be used by A's own employees during working hours. A is an operator and needs to exercise due diligence and submit a DDS prior to the release for free circulation of the wooden tables and seats.**

7. 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, unless such transfer involves an import (under the procedure "release for free circulation") or export.

8. 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-obligations.

9. Please explain the obligations in case of intra-group 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.

10. 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.

11. EU-established T3 supplier is a company that buys rubber in scope of the EUDR in a third country and imports it into the EU, where it processes the rubber and sells it on to a T2 manufacturer of automotive parts. The T2 automotive manufacturer then integrates the processed rubber in an automotive sub-component which it sells to the T1 supplier. What are the responsibilities for the T2 and T1 supplier, does he need to obtain and upload a DDS? Does it make a difference when some of the suppliers in the chain is a SME?

In this situation, the T3 supplier is an operator twice and is therefore subject to the EUDR-obligations twice:

- when it imports the rubber in scope of the EUDR under the procedure release for free circulation. This is reflected also in the following example set out in the FAQ (question 2.10); and

> 2) Car company B imports (i.e., place under customs procedure “release for free circulation”) leather of cattle to manufacture cars. Car company B is an operator when importing the leather for its own business operations. B needs to exercise due diligence and submit a DDS prior to the release for free circulation.

- when it sells the processed rubber to the T2 automotive manufacturer (assuming this processed rubber is a relevant product listed in Annex I to the EUDR). This is reflected also in the following example set out in the Guidance (Annex I, scenario 1):

> EU-established manufacturer A (non-SME operator) is a company that buys palm oil [HS 1511] in a third country and imports it into the EU, where it uses the palm oil to produce industrial fatty alcohols [HS 3823 70]. It then sells the industrial fatty alcohols to manufacturer B in another EU Member State.

— Manufacturer A is an operator when importing into the EU (declare for the customs procedure 'release for free circulation') the palm oil, as palm oil is a relevant product covered by Annex I of the EUDR. This means that manufacturer A must exercise due diligence on the palm oil, submit a DDS to the Information System and include the DDS reference number in the customs declaration for release for free circulation.

— Manufacturer A is also an operator when placing the industrial fatty alcohols on the market, as industrial fatty alcohols are relevant products covered by Annex I of the EUDR. This means that manufacturer A must submit a separate DDS for the industrial fatty alcohols before placing them on the market, in which they may refer to their previous DDS reference number according to Article 4(9).

The T2 automotive manufacturer is not an operator or trader and therefore not subject to any of the EUDR-obligations, assuming that the automotive sub-component is not listed in Annex I to the EUDR. This is reflected also in the following example set out in the FAQ (question 2.10):

1) Car company B buys leather of cattle (relevant product) from EU tannery T to manufacture a car using the leather of cattle for the car seats. Car company B places the car (non-relevant product) on the market by selling it to end consumers. Car company B is not an operator, as the car it is supplying on the market is not a relevant product in Annex I, nor a trader, as it is not supplying the leather of cattle (individually) - on the market.

The T1 supplier is also not an operator or trader and therefore not subject to any of the EUDR-obligations for the same reason the T2 automotive manufacturer is not an operator. This is so irrespective of whether the automotive sub-component would be listed in Annex I to the EUDR.

B. RELATED TO THE PRODUCTS IN SCOPE:

1. 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.

2. 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)

The following packaging materials are also subject to the EUDR:

4819 Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like

3. For import/export, is intercompany export in scope?

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

4. 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.

5. 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.

6. 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 5 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, reference can be made e.g. to the Corporate Sustainability Reporting Directive ("**CSRD**") and the Corporate Sustainability Due Diligence Directive ("**CSDDD**").

7. 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?

Based on the FAQ and the Guidance, an OEM that imports a relevant product into the EU under the procedure release for free circulation is an operator and therefore subject to the EUDR-obligations, irrespective of whether that product is incorporated into another product that is not listed in Annex I to the EUDR.

8. 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 the IMDS data sheet, 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').

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

Companies do not need to report on synthetic rubber.

