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Legality Without Protection?

Interpreting the Legality Requirement under
the EU Deforestation Regulation: Due
Diligence, Human Rights and the Risk of
Exclusion

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Summary

The legality requirement under the EU Regulation on Deforestation-free Products (EUDR) raises important interpretative questions concerning the nature and scope of the due diligence obligations imposed on companies operating in global value chains (GVCs). While the EUDR was primarily adopted as an environmental instrument aimed at reducing the European Union's contribution to global deforestation and forest degradation, it also introduces human rights considerations through its requirement that relevant commodities be produced in accordance with the applicable legislation of the country of production, including laws relating to land rights, labour rights, Indigenous peoples' rights and human rights protected under international law.

This thesis argues that the legality requirement is best understood within the broader EU and international business and human rights frameworks, particularly in relation to the Corporate Sustainability Due Diligence Directive (CSDDD), the UN Guiding Principles on Business and Human Rights and the legality framework previously developed under the EU Timber Regulation (EUTR). It identifies significant uncertainty regarding both the scope of relevant human rights protections and the extent of due diligence required to demonstrate that products present only a 'negligible risk' of non-compliance.

Building on doctrinal legal analysis combined with an effects-oriented and contextual approach, the thesis demonstrates that the EUDR operates through a predominantly exclusionary compliance model. Unlike broader international and EU corporate human rights and environmental due diligence frameworks, which emphasise ongoing engagement, mitigation and remediation, the EUDR conditions market access on the ability of companies to demonstrate negligible risk. In practice, this may incentivise disengagement from legally or politically complex sourcing contexts rather than long-term investment in improving human rights, environmental and labour conditions within GVCs.

The thesis further examines how these dynamics may disproportionately affect smallholders, Indigenous peoples and other vulnerable rightsholders in producer countries. Through analysis of existing literature, policy documents and selected case studies from sectors such as cocoa, coffee and palm oil, it shows that the costs and burdens associated with compliance are likely to fall most heavily on actors operating in contexts characterised by insecure land tenure, weak governance and labour informality. In this respect, legality-based governance mechanisms risk reinforcing structural inequalities where domestic legal systems themselves fail to adequately recognise or protect substantive human rights.

Ultimately, the thesis concludes that the challenges raised by the EUDR are not only interpretative, but structural. Clarifying the meaning of the legality requirement and the negligible-risk threshold is necessary to reduce legal uncertainty, but legal clarification alone cannot fully address the broader inequalities embedded within GVCs. A more coherent and proportionate approach to due diligence would require stronger alignment between environmental objectives and long-term human rights protection, particularly for the communities most directly affected by deforestation-related regulation.

Sammanfattning

Legalitetskravet i EU:s förordning om avskogningsfria produkter (EUDR) väcker viktiga tolkningsfrågor rörande arten och omfattningen av de due diligence-skyldigheter som åläggs företag verksamma i globala värdekedjor. Även om EUDR primärt antogs som ett miljöinstrument med syfte att minska EU:s bidrag till global avskogning och skogsförstörelse, introducerar förordningen även hänsyn till mänskliga rättigheter genom kravet att relevanta råvaror ska ha producerats i enlighet med den tillämpliga lagstiftningen i produktionslandet, inbegripet lagar om markrättigheter, arbetsrättigheter, urfolks rättigheter och mänskliga rättigheter skyddade enligt internationell rätt.

Denna uppsats argumenterar för att legalitetskravet bäst förstås inom ramen för de bredare EU-rättsliga och internationella ramverken för företag och mänskliga rättigheter, särskilt i förhållande till direktivet om företagens ansvar i fråga om hållbarhet (CSDDD), FN:s vägledande principer för företag och mänskliga rättigheter samt det legalitetsramverk som tidigare utvecklades under EU:s timmerförordning (EUTR). Uppsatsen identifierar betydande osäkerhet avseende såväl omfattningen av relevanta människorättsliga skydd som den due diligence som krävs för att visa att produkter endast medför en försumbar risk för bristande efterlevnad.

Med utgångspunkt i rättsdogmatisk analys kombinerad med ett effektorienterat och kontextuellt förhållningssätt visar uppsatsen att EUDR fungerar genom en övervägande exkluderande efterlevnadsmodell. Till skillnad från bredare internationella och EU-rättsliga ramverk för due diligence avseende mänskliga rättigheter och miljö, vilka betonar fortlöpande engagemang, riskreducering och avhjälpande åtgärder, villkorar EUDR marknadstillträde av företagens förmåga att påvisa försumbar risk. I praktiken kan detta skapa incitament för att dra sig ur rättsligt eller politiskt komplexa inköpskontexter snarare än att göra långsiktiga investeringar i förbättrade förhållanden avseende mänskliga rättigheter, miljö och arbetsvillkor inom globala värdekedjor.

Uppsatsen undersöker vidare hur dessa dynamiker oproportionerligt kan drabba småbrukare, urfolk och andra utsatta rättighetsbärare i producentländer. Genom analys av befintlig litteratur, policydokument och utvalda fallstudier från sektorer som kakao, kaffe och palmolja visas att de kostnader och bördor som är förknippade med efterlevnad sannolikt faller tyngst på aktörer verksamma i kontexter präglade av otrygg markinnehav, svag styrning och informella arbetsförhållanden. I detta avseende riskerar legalitetsbaserade styrningsmekanismer att förstärka strukturella ojämlikheter i fall där inhemska rättssystem i sig misslyckas med att på ett adekvat sätt erkänna eller skydda materiella mänskliga rättigheter.

Slutligen drar uppsatsen slutsatsen att de utmaningar som EUDR ger upphov till inte enbart är tolkningsrelaterade utan även strukturella. Att klargöra innebörden av legalitetskravet och tröskeln för försumbar risk är nödvändigt för att minska rättslig osäkerhet, men ett sådant klargörande kan inte ensamt fullt ut hantera de bredare ojämlikheter som är inbyggda i globala värdekedjor. Ett mer sammanhängande och proportionerligt förhållningssätt till due diligence skulle kräva en starkare samstämmighet mellan miljömål och långsiktigt skydd av mänskliga rättigheter, särskilt för de samhällen som är mest direkt berörda av avskogningsrelaterad reglering.

Preface

The inspiration for this thesis emerged during the ‘Business and Human Rights’ course that I attended in the second semester of my studies at Lund University. Through this course, I developed a strong interest in social sustainability and in the human rights implications of corporate conduct within global supply chains, particularly in relation to vulnerable communities. I was further drawn to the evolving regulatory landscape at the European Union level and to the broader social, economic and political questions surrounding the implementation of corporate sustainability legislation.

I would like to express my sincere gratitude to my supervisor, Radu Mares, for his guidance, encouragement and thoughtful feedback throughout the writing process, as well as for the inspiration provided through his teaching in Business and Human Rights. I would also like to thank all the academics I have met and had the opportunity to learn from and get inspired by during my studies in Lund.

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Theodora Dimitriadou

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Abbreviations

CBD	Convention on Biological Diversity
CSDDD	Corporate Sustainability Due Diligence Directive
CSRD	Corporate Sustainability Reporting Directive
ECJ	European Court of Justice
EFI	European Forest Institute
ESRS	European Sustainability Reporting Standards
EUDR	European Union Deforestation Regulation
EUTR	European Union Timber Regulation
FAO	Food and Agriculture Organization of the United Nations
FLEGT	Forest Law Enforcement, Governance and Trade
FPIC	Free, Prior and Informed Consent
GHG	Greenhouse Gas
GVCs	Global Value Chains
HREDD	Human Rights and Environmental Due Diligence
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IPLCs	Indigenous Peoples and Local Communities
NGOs	Non-Governmental Organizations
OECD	Organisation for Economic Co-operation and Development

TEU	Treaty on European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNDROP	United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas
UNGPs	United Nations Guiding Principles on Business and Human Rights
VPAs	Voluntary Partnership Agreements
WTO	World Trade Organization

1 Introduction

1.1 Background and context

The European Green Deal, launched in 2019 by the European Commission, aims to transform the European economy into a driver of sustainability, climate neutrality, biodiversity protection and just transition.¹ In parallel with the long-standing discussions on responsible business conduct following the adoption of the UN Guiding Principles on Business and Human Rights in 2011,² the European Union introduced a significant number of regulations in just a few years³ addressing the environmental and human rights impacts of corporate activities. These instruments impose due diligence⁴ and reporting⁵ obligations as well as trade-related restrictions. Among the latter are the EU Forced Labor Regulation⁶ as well as the EU Regulation on Deforestation-free Products (EUDR).⁷

Since 1990, 420 million hectares, i.e. approximately 10% of the world's forests, have been destroyed.⁸ Consequences of this include and are unfortunately not limited to major loss of biodiversity and global warming.⁹ As a major global contributor to deforestation through its imports, second only to the Chinese market,¹⁰ the EU has acknowledged its environmental footprint and in response has adopted the EUDR in 2023. Following multiple postponements, the Regulation is now set to be applicable from December 2026 for large and medium-sized enterprises and from June 2027 for small and micro enterprises.¹¹ The EUDR regulates the import of certain products

¹ European Commission, 'European Green Deal'

<https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en> accessed 13 April 2026.

² UN Human Rights Council, *Guiding Principles on Business and Human Rights* (2011) UN Doc A/HRC/17/31.

³ Radu Mares, 'Corporate self-regulation and the climate: The legal trajectory of sustainability due diligence in the European Union', in O. Quirico and F. Baber (eds.), *Implementing Climate Policies* (Cambridge University Press, 2024).

⁴ European Commission, *Proposal for a Directive on Corporate Sustainability Due Diligence* COM (2022) 71 final.