Products that are listed in Annex I to the EUDR but do not contain any relevant commodity are not subject to the EUDR. This means for instance that tyres made entirely from synthetic rubber are not subject to the EUDR. This is confirmed by the Guidance (chapter 7 b)):

> **Q7: Are relevant products covered by the EUDR in case they are produced from non-relevant commodities?**
>
> The Regulation does not apply to products which are made of non-relevant commodities, even if those products present the same Combined Nomenclature as the relevant products made of relevant commodities. The Regulation only applies to relevant products made of relevant commodities.
>
> That is the case for example:
>
> (i) palm oil from Elaeis guineensis is in the scope, but babassu oil from Attalea speciosa is not in the scope of the EUDR,
>
> (ii) rubber from Hevea brasiliensis is in the scope, but balata, gutta-percha, guayule, chicle and similar natural gums produced with other species are not in the scope of the EUDR, **neither are synthetic rubber products**,
>
> (iii) products of wood are in the scope, but rattan products are not in the scope of the EUDR.

10. What is definition of "reused packaging"? Is empty packaging that is shipped to be reused in or out of scope of EUDR? For example, is a wooden pallet designed to be used multiple times excluded from the EUDR scope from the beginning?

As set out above at no. 4 (at page 5), the EUDR, Guidance or FAQ currently do not confirm unequivocally that empty packaging is out of scope of EUDR if it was previously used as packing material to support another product.

11. CN/HS codes are usually set by customs – do we, or the supplier, need to define these codes earlier in the process to understand if the shipment is in scope of EUDR or not (to allow time for thorough due diligence)?

The application of the EUDR to a product depends heavily on the applicable CN/HS code. It is therefore key to correctly qualify the applicable CN/HS codes.

It is advisable to do so well in advance of the customs declaration to allow sufficient time for a proper due diligence and for other necessary actions if appropriate that may take time (such as making changes in the supply chain, re-organising storage, setting up a compliance system, etc.).

12. What needs to be included in our policy documents regarding deforestation, adhering to relevant local legislation, risk assessment and mitigation according to the EUDR?

The EUDR does not create specific obligations relating to companies' policy documents. Article 11(2) only requires operators to have in place *"adequate and proportionate policies, … to mitigate and manage effectively the risks of non-compliance of relevant products identified"* and to have *"an independent audit function to check the internal policies, …"*.

It may be useful to use the policy documents to describe a company's due diligence policy as a blueprint for the company's employees and for its suppliers.

In addition, policy documents can be used for the publication requirements under article 12 of the EUDR. Article 12 of the EUDR requires operators and traders that are not SMEs to publicly report the following on an annual basis *"as widely as possible, including via the internet"*:

- A summary of products (description, quantity and location of production) that were subject to DDSs during the reporting year
- The conclusions of the risk assessment and risk mitigation measures taken
- A description of the information and evidence that was obtained and used for the risk assessment
- Where applicable, a description of the consultation-process of the relevant indigenous peoples, local communities and other customary tenure rights holders or of the civil society organisations

13. Are transfers of test materials and prototypes of relevant products subject to the EUDR-obligations?

The EUDR, the FAQ or the Guidance do not directly address the issue of test materials and prototypes. They do so only indirectly, notably in the FAQ (question 2.10), which confirm that placing on the market takes place only after the manufacturing stage. This supports the view that test materials and prototypes are not subject to the EUDR-obligations.

Nevertheless, it is our understanding that certain competent authorities have indicated to consider test materials and prototypes to be in-scope.

C. RELATED TO THE DUE DILIGENCE REQUIREMENTS AND HOW TO MEET THEM:

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

The mandatory content of a DDS 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:'.

2. 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 pursuant to article 13 of the EUDR, requiring only the collection of information in the sense of article 9 EUDR without a full risk assessment and mitigation.

If the product comes from a high-risk or standard-risk country, the normal procedure will apply, meaning that also a full risk assessment and mitigation (in the sense of articles 10 and 11 of the EUDR) will be required. However, the competent national authorities are more likely to conduct checks on relevant products coming from high-risk countries.

3. Can operators and traders refer to previously submitted due diligence statements?

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

4. 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 (for instance by using the EUDR-SAQ developed by Drive Sustainability[19]). Whether these suppliers are required to provide such specifics is another issue which we address below at questions 9,14 and 21.

Based on the FAQ (question 3.4) 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.

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

The reference number of the DDS 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 company lodging the customs declaration for release for free circulation or export of a relevant product must include the reference number of the DDS assigned to that relevant product by the Commission's Information System in the customs declaration.

19 https://www.csreurope.org/newsbundle-articles/introducing-the-deforestation-sustainability-assessment-questionnaire-supporting-your-eudr-compliance-journey

For transactions that are subject to the EUDR but that do not involve customs, such as intra-EU transactions, the reference number does not need to be provided unless:

- 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 DDSs).

The EUDR does not impose a method to provide the reference number in such cases.

6. 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 (incl. quantities and supply chain actors) 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).

7. 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 DDS 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 DDS reference numbers in customs declarations.
- Inventory management: they need to make sure that relevant commodities and relevant products remain traceable to their origins, date of production/harvest and date of placing on the Union market. Moreover, they need to put measures in place to prevent the mixing of compliant relevant commodities and products with non-compliant relevant commodities and products.
- Legal department: they provide legal support to the various departments.
- Compliance department: they will support the responsible compliance officer.

- Reporting department (management reports, etc.) will need to prepare public reports on the due diligence system.

8. **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.**

Both in case the OEM imports, exports or places the relevant car parts on the market, the OEM will be an operator. In addition, if an OEM subsequently makes the relevant car parts available on the market, the OEM will be a trader and will be subject to the same obligations as operators unless it is an SME.

So, the OEM will be responsible for non-compliant car parts. This means that:

- if the supplier of the OEM has submitted a DDS, it is sufficient to ascertain that the supplier has done a due diligence. However, the OEM will retain responsibility. In its own DDS, the OEM will be able to refer to the previously submitted DDS.
- if the supplier has not submitted a DDS, it will be necessary for the OEM to conduct a complete due diligence (in the sense of articles 9, 10 and 11 of the EUDR).

9. **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 DDSs associated to those products. However, this may not be an obligation for SMEs as set out below at question no. 21.

This obligation may in practice imply a requirement to share some of the 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.

10. 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?

Whether a non-EU based supplier is an operator is discussed above at no 14 (at page 10). The Commission's view in the FAQ and the Guidance is that the OEM will be an operator under the EUDR as soon as it imports the relevant products under the procedure "release for free circulation".

The EUDR does not provide the option for non-operators or non-traders to voluntarily submit DDSs (so that downstream operators or traders can refer to them). 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 DDS submitted by a company that is not an operator or a trader is not a DDS in the sense of the EUDR (which would mean that downstream players cannot refer to it in their own DDSs).

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

Operators and traders must conduct due diligence on the main commodity in a relevant product only (FAQ, question 1.3):

> In the case of composite products containing multiple different relevant commodities or products (for example, a chocolate bar containing cocoa powder, cocoa butter and palm oil), the operator placing such a product on the EU market will need to conduct due diligence only on the main commodity and (derived) products deemed relevant under the EUDR, this being the commodity contained in the left column of Annex I. For example, for chocolate bars (Code 1806) the relevant commodity linked to it is cocoa. This means that the due diligence obligation and information requirements extend only to relevant products listed in the right column of Annex I under the relevant commodity which the chocolate bar contains or has been made using, which in this case is the cocoa powder and cocoa butter under the commodity cocoa.

The EUDR applies to relevant products even if the main relevant commodities contained therein are minimal. The EUDR, FAQ or Guidance do not provide for a *de minimis* amount of relevant commodities.

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

12. 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 is advisable to document as precisely as possible the journey of the relevant commodities from production/harvest to arrival. Specific guidance relating to the use of silos is provided in the FAQ (question 1.17):

1.17. How should the place of production of mixed goods be declared? (NEW)

The operator needs to declare the place of production of all goods effectively shipped to the EU.

For example, if compliant goods from multiple places of production are mixed into the same silo, stack, pile, tank, etc., and then some of those goods are placed on the EU market:

• The place of production declared should include the place of production of all goods that entered the silo since it was last empty (and could therefore potentially be included in the shipment)

• If the silos are not regularly emptied, the operator would need to declare the place of production of all goods that entered the silo during a period of time that ensures that commodities of unknown place of production are not mixed up in the process. For instance, when downloading part of the goods stored in the silo, this could be safely done by declaring the geolocation of all previous goods that entered the silo up to a minimum of 200% of the silo capacity, provided that the silo works in first-in first-out system. This approach applies to relevant commodities or products stored in stacks, tanks, etc. and all continuous processing.

• Declaring the place of production of x amount of goods that entered the silo, where x is the amount placed on the EU is not allowed under the Regulation, as it would violate the prohibition under the Regulation of placing products of unknown origin on the Union market.

This is without prejudice to the transitional provisions as described in section 9.

13. 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.