⁵ Corporate Sustainability Reporting Directive (European Parliament version 10.11.2022)

⁶ Regulation (EU) 2024/3015 of the European Parliament and of the Council of 27 November 2024 on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937 [2024] OJ L 2024/3015.

⁷ 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 [2023] OJ L 150/206.

⁸ *ibid.* recital (2)

⁹ *ibid.*

¹⁰ Béatrice Wedeux and Anke Schulmeister-Oldenhove, *Stepping Up? The Continuing Impact EU Consumption on Nature Worldwide* (WWF, 2023) 5–10 <<https://www.wwf.nl/globalassets/pdf/stepping-up-the-continuing-impact-of-eu-consumption-on-nature-worldwide.pdf>> accessed 20 February 2026.

¹¹ European Commission, 'Clarity and predictability to ensure a smooth entry into application of the EU Deforestation Regulation' (Press Release IP/25/2939, 4 December

that may be linked to deforestation and illegal activities during their production. It namely applies to cattle, cocoa, coffee, palm oil, rubber, soya and wood, as well as their derivatives.¹² It further imposes three requirements for a product to be allowed into the EU market: a) it is deforestation-free; b) its production has not violated any domestic legislation of the country of production; c) it is covered by a due-diligence statement.¹³ This requirement of ‘legality’ (b) includes, not only national laws, but also, among others, land use rights, labour and human rights protected under international law and the principle of Free, Prior and Informed Consent (FPIC) concerning indigenous peoples.¹⁴

1.2 Problem formulation

Despite its environmental objective, the EUDR raises several complex legal and practical questions regarding the way in which human rights are integrated into its due diligence system. The requirement of legality essentially obliges companies to ensure that relevant commodities have been produced in accordance with the legislation of the country of production, including rules on land tenure, labour rights, rights of Indigenous peoples and human rights protected under international law.

On the latter, the precise scope of these human rights obligations remains uncertain. The Commission’s guidance clarifies that relevant legislation under the EUDR concerns laws affecting the legal status of the area of production and must be interpreted in light of the Regulation’s environmental objectives, namely halting deforestation, reducing greenhouse gas emissions and protecting biodiversity.¹⁵ As a result, not all human rights or labour rights violations occurring within global value chains necessarily fall within the scope of the legality requirement, raising questions regarding which rights and situations are sufficiently connected to the Regulation’s objectives. At the same time, uncertainty concerns the extent of due diligence required to demonstrate that products present only a ‘negligible risk’ of non-compliance.

The EUDR operates through a market-access model potentially resulting in exclusion where risks cannot be sufficiently reduced. This creates incoherence with the broader EU business and human rights framework, particularly the Corporate Sustainability Due Diligence Directive (CSDDD), which emphasises ongoing engagement, mitigation and remediation rather than disengagement from higher-risk sourcing contexts.

2025) <https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2939 > accessed 13 April 2026.

¹² Regulation (EU) 2023/1115 (EUDR) art 1 and Annex I

¹³ *ibid.* art. 3.

¹⁴ *ibid.* art. 2(40).

¹⁵ European Commission, ‘Annex to the Communication to the Commission: Approval of the updated content of a draft Commission Notice on the Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products’ C (2026) 3056 final (4 May 2026) 17.

These ambiguities are particularly significant in GVCs characterised by weak governance structures, insecure land tenure systems and limited economic resources. In practice, strict or exclusionary approaches to compliance may incentivise companies to disengage from smallholders and legally or politically complex sourcing areas in order to avoid liability and market risks. Such practices may produce unintended consequences for livelihoods, labour rights, the right to food and the land rights of Indigenous peoples and local communities, despite the Regulation's broader sustainability objectives.

Against this background, this thesis examines the interpretative ambiguities surrounding the legality requirement and due diligence framework under the EUDR, including their relationship with the broader EU human rights and sustainability framework and the legality framework developed under the EU Timber Regulation (EUTR). It further analyses how the EUDR's exclusionary compliance logic and negligible-risk standard may influence corporate sourcing behaviour and contribute to exclusionary effects for smallholders, Indigenous peoples and other vulnerable rightsholders in producer countries.

1.3 Objective and Research questions

The aim of this thesis is to examine the interpretative challenges surrounding the legality requirement and due diligence framework under the EUDR, and to analyse how the Regulation's exclusionary compliance logic may influence corporate sourcing practices and human rights outcomes in producer countries. Particular attention is paid to the relationship between the EUDR and the broader EU and international corporate due diligence frameworks, particularly in light of the Corporate Sustainability Due Diligence Directive (CSDDD) and the legality framework developed under the EU Timber Regulation (EUTR).

More specifically, this thesis explores the following research questions:

The main research question:

What interpretative challenges arise from the legality requirement and due diligence framework under the EUDR, and what are their potential human rights consequences for vulnerable actors in producer countries?

Relevant questions, that are structurally essential to be addressed in order to answer the main question, include:

1. What is the scope of the legality requirement under the EUDR and what is the nature of obligations it imposes on companies?
2. How does the EUDR's exclusionary compliance model relate to broader EU and international due diligence frameworks, particularly the CSDDD, the UNGPs and the OECD Guidelines?
3. How does the legality framework and legislative history of the EUTR inform the interpretation of the legality requirement under the EUDR?

4. How may the EUDR's due diligence design and negligible-risk standard influence corporate sourcing strategies, in particular the risk of disengagement?
5. What are the potential consequences of exclusionary sourcing practices for smallholders, Indigenous peoples and other vulnerable rightsholders in producer countries?

1.4 Method and materials

Methodologically, this thesis adopts the legal doctrinal method,¹⁶ as the research questions primarily concern the analysis and interpretation of laws. The analysis mainly concerns provisions of the EUDR, their relationship with other legal instruments and their connection to international human rights standards relevant to global value chains.

From a theoretical perspective, the interpretation of legal norms can be approached through different schools of legal thought. Traditional legal formalism emphasises the application of legal rules based primarily on their textual meaning, treating law as a closed and coherent system.¹⁷ By contrast, purposive (teleological) approaches interpret legal provisions in light of their objectives,¹⁸ while contextual and systematic approaches emphasise that legal rules must be understood within the broader legal and socio-economic framework in which they operate.¹⁹

While systematic interpretation situates legal provisions within the broader legal framework, this thesis adopts a broader contextual perspective that also takes into account the political economy of sustainability and due diligence laws in global value chains. In that sense, a political economy perspective does not view such laws as purely technical legal instruments, but instead it examines political, social and economic structures within which they operate, as well as how those structures may include or exclude different stakeholders.²⁰ This perspective therefore makes it possible to assess not only the legal content of the EUDR, but also how its implementation may affect different actors across global value chains, including the potential for unequal outcomes or alternative forms of governance.

¹⁶ P Ishwara Bhat, 'Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles', in *Idea and Methods of Legal Research*, (Oxford Academic 2020) p. 143-168.

¹⁷ Koen Lenaerts and José A Gutiérrez-Fons, 'To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice' (2014) 20 *Columbia Journal of European Law* 6-7.

¹⁸ *ibid.* 24-26.

¹⁹ *ibid.* 13-14.

²⁰ Martin Fougère, 'Political Economy Approaches to Transnational Commodity Markets: An Application to the Case of the Global Palm Oil Market' in Mark Tadjewski and others (eds), *The Routledge Companion to Critical Marketing* (1st edn, Routledge 2018) 453-454.

In line with established approaches in EU law, the doctrinal analysis draws on textual, systematic and teleological methods of interpretation. This requires that legal provisions are interpreted not only according to their wording, but also in light of their context within the broader EU legal framework and the objectives pursued by the legislation. These methods are applied cumulatively in order to determine the scope and meaning of the EUDR's legality requirement, particularly in relation to its interaction with other EU instruments such as the CSDDD and the EUTR.

The doctrinal analysis aims to determine the scope and legal meaning of the EUDR's legality requirement and to assess the nature of obligations imposed on companies. In this context, the principle of proportionality serves as an important analytical tool. The legal analysis is complemented by an effects-oriented perspective, which considers how interpretative ambiguities may influence corporate behaviour, market structures and regulatory responses in producer countries. This reflects the understanding that legal interpretation may produce materially different outcomes in practice, particularly in the context of complex global value chains characterised by structural risks such as weak governance, unclear land tenure and labour rights violations.

The thesis relies on legal materials within the EU legal order, including the EUDR, the CSDDD, the CSRD, the EUTR, general principles of EU law as well as relevant European Commission guidance. International law is analysed through instruments such as the UNGPs, the OECD Guidelines for Multinational Enterprises, the UN Declaration on the Rights of Indigenous Peoples, and the ILO Convention No. 169. The legal analysis is complemented by academic literature on business and human rights, legal opinions, empirical studies, and selected corporate reports. AI tools, namely ChatGPT and Claude were used for language enhancement and for help on citation editing according to OSCOLA style in footnotes and bibliography.

1.5 Delimitations

This thesis focuses on the EU Deforestation Regulation (EUDR), with particular emphasis on the legality requirement and the due diligence obligations imposed on operators placing relevant commodities on the EU market. The EUDR is selected because it introduces binding market-access conditions applicable across several global value chains and because it constitutes one of the most recent developments within the EU's broader business and human rights and environmental governance framework. In addition, unlike instruments such as the CSDDD and CSRD, the EUDR has not been substantially altered through the recent OMNIBUS simplification process.

The thesis does not provide a comprehensive doctrinal analysis of the EUDR as a whole, nor does it seek to assess the overall effectiveness of the Regulation in reducing global deforestation. Instead, the analysis is limited to

the interpretation of the legality requirement and the obligations imposed on companies under the Regulation.