The Guidance (chapter 6 b)) indicates which documents should be collected (to the extent possible), which additional documents could be collected, and which checks should be conducted. The main points to note are the following:

… Whether a land title or other documentation of an arrangement is needed is dependent on the national legislation; if possession of a land title is not required under domestic law to produce and commercialise agricultural products, it is not required under the EUDR.

The obligation to collect documents or other information depends on the different regulatory regimes of countries, as not all of them require the issuing of specific documentation. …

… All information must be analysed and verified, meaning operators must be able to evaluate the content and reliability of the documents they collect and to understand the links between the different information in different documents.

… Operators should take reasonable measures to satisfy themselves that such documents are genuine, depending on their assessment of the general situation in the country of production. In this regard, the operator should also take into account the risk of corruption …

In cases where the level of corruption is considered high there might be an implication that documents cannot be considered reliable, and further verification may be required. In the

occurrence of such cases special care is necessary when checking the documents as there might be reason to doubt their credibility.

Apart from relying on recognised international indices, operators could check lists of conditions and vulnerabilities, including previous evidence of corrupt practice, that point to a greater risk - and thus demand a higher level of scrutiny. …

14. 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?

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 (legal) responsibilities for such downstream companies.

15. How can (indirectly affected) companies collect information from the supply chain – e.g. that suppliers conducted their due diligence correctly?

Operators and traders 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 DDSs 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.

16. Will the EU Information System for due diligence submissions be accessible for downstream companies even if indirectly affected by EUDR?

The Information System is accessible only to the Commission, the customs authorities, the competent national authorities, operators, and traders.

17. 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 when the operator or trader is subject to the EUDR. This means that the reporting obligation starts in 2027 relating to the year 2026.

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

18. 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 DDS is submitted into the EU Information System, a reference number will be generated. As indicated above in response to question C5, 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 DDSs).

19. Is it correct to understand that "the due diligence must be repeated (i.e. updated) for each relevant product", meaning even we need a different DDS reference number for each batch of e.g., tires even if they have the same part number? How is "batch" defined?

The obligation to submit a DDS is linked to the placing on the market, making available on the market or exporting. In other words, a DDS number is not linked to a product but to one or more transactions.

If a transaction covers multiple products, all these products can therefore be covered by the same DDS. This also means that a product or a batch of products will be covered by multiple DDSs if they are resold, reimported or reexported.

The EUDR and Guidance do not use the term 'batch'. The FAQ uses the term in a generic way (sometimes together with 'shipment') when referring to groups of products covered by the same transaction (and therefore the same DDS).

Moreover, as explained above at no. 48 (at page 22), it is possible to cover multiple transactions in one DDS.

20. What do we need to include in the annual reporting regarding EUDR? What details should we describe in Annual reporting?

Pursuant to article 12 of the EUDR, operators and traders that are not SMEs must publicly report the following on an annual basis *"as widely as possible, including via the internet"*:

- A summary of products (description, quantity and location of production) that were subject to DDSs during the reporting year
- The conclusions of the risk assessment and risk mitigation measures taken
- A description of the information and evidence that was obtained and used for the risk assessment
- Where applicable, a description of the consultation-process of the relevant indigenous peoples, local communities and other customary tenure rights holders or of the civil society organisations

The EUDR does not require that this information is included in the annual report. It is possible to include this information in the sustainability report pursuant to the (national implementation of) the CSRD.

21. A supplier has stated that an OEM will not be able to access the contents of their DDS, only the reference number. Another one claims that only the company having produced the DDS can see the details in it (and competent authorities) but not customers, and that this is right according to EUDR. Is this correct?

Pursuant to article 4(7) of the EUDR, operators and traders *"shall communicate to operators and to traders further down the supply chain of the relevant products they placed on the market or exported **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 obligation does not apply to SMEs: pursuant to article 4(8) of the EUDR, they are not required to exercise due diligence (SME operators must only provide a DDS reference number to the competent authority upon request) unless no due diligence was conducted before.

The EUDR does not require operators and traders to provide any information to customers that are not operators or traders, so:

- to the extent the OEM is an operator or trader itself, it has the right to receive all information necessary to demonstrate that due diligence was exercised and that no or only a negligible risk was found. This arguably includes at least the content of the DDS; and
- if the OEM is not an operator or trader itself, it has no such right under the EUDR.

22. Is it true that the EU IT system will provide the operator/trader uploading their DDS with two codes/numbers, and that their customers need both of these to be able to refer to their supplier's DDS?

Pursuant to article 7 of the Implementing Regulation, the Information System will provide operators and traders with two numbers: a reference number and a verification number.

Downstream operators and traders may refer in their DDSs to the reference number(s) of the DDSs submitted by their suppliers. They do not have to refer to the verification number.

In practice, they may also need the verification number to be able to ascertain that a due diligence was conducted, for instance if the required information is not provided by the supplier directly (as explained above at no. 50, at page 23). The verification number will also be necessary if the operators and traders do not want to rely (fully) on the due diligence conducted by the supplier and want to verify certain data.

D. RELATED TO THE CORRECTIVE MEASURES AND PENALTIES:

1. 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?

Corrective actions and penalties will be based on national law, which must as a minimum include the corrective measures and penalties listed in articles 24 and 25 EUDR. These only mention the possibility for competent national authorities to impose recall measures on *operators or traders* and not the possibility to impose such measures on *customers* of operators or traders. However, national law may go further.

The key question will be if an OEM, as a mere purchaser of parts, is an operator. According to the Commission (see above no. 28, at page 13) this depends on whether the car part was imported under the procedure "release for free circulation" or not:

- **If not**, the OEM would not be an operator or trader as cars are not listed in Annex I to the EUDR. The EUDR does not clarify what must be done in cases where a recall is not possible (e.g., because the tyres have been fitted onto cars).

  Unless the upstream 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).

- **If the car part was imported**, the OEM would be an operator. In that case, the competent national authorities would be able to order the OEM to recall the non-compliant relevant product.

It is unclear whether this would extend to relevant products incorporated into other products (not listed in Annex I to the EUDR). As the EUDR-obligations do not apply to products that are not listed in Annex I to the EUDR, even if they incorporate relevant products, the argument may be made that the same logic applies to a recall obligation. This is however not confirmed in the FAQ or Guidance.

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

The OEM in this case is in any event 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 tyre.

The EUDR does not clarify what must be done in cases where a recall is not possible (e.g., because the tyres have been fitted onto cars by a customer of this other trader).

3. 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) 139/2004 on the control of concentrations between undertakings details how this turnover must be calculated.

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

Corrective actions and penalties will be based on national law, which must as a minimum include the corrective measures and penalties listed in articles 24 and 25 EUDR. These only mention the possibility for competent national authorities to impose recall measures on *operators or traders* and not the possibility to impose such measures on *customers* of operators or traders. However, national law may go further.

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).

5. **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 Trader 1 (assuming neither of them are SMEs). For the avoidance of doubt, Trader 2 would be responsible as well if he resells the product.

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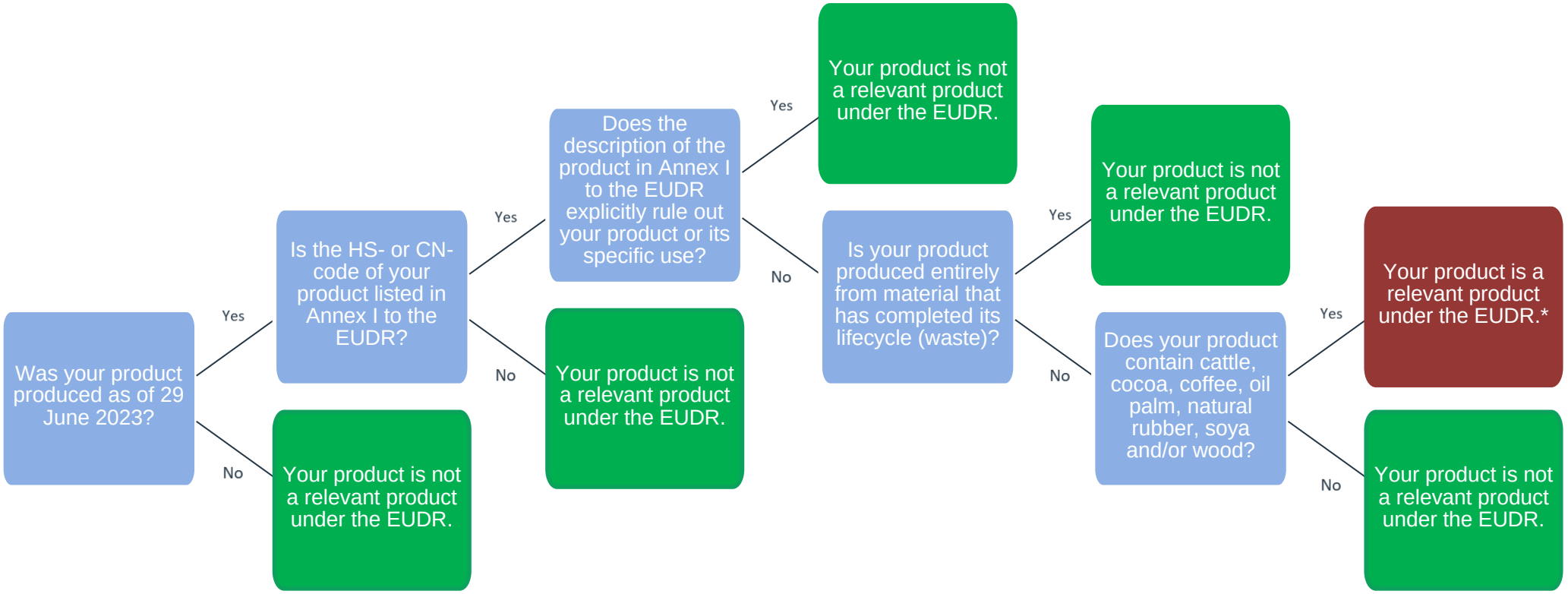
III. SIMPLIFIED DECISION TREES