While the thesis examines broader governance dynamics and practical consequences connected to the implementation of the EUDR, it does not aim to provide a quantitative empirical assessment of the Regulation's impacts. Rather, empirical examples, policy reports and selected corporate practices are used illustratively in order to contextualise the doctrinal analysis and examine how the current ambiguities regarding the legality requirement may influence corporate behaviour and affect vulnerable rightsholders in producer countries.

The human rights analysis is limited primarily to rights directly connected to the legal status of the area of production, including land-related rights, labour rights, and the rights of Indigenous peoples and local communities. The thesis therefore does not provide a comprehensive analysis of all human rights potentially at midstream and downstream stages of GVCs.

Finally, while the thesis pays particular attention to commodity sectors characterised by significant smallholder participation and governance-related risks, especially cocoa, coffee and palm oil supply chains, it also considers the timber sector due to its historical and practical relevance to legality-based forest governance under the EUTR, FLEGT and the EUDR. Nevertheless, the thesis does not aim to provide an equal sector-specific analysis of all commodities covered by the Regulation.

1.6 Structure

This thesis is divided into 5 chapters.

Chapter 1 introduces the research context, formulates the research problem and explains the methodological approach, as well as the delimitations of the thesis.

Chapter 2 presents the EUDR framework, with particular focus on the legality requirement, the concept of negligible risk and the integration of human rights considerations within the Regulation. It further situates the EUDR within the broader EU business and human rights framework through a comparative discussion of related instruments, particularly the EUTR and the CSDDD.

Chapter 3 identifies and analyses the key interpretative challenges arising under the legality requirement and due diligence framework of the EUDR. These include the distinction between obligations of means and obligations of results, the structural tension between the EUDR's and the CSDDD's different due diligence models, the indeterminate threshold for demonstrating negligible risk, and the principle of proportionality.

Chapter 4 analyses the practical and human rights implications of zero-tolerance compliance under the EUDR, with particular focus on the exclusion of smallholders, Indigenous peoples and local communities in producer countries.

Chapter 5 presents the conclusions of the thesis, evaluating the findings in light of the research questions and identifying the broader implications of the interpretative ambiguities examined throughout.

2 The EUDR framework

2.1 Objectives and scope of the EUDR

The EUDR is a central regulation adopted by the EU in the context of upholding its commitments under the EU Green Deal as well as the Paris Agreement.²¹ Protecting forests is considered necessary to minimize contemporary challenges such as greenhouse gas emissions and biodiversity loss and to achieve climate neutrality. As massive agricultural production is linked to deforestation, the EU's primary objective is to limit its contribution to deforestation and forest degradation worldwide resulting from the market's consumption.²² To achieve this, the regulation establishes conditions for placing certain commodities and their derived products on, or exporting them from, the EU market. These commodities include cattle, cocoa, coffee, oil palm, rubber, soya and wood.²³ These products can only be placed on the market if three conditions are met: they must be deforestation-free, produced in accordance with the relevant legislation of the country of production and covered by a due diligence statement.²⁴

The first requirement is the core environmental standard of the Regulation, and it reflects its primary objective of minimizing deforestation. A product is considered deforestation-free where the relevant commodities were not produced on land that has been subject to deforestation after the 'cut-off date', i.e. after the 31st of December 2020.²⁵ This date was chosen to make sure that supply chains will not be disrupted and that producers have time to adapt their operations to this requirement, while being consistent with the environmental objective.

The second requirement, that is the legality requirement, constitutes the central entry point for human rights considerations within the regulation and it is the main focus of this thesis. In addition to being deforestation-free, the relevant commodities must be produced in accordance with the relevant legislation of the country of production.²⁶ The regulation provides a non-exhaustive list of areas covered by this obligation, including laws on land use rights, environmental protection, forest-related rules, labour rights, human rights protected under international law, the principle of free, prior and informed consent of Indigenous peoples (FPIC), as well as tax, anti-corruption and trade legislation.²⁷

²¹ Council of the European Union, 'Paris Agreement on Climate Change' (Consilium 2025) < <https://www.consilium.europa.eu/en/policies/paris-agreement-climate/> > accessed 23 May 2026.

²² Regulation (EU) 2023/1115 (EUDR) (n 7) recital 12.

²³ *ibid.* art 1 and annex I.

²⁴ *ibid.* art 3.

²⁵ *ibid.* recitals 45- 46.

²⁶ *ibid.* art. 3.

²⁷ *ibid.* art 2(40).

In its guidance document,²⁸ the Commission explained that this requirement concerns only the laws impacting and influencing the legal status of the specific area of production, and not generally laws related to the supply chains of, for example, relevant products. The Commission further gives examples of relevant legislation but clarifies that the list is not exhaustive.²⁹ The legality requirement will be further analysed throughout this paper.

The third requirement aims to confirm that the product entering or leaving the EU market meets the first two requirements. It concerns the obligation that the product is always accompanied by an electronic due diligence statement.³⁰ It is expected that this obligation will assist competent authorities and courts to oversee enforcement through the relevant EU information system, and will encourage operators, who are the ones responsible for conducting due diligence and presenting due diligence statements, to comply with the Regulation.³¹ Through this statement, operators confirm that they have carried out the required due diligence process and that no or only negligible risk of non-compliance has been identified, in terms of both the deforestation-free requirement and the legality requirement. The process includes information gathering, risk assessment and risk mitigation.³² Only if the risk has been reduced to a negligible level, may the product be placed on the market.

According to Article 25 of the Regulation, Member States are obliged to ensure heavy financial penalties to operators and traders who infringe the EUDR. Those should include not only confiscating the illegal products and the gains earned from them but also fines up to 4% of their total EU annual turnover, as well as temporary exclusion from the market. These penalties incentivise operators and traders to pay attention to the specific requirements of this Regulation, to avoid potential liability. However, the severity of those penalties and the extensive due diligence requirements raise practical and legal questions regarding the clarity of the obligations and the way companies interpret and implement them.

The notion of ‘negligible risk’ that is previously mentioned is central to the operation of the EUDR, as it ultimately determines whether a product may be placed on or exported from the EU market. While the Regulation requires operators to carry out a due diligence process, it does not demand absolute certainty of compliance, but rather that the risk of non-compliance with the deforestation-free and legality requirements be reduced to a negligible level. This was already central to the due diligence framework under the EU Timber Regulation (EUTR), where operators were likewise required to ensure that

²⁸ European Commission, *Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products* [2025] OJ C/2025/4524, 13 <<https://eur-lex.europa.eu/eli/C/2025/4524/oj/eng>> accessed 23 May 2026.

²⁹ *ibid.* 14.

³⁰ Regulation (EU) 2023/1115 (n 7) art. 3.

³¹ *ibid.* art. 4, recitals 51 and 62.

³² *ibid.* art. 8 and recital 49.

only timber associated with negligible risk of illegality could be placed on the market.³³

According to the Commission's guidance, negligible risk should be understood as a situation in which, following a full risk assessment and, where appropriate, the adoption of mitigation measures, the product shows 'no cause for concern' as regards compliance with Article 3 of the Regulation.³⁴ The due diligence process therefore involves three steps: information collection, risk assessment, and, where necessary, risk mitigation.³⁵ Only where this process demonstrates no or only negligible risk may a product be marketed. The regulatory Impact Assessment emphasises that the extent of due diligence obligations depends on the level of risk identified, with low-risk contexts requiring a simplified due diligence process.³⁶ The concept of negligible risk will be further discussed in Chapter 3.

2.2 Production in accordance with the relevant legislation of the country of production

As mentioned before, the EUDR is primarily an environmental regulation aimed at limiting the EU's contribution to global deforestation and forest degradation, reducing greenhouse gas emissions and protecting biodiversity. At the same time, it creates obligations for operators to ensure that the products they import or export are not connected to illegal activities and violations of a broad range of laws, 'applicable in the country of production'.³⁷ In particular, the reference to land-use rights, labour laws, international human rights law and the principle of FPIC of Indigenous peoples³⁸ indicates that the Regulation addresses social and human rights concerns connected to agricultural production.

The Commission's guidance³⁹ further clarifies that the legality requirement may cover a broad range of national legislation that is relevant to the production of the commodities concerned. These include, first, laws governing land-use rights, such as legislation on harvesting, cultivating, land transfer and leasing.⁴⁰ Second, relevant legislation relates to environmental protection and forest governance, including laws on protected areas,

³³ Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market [2010] OJ L295/23, art 6(1)(b).

³⁴ European Commission, *Guidance Document for Regulation (EU) 2023/1115* (n 28) section 4(b).

³⁵ European Commission, *Impact Assessment Accompanying the Proposal for a Regulation on deforestation-free products* SWD(2021) 326 final.

³⁶ *ibid.*

³⁷ Regulation (EU) 2023/1115 (n 7) art. 2(40).

³⁸ United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples* UNGA Res 61/295 (13 September 2007) art 19.

³⁹ European Commission, *Guidance Document for Regulation (EU) 2023/1115* (n 28) 14.

⁴⁰ *ibid.*

biodiversity conservation, endangered species, land development, and harvesting of wood.⁴¹

Third, the Regulation may involve third parties' rights connected to the land, including 'traditional land use rights of Indigenous peoples and local communities' (IPLCs).⁴² Indigenous peoples are further protected specifically considering their right to Free, Prior and Informed Consent as reflected in article 19 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The protection of such right in this case includes consultations with Indigenous peoples in case of projects affecting their land, territory and resources, as well as situations involving their relocation or the need for remediation.⁴³

Another important set of laws that is considered relevant when it comes to the commodities' production is labour rights and international human rights law. This is a very broad range of legislation, that is not clearly limited by the Commission's guidance, as it clarifies that those laws can concern both people being in the area and people having rights in relation with the area.⁴⁴ It can include laws governing occupational health and safety, prohibition of forced and child labour as well as human rights like 'self-determination, the right to water, food, adequate standard of living, culture, property, a clean, healthy and sustainable environment, and the rights to safety and to life'.⁴⁵ In principle, these rights may derive either from international instruments ratified by the country of production or from universally applicable norms (jus cogens) such as the prohibition of racial discrimination.⁴⁶

The scope of the legality requirement is nevertheless limited by Article 2 (40) of the Regulation, which specifies that the relevant legislation must concern 'the legal status of the area of production'. The Commission's updated 2026 guidance clarifies that relevant legislation is not determined merely by the fact that certain laws apply generally to supply chains or production processes, but rather by whether those laws 'specifically impact or influence the legal status of the area in which the commodities were produced'.⁴⁷ This formulation introduces an important interpretative question regarding the extent to which different labour, human rights and environmental laws fall within the scope of the Regulation. The Commission notes that such interpretation must consider the EUDR's main objectives; 'halting deforestation and forest degradation in the context of the Union's

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ M Rice and R Godts, *Was It Produced Legally? Understanding the Legality Requirement in the EU Deforestation Regulation and How to Implement It* (ClientEarth 2025) 16.

⁴⁶ *ibid.* 18.

⁴⁷ European Commission, 'Approval of the Updated Content' 17.

commitment to address climate change and biodiversity loss'.⁴⁸ Stakeholders have expressed concerns that certain labour-rights risks, such as violations relating to wages, working hours, child labour or broader labour conditions, may be deprioritised within corporate due diligence systems where their connection to deforestation is less direct.⁴⁹

Scholars and civil society organisations have suggested that the notion of 'legal status' could be interpreted in different ways. According to ClientEarth, for example, 'legal status' essentially could refer to 'both the legal treatment of the commodity production process and also the legal status of its impacts in the [broader] area of production'.⁵⁰ The notion of 'area of production' further suggests that the legality requirement is not limited strictly to the specific plot of land where the commodity is produced. Rather, it may include a broader geographical area affected by production activities.⁵¹ For example, agricultural activities that contaminate water resources or affect nearby forests may be considered unlawful even if the production itself takes place on a legally owned plot of land.⁵²

The practical implementation of the Regulation must also be considered in light of the structural characteristics of global value chains. Supply chains covered by the EUDR often include multiple intermediaries and production stages across several jurisdictions, many of which, particularly in industries like agriculture, construction or logistics, are characterised by weak governance structures, informal land tenure systems and labour rights challenges, such as forced labour, gender pay gaps and discrimination.⁵³ Their root causes, namely poverty, limited access to education and weak labour protection are complex and cannot be resolved immediately, but require gradual improvements and coordinated efforts by governments, companies and local stakeholders.⁵⁴

The Regulation only partially reflects these structural challenges and the legal and practical diversity of the countries of production. One example is the country benchmarking system,⁵⁵ under which countries are classified according to the level of risk that the production of relevant commodities contributes to deforestation. Based on this system, countries may be designated as low-risk, standard-risk or high-risk, with the classification

⁴⁸ *ibid.*

⁴⁹ Preferred by Nature, 'Has the EUDR Guidance Sacrificed Labour Rights?' (Preferred by Nature 2024) <<https://www.preferredbynature.org/news/has-eudr-guidance-sacrificed-labour-rights>> accessed 19 May 2026.

⁵⁰ Rice and Godts (n 45) 14.

⁵¹ *ibid.* 15.

⁵² *ibid.*

⁵³ Andreas Rade and others (VDA), *Requiring Perfection is Not Proportionate: Legal Opinion Regarding the Interpretation of the EUDR's Obligations on Upholding the Relevant Legislation of the Country of Production (Art. 2 No. 40 & Art. 3 EUDR) in Supply Chains as Obligations of Means* (German Association of the Automotive Industry, 16 January 2026) 2.

⁵⁴ *ibid.*

⁵⁵ Regulation (EU) 2023/1115 (n 7) art 29.

determining the level of due diligence required by operators.⁵⁶ Low-risk countries are understood as those with limited deforestation and relatively strong governance frameworks, while high-risk countries are characterised by significant or ongoing deforestation and weaker enforcement of forest-related laws.⁵⁷ Standard-risk countries occupy an intermediate category, where deforestation risks are present but are not classified as particularly severe or systematic.⁵⁸

The classification has direct implications for companies' due diligence obligations. Operators sourcing from standard-risk and high-risk countries are required to carry out full due diligence, including detailed information collection, risk assessment and risk mitigation measures.⁵⁹ By contrast, sourcing from low-risk countries allows companies to rely on simplified due diligence, although they must still collect verifiable data and ensure compliance with the Regulation's requirements.⁶⁰

As the country benchmarking system focuses primarily on the risk of deforestation and forest degradation, it does not comprehensively assess the human rights and legality risks associated with production. This can partly be explained by the overall objective and structure of the EUDR itself. Article 29 bases country classification primarily on environmental criteria, including rates of deforestation, forest degradation and agricultural expansion, while human rights and legality considerations appear only as optional supplementary factors in the assessment.⁶¹ The benchmarking system therefore reflects the Regulation's core environmental objective of minimising global deforestation and forest degradation, whereas legality-related risks are addressed mainly through operators' due diligence obligations under Article 3(b).

At present, four countries, namely Belarus, Myanmar, North Korea and Russia, are considered high-risk, while 140 countries are included in the low-risk category.⁶² Countries not listed in the Annex are automatically considered to present a standard level of risk.⁶³ Major producer countries such as Brazil, Indonesia, Malaysia and Cambodia fall within the standard-risk

⁵⁶'EU Deforestation Regulation (EUDR) Explained' (EUDR.co, 2025) <<https://eudr.co/eudr-deforestation-regulation/>> accessed 13 April 2026.

⁵⁷'EUDR Risk Classification Explained Clearly' (EUDR.co, 2025) <<https://eudr.co/eudr-risk-classification/>> accessed 13 April 2026.

⁵⁸ *ibid.*

⁵⁹ *ibid.*

⁶⁰ *ibid.*

⁶¹ Regulation (EU) 2023/1115 (n 7) art 29 (4)(d)

⁶² European Commission, *COMMISSION IMPLEMENTING REGULATION (EU) laying down rules for the application of Regulation (EU) 2023/1115 of the European Parliament and of the Council as regards a list of countries that present a low or high risk of producing relevant commodities for which the relevant products do not comply with Article 3, point (a)* C(2025) 3279 final (22 May 2025) annex.

⁶³ *ibid.* art. 1.

category,⁶⁴ despite being characterised by complex governance challenges that are directly relevant to the legality requirement. While companies sourcing from these countries are formally subject to full due diligence obligations as in high-risk countries, the classification itself does not provide guidance on how to address these legality-related risks.

2.3 The EUDR in the broader EU business and human rights framework

Since the EUDR is part of the broader Human Rights and Environmental Due Diligence (HREDD)⁶⁵ initiatives of the EU, it is useful to analyse it considering relevant regulations. In particular, the Regulation interacts with other instruments such as the EU Timber Regulation (EUTR), the Corporate Sustainability Due Diligence Directive (CSDDD) and the Corporate Sustainability Reporting Directive (CSRD). Examining these relationships is important in order to understand how the legality requirement should be interpreted within the broader EU HREDD system.

2.3.1 EUTR⁶⁶

As the issue of deforestation linked to international trade is not new, the EUDR is not the first instrument adopted by the EU to address illegal activities related to forest resources. The EU Timber Regulation (EUTR) was adopted in 2010 in the context of the EU action plan on ‘forest law enforcement, governance and trade’ (FLEGT). Its focus was fighting illegal logging by prohibiting the access of illegally sourced timber and its products in the EU market.⁶⁷ As the EUTR regulated the imports of timber into the EU market, it operated alongside the FLEGT Action Plan’s Voluntary Partnership Agreements (VPAs), which were bilateral trade agreements between the EU and timber-producing countries regulating exports.⁶⁸

⁶⁴European Commission, ‘Country Classification List’ (Green Forum, 2025) <https://green-forum.ec.europa.eu/nature-and-biodiversity/deforestation-regulation-implementation/eudr-cooperation-and-partnerships/country-classification-list_en> accessed 8 May 2026.

⁶⁵Jimena Solar, Yovita Ivanova and Christoph Oberlack, ‘Human Rights and Environmental Due Diligence Regulations for Deforestation-Free Value Chains? Exploring the Implementation of the EU Regulation on Deforestation-Free Products in the Cocoa and Coffee Sectors of Peru’ (23 April 2025) 605 <<https://doi.org/10.1111/1758-5899.70009>> accessed 23 May 2026.

⁶⁶ Regulation (EU) No 995/2010 (n 33).

⁶⁷ European Commission, *Forest Law Enforcement, Governance and Trade (FLEGT), proposal for an EU action plan. Communication from the Commission COM (2003) 251 final.*

⁶⁸ Ragnar Jonsson, Alexandru Giurca, Mauro Masiero, Ed Pepke, Davide Pettenella, Jeffrey Prestemon and Georg Winkel, *Assessment of the EU Timber Regulation and FLEGT Action Plan* (From Science to Policy 1, European Forest Institute 2015) 7.