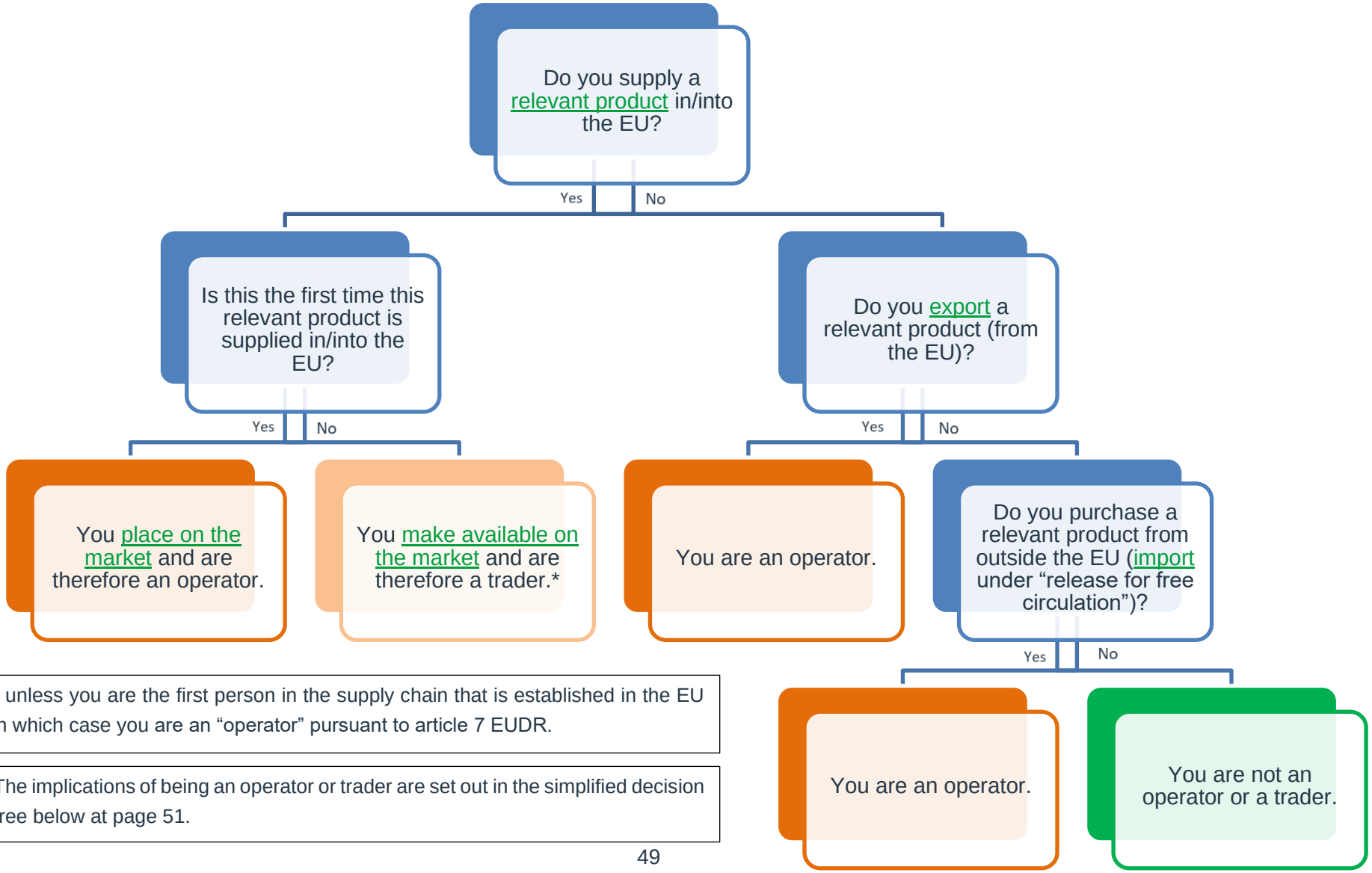
A. SCOPE: PRODUCT



*
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).

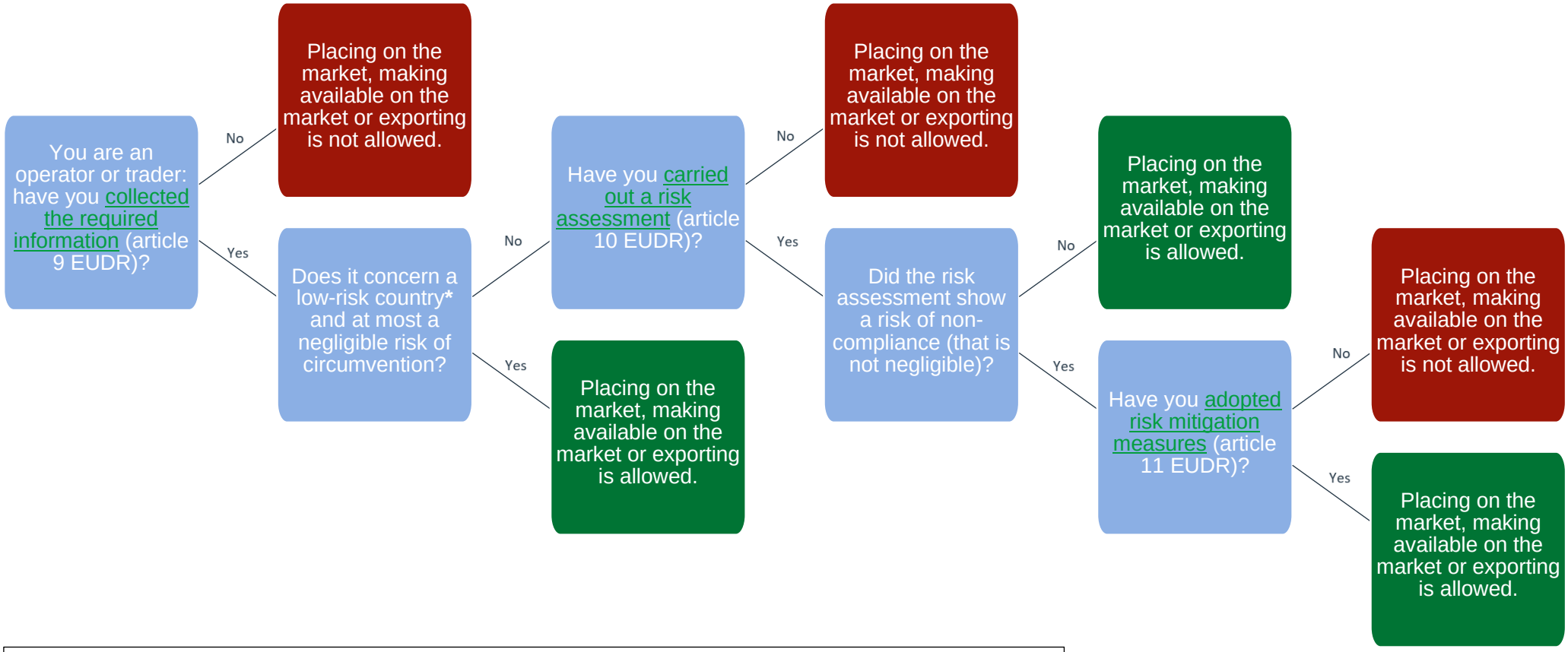
B. SCOPE: OPERATOR OR TRADER?



* 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 51.

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