The EUTR established a due diligence system requiring operators placing timber on the EU market to minimise the risk of illegal timber entering the market.⁶⁹ This system required companies to collect information on the origin of timber, assess the risk of illegality in their supply chains and to adopt mitigation measures where necessary.⁷⁰ The concept of illegality under the Regulation was defined with reference to the ‘applicable legislation’ of the country of harvest. Article 2(h) of the Regulation specifies that applicable legislation includes rules governing rights to harvest timber, payments for harvesting rights, environmental and forest legislation, trade and customs provisions as well as third parties’ legal rights concerning use and tenure that are affected by timber harvesting.⁷¹

The reference to third parties’ rights introduced a limited social dimension into the legality requirement. This is notable given that Recital 3 of the EUTR explicitly acknowledged that illegal logging ‘has social, political and economic implications, often undermining the progress towards good governance and threatening the livelihood of local forest-dependent communities, and it can be linked to armed conflicts’.⁷² Despite this broad recognition, the operative provisions reduced social concerns to the single reference to third parties’ rights in Article 2(h), with no extensive guidance from the Commission.⁷³

It is interesting to consider the legislative history of the EUTR. During the drafting process, the European Parliament proposed a broader interpretation of applicable legislation and especially third parties’ rights, in order to include substantive human rights:

‘Applicable legislation means legislation, whether national, regional or international, in particular that concerning the conservation of biological diversity, forest management, resource use rights and the minimization of adverse environmental impacts; it should also take into account property tenure, rights of indigenous people, labour and community welfare legislation...’⁷⁴.

However, the Council suggested that property tenure and rights of Indigenous Peoples should indeed be included, but not labour and community welfare legislation as the European Parliament proposed because that would be ‘problematic from a legal perspective’⁷⁵. This concern can be understood in

⁶⁹ Regulation (EU) No 995/2010 (n 33) art 6.

⁷⁰ *ibid.*

⁷¹ *ibid.* art 2(h).

⁷² *Ibid.* recital 3.

⁷³ Commission Notice, ‘Guidance Document for the EU Timber Regulation’ C(2016) 755 final (12 February 2016).

⁷⁴ Council of the European Union, *Proposal for a Regulation of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market* (COD 2008/0198, 5636/10, 2010).

⁷⁵ *ibid.*

several ways. Labour and community welfare rights are typically broader and less clearly defined than traditional legality criteria, making compliance more difficult to assess and enforce. Their inclusion would also have shifted the Regulation from a formal verification of legality towards a more substantive evaluation of social and human rights conditions.

The Forest Stewardship Council's Advice Note on applicable legislation,⁷⁶ which was itself developed to align with the EUTR's legality definition, organised third parties' rights into three categories; customary rights, covering legislation relating to forest harvesting activities including requirements for benefit-sharing and indigenous rights⁷⁷; Free, Prior and Informed Consent (FPIC) in relation to the transfer of forest management and customary rights; and indigenous peoples' rights relating to land tenure and the use of forest resources and traditional activities.⁷⁸ However, all three categories are expressly conditioned by the qualification 'where such legislation exists'.⁷⁹ This dependence on national law significantly limited the guarantees of the EUTR particularly given that countries could change their domestic legal standards precisely to facilitate trade with the EU.⁸⁰

Scholarly analysis of the EUTR confirms that this dependence on national law had broader consequences. While the EUTR's legitimacy was based on a presumed link between legality and sustainability⁸¹, as FLEGT Action Plan's stated goal of 'promoting equitable and just solutions to the illegal logging problem which do not have an adverse impact on people' suggested⁸², the shift from sustainability to legality carried significant costs for communities. Ituarte-Lima, Dupraz-Ardiot and McDermott argue that by asserting the primacy of state laws independently of their alignment with international human rights law, the EUTR risked reinforcing legal frameworks that favoured large-scale export production over local forest access and use.⁸³ This is particularly significant given that a substantial portion of timber classified as illegal under such frameworks is in practice produced for local consumption and governed by customary laws not recognised by the state effectively excluding local forest users whose

⁷⁶ Forest Stewardship Council, *Advice Note FSC-ADV-30-010-01 EN: Applicable National and Local Laws and Regulations for Controlled Wood for Forest Management Enterprises* (FSC International Center GmbH, 10 July 2014) 3.

⁷⁷ *ibid.*

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ Romy Klimke, 'Out of the Woods?: Human Rights and the New EU Regulation on Deforestation' (Verfassungsblog, 3 August 2023).

⁸¹ Claudia Ituarte-Lima, Amelie Dupraz-Ardiot and Constance L McDermott, 'Incorporating International Biodiversity Law Principles and Rights Perspective into the European Union Timber Regulation' (2019) 19 *International Environmental Agreements* 256.

⁸² European Commission, Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan COM(2003) 251 final, 1 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52003DC0251>> accessed 23 May 2026.

⁸³ Ituarte-Lima and others (n 81) 258-259.

practices may be ecologically sustainable but fall outside formal legal systems.⁸⁴

International instruments such as the Convention on Biological Diversity (CBD),⁸⁵ which explicitly recognises the role of Indigenous peoples and local communities in sustainable forest use and calls for safeguards grounded in international human rights law, provided a framework within which the third parties' rights provision could have been interpreted more substantively. The provision in Article 2(h) therefore had a potential to cover a broader range of community rights claims than in was interpreted to cover in practice, including dispossession of any forest-dependent community grounded in widely ratified IHRL instruments.⁸⁶

Overall, the scope of the EUTR was limited in several respects. First, it applied only to timber products, leaving other agricultural commodities linked to deforestation outside its regulatory framework. Second, the Regulation addressed only the illegality of timber harvesting, without introducing a broader environmental standard such as a prohibition of deforestation itself.⁸⁷ Moreover, the Regulation has been criticized for allowing loopholes and imposing unclear obligations, creating disproportionate burdens for operators.⁸⁸

These structural limitations of the EUTR, as well as of the VPAs, were accompanied by documented patterns of unintended consequences in producer countries. An early assessment of the Regulation by the European Forest Institute (EFI) highlighted both disproportional disadvantages for SMEs due to high costs of the timber legality verification and consequences for local communities and smallholders.⁸⁹ Besides high costs, some of the problems identified, according to the EFI, were lack of guidance from authorities, heavy bureaucracy and weak law enforcement, which together with the complex supply chains created barriers for small operators, given market advantage to large producers. Furthermore, experiences from Ghana, Indonesia, Cameroon and other producer countries confirmed those findings and showed that local communities were frequently not considered or involved in negotiations or unaware of legality verification altogether.⁹⁰

⁸⁴ *ibid.* 260.

⁸⁵ Convention on Biological Diversity (CBD), 'Voluntary Guidelines on Safeguards in Biodiversity Financing Mechanisms', annexed to Decision XII/3, 'Resource mobilization' (2014) UNEP/CBD/COP/DEC/XII/3; see also Ituarte-Lima and others (n 81) 256–257.

⁸⁶ Ituarte-lima (n 81) 267–268

⁸⁷ Margret Kothke, Melvin Lippe, Peter Elsasser 'Comparing the former EUTR and upcoming EUDR: Some implications for private sector and authorities' *Forest Policy and Economics* 157 (2023) 2.

⁸⁸ *ibid.*

⁸⁹ Jonsson and others (n 68) 3–4.

⁹⁰ *ibid.* 12–14.

Relevant concerns were raised repeatedly during the meetings of the FLEGT/EUTR Expert Group, the official multistakeholder platform operating alongside the Regulation.⁹¹ The expert group addressed cases in which timber imports were linked to systematic violence, even murder, against landowners to prevent them from claiming their land use rights, the so-called ‘blood timber’.⁹² As Jonsson and others concluded in their assessment, ‘experience shows that going beyond timber legality and including socioeconomic development objectives will make VPA implementation more successful’.⁹³

The European Commission ultimately acknowledged these shortcomings, concluding that ‘focusing solely on legality of timber was not sufficient to meet the set objectives’.⁹⁴ The EUTR ‘Fitness Check’ identified persistent challenges related to uneven enforcement, administrative burden and limited effectiveness in complex supply chains.⁹⁵ At the same time, the Commission emphasised that such a Regulation must be implemented in accordance with fundamental rights protected under EU law, including the right to life, the right to property, and to environmental protection, and must comply with the principle of proportionality.⁹⁶

The EUDR will now replace the EUTR, building upon its due diligence approach, but significantly expanding its scope and ambition. It extends its framework beyond timber to several commodities and introduces the additional requirement that products be deforestation-free. Most relevantly for the purposes of this thesis, it extends the legality requirement to include human rights protected under international law, labour rights and the principle of FPIC. In that sense, the EUDR is the first regulation within the EU framework that directly addresses the human rights impacts of deforestation, in addition to the environmental aspect. Whether this expansion provides different outcomes in practice depends, however, on how corporate due diligence obligations are shaped. As the EUTR experience shows, a framework that conditions rights protection on domestic legal recognition risks leaving the communities most affected by deforestation

⁹¹ Commission Expert Group/Multi-Stakeholder Platform on Protecting and Restoring the World’s Forests, including the EU Timber Regulation and the FLEGT Regulation (E03282) <<https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupId=3282&fromMeetings=true&meetingId=2751>> accessed 23 May 2026.

⁹² European Commission Directorate-General Environment, *Summary Record of the FLEGT/EUTR Expert Group Meeting 19 April 2018* (ENV.F.3 – Multilateral Environmental Cooperation, European Commission 2018).

⁹³ Jonsson (n 68) 3.

⁹⁴ Regulation (EU) 2023/1115 (n 7) recital 32.

⁹⁵ European Commission, *Fitness Check of the EU Timber Regulation (EUTR) and the FLEGT Regulation* SWD (2021) 328 final (17 November 2021) <https://environment.ec.europa.eu/publications/proposal-regulation-deforestation-free-products_en> accessed 23 May 2026.

⁹⁶ *ibid.* 10.

without effective protection. This interpretative question is addressed in Chapter 3.

2.3.2 CSDDD⁹⁷

The CSDDD, adopted in 2024, establishes a common due diligence framework requiring large companies operating in the EU to address, prevent and mitigate potential adverse human rights and environmental impacts caused by their operations, subsidiaries and value chains.⁹⁸ In addition to these due diligence obligations, the Directive introduces civil liability for companies that fail to comply with their duties and thereby cause harm.⁹⁹ Its human rights scope is broader and more explicitly structured than that of the EUDR, as reflected in the detailed Annex listing protected rights and prohibited impacts under international human rights and labour instruments. These include protections under the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), various international labour rights instruments and others.¹⁰⁰ Nevertheless, the scope of protected rights under the CSDDD remains selective rather than fully comprehensive, excluding international instruments such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), possibly due to political compromise.¹⁰¹ Moreover, the technical formulation of ‘adverse human rights impacts’ generates interpretative complexity regarding the precise material scope of protection.¹⁰²

In the context of the simplification efforts to increase the EU market’s competitiveness¹⁰³, the scope of the CSDDD has been amended. Following these changes, the CSDDD now applies only to companies that employ at least 5000 employees and generate at least EUR 1.5 billion annual turnover¹⁰⁴, narrowing its scope significantly, while its application has been

⁹⁷ Directive (EU) 2024/1760 of the European Parliament and the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 [2024] OJ L1760/1.

⁹⁸ *ibid.* art 1(1).

⁹⁹ *ibid.*

¹⁰⁰ *ibid.* annex.

¹⁰¹ Nele Meyer and Christopher Patz, ‘Dividing the Indivisible Human Rights under the EU Corporate Sustainability Due Diligence Directive’ (Verfassungsblog, 1 June 2024).

¹⁰² Directive (EU) 2024/1760 (n 97) art 3(1).

¹⁰³ Council of the European Union, ‘Council signs off simplification of sustainability reporting and due diligence requirements to boost EU competitiveness’ (Press release, 24 February 2026) <<https://www.consilium.europa.eu/en/press/press-releases/2026/02/24/council-signs-off-simplification-of-sustainability-reporting-and-due-diligence-requirements-to-boost-eu-competitiveness/>> accessed 18 May 2026.

¹⁰⁴ Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence requirements, art 4.

further postponed.¹⁰⁵ Alongside the CSDDD, part of the OMNIBUS simplification package is the Corporate Sustainability Reporting Directive (CSRD).¹⁰⁶ While the CSDDD focuses on due diligence obligations, the CSRD obliges companies to report on their sustainability practices and due diligence efforts using the European Sustainability Reporting Standards (ESRS).¹⁰⁷

The CSDDD establishes a structured due diligence process based on a risk assessment, following internationally recognized standards such as the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.¹⁰⁸ Companies are required to map their operations, subsidiaries and business partners in order to identify areas where adverse human rights or environmental impacts are most likely to occur and where they may be most severe.¹⁰⁹ After identifying and prioritising the risks, they are required to prevent or mitigate the adverse impacts. Articles 8, 9 and 10 (6) of the CSDDD clearly state that companies are only able to disengage from a business partner, after reasonable efforts to prevent or mitigate the harm have failed, as a measure of last resort.

The coexistence of the CSDDD and the EUDR raises questions regarding the relationship between them, particularly where they overlap. While the CSDDD establishes a general framework for corporate HREDD, the EUDR introduces market access requirements for specific products. The EUDR itself acknowledges the potential overlap with relevant EU legislation in Recital 56, adopting the *lex specialis* principle,¹¹⁰ according to which a more specific law should prevail over a more general one when both regulate the same situation.

The Commission's guidance on the EUDR indicates that the EUDR should generally be considered *lex specialis*, with its rules prevailing over the CSDDD which acts as *lex generalis* 'to the extent of the conflict, insofar as they provide more extensive or more specific obligations pursuing the same objectives'.¹¹¹ However, scholars argue that while the EUDR is clearly *lex*

¹⁰⁵ *ibid.* recital 46.

¹⁰⁶ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting [2022] OJ L 322/15.

¹⁰⁷ European Commission, 'Commission Adopts European Sustainability Reporting Standards' (31 July 2023) <https://finance.ec.europa.eu/news/commission-adopts-european-sustainability-reporting-standards-2023-07-31_en> accessed 23 May 2026.

¹⁰⁸ Elise Nicoleta Valcu and Laura-Cristiana Spataru-Negura, 'EU and Corporate Sustainability: Meeting the European Standards - CSRD and CSDDD Explained' (2025) 20 *Journal of Agricultural and Environmental Law* 47, 508-509.

¹⁰⁹ *ibid.* 502- 504.

¹¹⁰ Principle I.3.2 - *Lex specialis*-principle <https://www.trans-lex.org/910000/_/lex-specialis-principle/> accessed 23 May 2026.

¹¹¹ European Commission, *Guidance Document for Regulation (EU) 2023/1115* (n 28) section 4(d).

specialis with regard to deforestation-related obligations, the CSDDD may constitute the more specific framework in relation to human rights violations in supply chains.¹¹² This argument is based on the observation that the EUDR addresses human rights issues only indirectly through the legality requirement, whereas the CSDDD establishes a detailed due diligence framework on how companies must identify, prevent and mitigate adverse human rights impacts.¹¹³ The intersection between the two instruments will be further discussed in Chapter 3.

¹¹² Andreas Rade and others (n 53) 6-7.

¹¹³ *ibid.*

3 Interpretative challenges under the EUDR legality requirement

This chapter analyses the main interpretative challenges arising under the legality requirement of the EUDR. In particular, it examines the nature of corporate due diligence obligations, the relationship between the EUDR and broader EU due diligence frameworks, and the implications of the Regulation's legality and negligible-risk requirements for companies operating in complex global value chains.

3.1 Obligations of means and obligations of results under corporate due diligence frameworks

Before analysing the structure and logic of due diligence under the EUDR, it is useful to clarify the distinction between obligations of means and obligations of results in existing corporate due diligence frameworks. An obligation of results requires that a specific outcome be achieved and this way compliance is measured by success.¹¹⁴ Applied to the EUDR legality requirement, this would mean that a company importing or exporting a product must guarantee that no violations (or, more precisely, only 'negligible' risk of violations) of the relevant legislation occurred anywhere in its production. If non-negligible risks are found, the obligation has not been met, regardless of the efforts the company made to mitigate such risks. An obligation of means, by contrast, does not tie compliance to a guaranteed outcome. It requires instead that a company undertakes genuine, continuous and proportionate efforts to identify, prevent and mitigate risks. Compliance is therefore assessed based on the quality of the process, rather than the absence of harm.

The distinction between obligations of means (or conduct) and obligations of results in international law is associated primarily with Roberto Ago's work in the International Law Commission's development of the law of state responsibility.¹¹⁵ This distinction is the base of today's regulatory context of due diligence obligations of states as well as private actors.¹¹⁶ In corporate due diligence obligations, this understanding is reflected in the UN Guiding Principles on Business and Human Rights.¹¹⁷ Under Pillar II, the corporate responsibility to respect human rights involves due diligence requirements that aim to identify, prevent, mitigate and account for adverse impacts.¹¹⁸

¹¹⁴ James Crawford, 'Second Report on State Responsibility' (17 March, 1 and 30 April, 19 July 1999) UN Doc A/CN.4/498, para. 57.

¹¹⁵ Roberto Ago, 'Sixth Report on State Responsibility' (1977) UN Doc A/CN.4/302.

¹¹⁶ Alice Ollino, *Due Diligence Obligations in International Law* (Cambridge University Press 2022) 64.

¹¹⁷ UN Human Rights Council, *Guiding Principles on Business and Human Rights* (2011) UN Doc A/HRC/17/31, Principle 17 and Commentary.

¹¹⁸ *Ibid.*

Conducting human rights due diligence is understood as a ‘continuous process of identifying and addressing the human rights impact of a company across its operations and products, and throughout its supplier and business partner networks’.¹¹⁹ This process includes both internal assessments and external engagement with affected stakeholders.¹²⁰ This continuous process is what is characterised as an obligation of means, with the standard being the quality and seriousness of the due diligence efforts, not a guaranteed outcome.

A similar perspective on due diligence is adopted by the OECD framework on responsible business conduct, which further recognises that companies operate in contexts characterised by ‘systematic risks’, such as weak governance, corruption and human rights violations.¹²¹ These conditions are often beyond their direct control of individual companies. In such circumstances, enterprises are expected to take appropriate measures to identify and mitigate risks, collaborating across different sectors with different actors and governments.¹²²

Even though the EUDR does not directly mention the UNGPs or the OECD Guidelines, its due diligence system contains certain procedural elements similar to the risk-assessment frameworks developed under those instruments.¹²³ The Commission’s proposal for the EUDR describes the due diligence system set out in article 8 as a three-step procedure; first, gathering all relevant information about the commodity and its supply chain; second, assessing the risk of non-compliance on the basis of that information; and third, where risks are identified, taking adequate mitigation measures to reduce the risk to a negligible level before placing the product on the market.¹²⁴

However, important differences remain. Under the UNGPs, the OECD Guidelines and the CSDDD, due diligence is primarily understood as an ongoing process aimed at preventing, mitigating and remediating adverse human rights impacts, with disengagement operating only as a measure of last resort. By contrast, under the EUDR, mitigation mainly functions as a

¹¹⁹ UN Office of the High Commissioner for Human Rights ‘Frequently Asked Questions about the Guiding Principles on Business and Human Rights’ (HR/PUB/14/3, UN 2014).

¹²⁰ *ibid.*

¹²¹ OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD Publishing 2023).

¹²² OECD, *OECD Due Diligence Guidance for Responsible Business Conduct* (OECD Publishing 2018) 75-76

<https://www.oecd.org/content/dam/oecd/en/publications/reports/2018/02/oecd-due-diligence-guidance-for-responsible-business-conduct_c669bd57/15f5f4b3-en.pdf> accessed 18 May 2026.

¹²³ Regulation (EU) 2023/1115 (n 7) arts 4, 8 and 11.

¹²⁴ European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the Making Available on the Union Market as well as Export from the Union of Certain Commodities and Products Associated with Deforestation and Forest Degradation and Repealing Regulation (EU) No 995/2010* COM(2021) 706 final 13-14.

mechanism for determining whether products may continue accessing the EU market. In this respect, the Commission's updated 2026 guidance stresses that risk assessment and mitigation measures must be tailored to the characteristics of the relevant products and sourcing contexts. Operators are expected to consider factors such as supply chain complexity, substantiated concerns regarding illegality among suppliers, weak law enforcement and corruption risks in the country of production.¹²⁵ Where risks cannot be reduced to a negligible level, operators must refrain from placing the products on the market, resulting in important financial burdens.

Recent analyses similarly note that product-based regulations such as the EUDR position due diligence primarily as a mechanism for establishing market compliance rather than as an ongoing process of improving human rights conditions throughout supply chains. The OECD has noted that product and market-based measures, such as the EUDR, often require companies to prove that products present 'no or negligible risk', thereby positioning due diligence primarily as a tool for establishing compliance rather than an ongoing process of risk management¹²⁶ and recognised that: 'Authorities prohibit the import/export of non-compliant goods, with possible consequences for suspension or termination of contracts where goods are found non-compliant following investigation and review processes.'¹²⁷ The OECD recognises the subsequent consequences of such approaches, particularly in relation to responsible disengagement, noting the lack of clarity surrounding when disengagement is appropriate.¹²⁸ The following section analyses this inconsistency of corporate obligations between the EUDR and the due diligence models of comparable EU legal instruments.

3.2 The relationship between the EUDR and the broader EU due diligence framework

Looking at earlier and parallel EU instruments helps clarify how due diligence obligations are generally understood within the EU legal framework. The EUTR, as the predecessor of EUDR, as well as recent business and human rights legislative developments in the EU, such as the CSDDD, are extremely relevant.

3.2.1 EUTR

¹²⁵ European Commission, 'Approval of the updated content of a draft Commission Notice on the Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products' (n 15) 11-12.

¹²⁶ OECD, *Mapping of Social and Environmental Due Diligence Legislation* (OECD Publishing 2026) 27

<https://www.oecd.org/content/dam/oecd/en/publications/reports/2026/04/mapping-of-social-and-environmental-due-diligence-legislation_6cf2c241/bac11241-en.pdf> accessed 23 May 2026.

¹²⁷ *ibid.* 20.

¹²⁸ *ibid.* 27.

The legality requirement under the EUTR was not originally discussed as a purely formal verification of compliance with domestic law. Within the framework of the FLEGT initiative,¹²⁹ there were attempts to define legality in forest governance in a broader way that would incorporate social and environmental considerations. The European Parliament, for example, proposed an expanded definition of ‘applicable legislation’ while negotiating the EUTR,¹³⁰ including not only domestic law but also international standards and rights-related aspects, such as biodiversity conservation, forest management, resource use rights, labour conditions and Indigenous rights.¹³¹

Even though the EP’s proposal was not fully adopted at the end, it suggests that, at least at an earlier state, the legality requirement under the EUTR intended to go beyond formal compliance and to contribute to the protection of substantive environmental and human rights. The reason for this more conservative approach was that the other option was considered to be ‘problematic from a legal perspective’.¹³²

The EUTR already established a due diligence system aimed at preventing illegal timber from entering the EU market. However, its design is part of a broader shift in EU forest governance from sustainability to legality. As discussed in the literature, earlier efforts to establish a multilateral framework for sustainable forest management failed due to disagreements between states, particularly regarding sovereignty over natural resources.¹³³ In response, the EU moved towards a legality-based approach, focusing on compliance with the laws of the country of production rather than attempting to define or enforce substantive sustainability standards.

By relying on legality, the EU was able to avoid contentious debates over what constitutes ‘sustainable’ forest management and, at the same time, to align its measures with WTO rules, which restrict the imposition of unilateral sustainability standards on imports.¹³⁴ However, as Ituarte Lima argues, this approach rests on an ‘apparent neutrality’.¹³⁵ Legality depends on national legal frameworks, which may vary significantly in their level of protection and may not adequately safeguard environmental or human rights interests. As a result, legality does not necessarily equate to sustainability or justice.

¹²⁹ See Ch 2.3.1.

¹³⁰ Council of the European Union, *Proposal for a Regulation of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market* (COD 2008/0198, 5636/10, 2010).

¹³¹ Laura van Heeswijk, Esther Turnhout, ‘The discursive structure of FLEGT (Forest Law Enforcement, Governance and Trade): The negotiation and interpretation of legality in the EU and Indonesia’ (2013) 32 *Forest Policy and Economics*, 9.

¹³² Council of the European Union (n 130).

¹³³ Ituarte-Lima and others (n 81) 260.

¹³⁴ *ibid.*

¹³⁵ *ibid.*

This limitation became visible in the implementation of the EUTR. Although the Regulation required operators to exercise due diligence, in practice compliance often focused on documentation and formal verification of legality ignoring substantive realities of forest governance. In contexts where domestic legal frameworks were weak, exclusionary or poorly enforced, legality-based due diligence could therefore fail to protect local communities, biodiversity or equitable access to resources.¹³⁶

Seen in this light, the EUTR illustrates both the strengths and limitations of legality-based due diligence. On the one hand, it provides a workable and legally defensible framework for regulating global supply chains. On the other hand, it risks conflating procedural compliance with substantive outcomes, particularly where legality itself is an unstable or insufficient benchmark.

The distinction between procedural and substantive rights in legality-based forest governance was emphasized by Claudia Ituarte- Lima in her analysis of the EUTR and its relationship with the CBD principles.¹³⁷ Her argument provides a useful framework for analysing due diligence obligations. According to Ituarte- Lima, procedural safeguards refer to the mechanisms used to implement and enforce rules, such as due diligence systems, risk assessments and information gathering.¹³⁸ Substantive safeguards, by contrast, refer to the actual rights and protections themselves, including biodiversity protection, land rights and the rights of Indigenous peoples and local communities.¹³⁹

A key insight of her analysis is that procedural mechanisms can only be effective if the underlying substantive rights are properly defined and implemented.¹⁴⁰ In other words, due diligence systems and legality checks can only protect biodiversity and local communities if the relevant laws already provide such protection and if they are effectively enforced in practice. That means that legality-based systems do not guarantee substantive outcomes, but, instead, they depend on the quality of national legal frameworks. Where these frameworks are weak, incomplete or fail to recognise certain rights, compliance with legality may still lead to harmful outcomes. In this sense, legality reflects existing legal conditions rather than correcting them.

Considering this EUTR-focused analysis and applying it to the EUDR, it is evident that legality itself is limited when it comes to protecting the substantive rights the Regulation aims to protect. The Regulation requires compliance with the applicable legislation of the country of production.¹⁴¹

¹³⁶ European Commission Directorate-General Environment (n 92)

¹³⁷ Ituarte-lima (n 73).

¹³⁸ *ibid.* 263.

¹³⁹ *ibid.*

¹⁴⁰ *ibid.* 266–267.

¹⁴¹ Regulation (EU) 2023/1115 (n 7) art 3.

However, such compliance does not necessarily ensure that environmental or human rights standards are effectively respected.¹⁴² At the same time, however, the EUDR expands the legality framework beyond the EUTR by expressly referring to ‘human rights protected under international law’.¹⁴³ This suggests a broader and partly internationalised understanding of legality compared to the more narrowly domestic legality framework of the EUTR. The exact implications of this expansion nevertheless remain uncertain. While the EUDR incorporates references to international human rights standards, those rights are still linked to the ‘legal status of the area of production’ and to laws applicable in the country of production. Additionally, the precise material scope of those protections remains uncertain and dependent on interpretation. This raises interpretative questions regarding which labour and human rights violations are sufficiently connected to the Regulation’s environmental objectives to fall within the legality requirement.

Those limitations are particularly relevant when assessing the extent of due diligence expected from companies and the practical operation of the negligible-risk standard. Companies cannot be expected to ensure outcomes that depend on legal systems beyond their control. Instead, a due diligence model that protects substantive rights is better understood as an ongoing process that better reflects the realities of complex value chains. At the same time, it raises important questions about whether such a system can fully deliver on its environmental and human rights objectives, an issue that becomes particularly visible in its impact on smallholders and other vulnerable actors. This will be further discussed in Chapter 4.

3.2.2 CSDDD

More recent EU instruments move away from a narrow legality-based approach and instead align explicitly with international due diligence standards. The CSDDD,¹⁴⁴ as well as related instruments such as the CSRD¹⁴⁵ and the EU Taxonomy Regulation¹⁴⁶, are grounded in the frameworks established by the UNGPs and the OECD Guidelines for MNE. As discussed earlier, these frameworks conceptualise corporate obligations as ongoing processes of risk identification and mitigation, rather than as guarantees of specific outcomes.

¹⁴² Eliza Zhunusova and others, ‘Potential Impacts of the Proposed EU Regulation on Deforestation-Free Supply Chains on Smallholders, Indigenous Peoples, and Local Communities in Producer Countries Outside the EU’ (2022) 143 *Forest Policy and Economics* 5.

¹⁴³ Regulation (EU) 2023/1115 (n 7) art 2(40).

¹⁴⁴ Directive (EU) 2024/1760 (n 97) recital 5.

¹⁴⁵ Directive (EU) 2022/2464 (n 106) recital 31.

¹⁴⁶ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and amending Regulation (EU) 2019/2088 [2020] OJ L 198/13 art 18.

Particularly the CSDDD reflects this approach by requiring companies to identify and prioritise risks, adopt appropriate measures, and engage with business partners to improve conditions over time.¹⁴⁷ Importantly, it recognises disengagement only as a last resort.¹⁴⁸ This structure reflects an obligation of means. Companies are not required to guarantee that no adverse impacts occur, but rather to demonstrate that they have taken appropriate and effective steps to address them.

The relationship between the EUDR and the CSDDD is particularly relevant where their scope overlaps and where large companies have to comply with both Regulations, when each one of them introduces a different model of due diligence. While the EUDR regulates deforestation-specific obligations, the CSDDD provides a more detailed and structured framework for addressing human rights risks in supply chains. These tensions already arise in practice for companies operating under both the EUDR and the CSDDD frameworks. While the EUDR's legality and negligible-risk requirements may incentivise exclusion from legally or politically complex sourcing areas, the CSDDD requires companies to prioritise ongoing engagement, mitigation and remediation before disengagement is considered as a last resort. This creates a potential regulatory confusion for companies subject to both instruments, since the EUDR is presented by the Commission as *lex specialis* in relation to the CSDDD,¹⁴⁹ while at the same time a strict exclusionary compliance strategy under the EUDR may undermine the broader engagement, mitigation and remediation obligations expected under the CSDDD as *lex generalis*. The following example of Stora Enso illustrates this legal incoherence and how some companies, that are in scope of both Regulations simultaneously attempt to reconcile these potentially conflicting regulatory expectations through continuous supplier engagement.

3.2.3 Stora Enso: Reconciling EUDR and CSDDD approaches to due diligence

Stora Enso, a major Nordic forest industry company, provides an example of how large companies subject to both the EUDR and the CSDDD are already attempting to operationalise due diligence obligations in practice. The company's sustainability reporting and participation in the European Commission's Multi-Stakeholder Platform on Protecting and Restoring the World's Forests illustrate an approach centred on ongoing engagement, corrective action and remediation rather than immediate disengagement from higher-risk sourcing contexts.

¹⁴⁷ Directive (EU) 2024/1760 (n 97) Arts 1 and 11.

¹⁴⁸ *ibid* art 10(6)

¹⁴⁹ European Commission, 'Approval of the updated content of a draft Commission Notice on the Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products' section 4(f).

In its presentation during the 34th Meeting of the Expert Group/Multi-Stakeholder Platform, Stora Enso emphasised that enforcement should remain ‘practical and proportionate’ and capable of adapting to the complexity of global value chains and process industries, in order to avoid disproportionate burdens.¹⁵⁰ At the same time, the company identified awareness-raising across the supply chain as an essential element of implementation. According to the presentation, awareness of the EUDR’s requirements should be strengthened both upstream and downstream.¹⁵¹ In practical terms, Stora Enso reports having adopted several measures aimed at facilitating compliance within its supply chain. The company states that it provides information and training to private forest owners and, where authorised, submits due diligence statements on their behalf.¹⁵² It has also reviewed and updated internal policies, revised due diligence system descriptions and prepared for future public reporting obligations.

The company’s 2025 annual report further analyses policies that are followed to address potential and real impacts in the context of its human rights governance.¹⁵³ Stora Enso’s Human Rights Policy and Human Rights Guidelines focus on proactive risk identification, mitigation of adverse impacts and implementation of remediation measures throughout the Group’s operations and supply chains, especially concerning impacts on affected communities.¹⁵⁴ The company states that management of land and natural resource rights within its operations and supply chains must respect stakeholder rights and the Indigenous Peoples’ Free, Prior and Informed Consent (FPIC), highlighting the importance of community consultations, and, where necessary, the intervention of third party remediation.¹⁵⁵ In regions with major indigenous population, Stora Enso engages with civil society organisations and social movements dedicated to Indigenous Peoples’ rights ‘to ensure transparent and culturally sensitive dialogue’.¹⁵⁶

Moreover, recognising the problem of land related disputes, the Group indicates that it ‘supports the resilience and livelihood of local communities through development programmes’ and that it has been continuously contributing to Indigenous education and infrastructure development.¹⁵⁷ Grievance mechanisms are also available to external stakeholders, including

¹⁵⁰ Nina Norjama, ‘Stora Enso & EUDR Implementation’ (Presentation delivered at the 34th Meeting of the Expert Group/Multi-Stakeholder Platform on Protecting and Restoring the World’s Forests, 8 July 2025) <<https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=63250>> accessed 23 May 2026.

¹⁵¹ *ibid.*

¹⁵² *ibid.*

¹⁵³ Stora Enso, *Annual Report 2025* <https://www.storaenso.com/-/media/documents/download-center/documents/annual-reports/2025/storaenso_annual_report_2025.pdf> accessed 23 May 2026.

¹⁵⁴ *ibid.* 124.

¹⁵⁵ *ibid.* 127.

¹⁵⁶ *ibid.*

¹⁵⁷ *ibid.* 128.

affected communities, and remediation measures are determined according to local context and specific impacts and usually include corrective actions and knowledge sharing in order to prevent future similar impacts.¹⁵⁸

A more concrete example of Stora Enso's due diligence practices concerns its engagement with a tier 1 supplier in Brazil.¹⁵⁹ Following a desktop assessment, the company identified concerns regarding the supplier's impacts on local communities, land rights and past environmental incidents, as well as limitations in publicly available information.¹⁶⁰ In response, Stora Enso implemented a corrective action process involving regular follow-up discussions and an on-site sustainability audit carried out by an external provider, which identified the need for corrective measures relating to labour rights, governance practices and awareness of grievance mechanisms.¹⁶¹

Another example concerns a supply chain which Stora Enso identifies as involving heightened sustainability risks, particularly due to labour-intensive working conditions, health and safety concerns, and the involvement of low-skilled and migrant workers.¹⁶² In 2025, the company further developed a structured approach to address these risks, including human rights-focused supplier visits at small and medium-sized enterprises in Poland conducted by external consultants.¹⁶³ According to the report, these visits aimed to improve understanding of risks within the supply chain and to support future capacity-building, mitigation measures and cooperation with suppliers.¹⁶⁴

This engagement-based approach is not a result of voluntary corporate responsibility. For companies such as Stora Enso that fall within the scope of the CSDDD, continued engagement, mitigation and remediation efforts constitute part of their legal due diligence obligations under EU law. Yet this is precisely where the legal incoherence between the two instruments becomes concrete. The more thoroughly a company conducts due diligence in accordance with its CSDDD obligations, identifying risks, auditing suppliers, uncovering labour rights concerns or land disputes, the more likely it is to generate findings that cannot be mitigated to a negligible level within the timeframe required by the EUDR. A company that takes its CSDDD obligations seriously may therefore find itself legally compelled to exclude products from the EU market that it is simultaneously obliged to keep engaging with under the broader due diligence framework. The Stora Enso example thus illustrates not only how companies attempt to navigate these tensions in practice, but also a structural problem in the EU's sustainability

¹⁵⁸ *ibid* 124.

¹⁵⁹ *ibid*.

¹⁶⁰ *ibid*.

¹⁶¹ *ibid*.

¹⁶² *ibid* 125.

¹⁶³ *ibid*.

¹⁶⁴ *ibid*.

framework: diligent compliance with one instrument can trigger non-compliance consequences under another.

3.3 Proportionality under EU law

In this context, the corporate due diligence obligations stemming from the legality requirement and the negligible-risk standard raise proportionality concerns when interpreted in a strict and exclusionary manner. According to the principle of proportionality, which is a general principle of EU law enshrined in Article 5(4) of the Treaty of the European Union,¹⁶⁵ EU measures must not exceed what is necessary to achieve their objectives.¹⁶⁶ The European Court of Justice (ECJ) has further clarified that this requires a three-step test: the measure must be appropriate, necessary and proportionate in the strict sense.¹⁶⁷

First, a rigid application of the negligible-risk standard may fail the requirement of appropriateness. A measure is appropriate only if it can realistically achieve its objective.¹⁶⁸ However, requiring companies to guarantee full compliance with all relevant laws across complex global supply chains sets a standard that is extremely difficult, if not impossible, to meet in practice. Supply chains in sectors covered by the EUDR often involve multiple actors operating in contexts characterised by structural risks, including weak governance, labour exploitation and unclear land tenure systems. A standard that cannot reasonably be met cannot be considered appropriate.

Second, the necessity of a strict exclusionary interpretation of the legality requirement may be questioned when the EUDR is situated within the broader EU sustainability framework. Even if such an interpretation were considered appropriate, it would not be necessary to achieve the objectives of the Regulation¹⁶⁹. The objective of the EUDR is specifically framed in terms of minimising the Union's contribution to deforestation and forest degradation. In this respect, exclusion from the EU market and disengagement from suppliers associated with non-negligible risks may constitute important mechanisms through which the Regulation seeks to achieve its environmental objectives.

Nevertheless, where companies are simultaneously subject to broader human rights due diligence obligations under instruments such as the CSDDD, tensions arise regarding whether exclusionary compliance strategies are

¹⁶⁵ Consolidated Version of the Treaty on European Union [2012] OJ C 326/13, art 5(4).

¹⁶⁶ *ibid.*

¹⁶⁷ Case C-331/88 *R v Minister of Agriculture, Fisheries and Food, ex p Fedesa* [1990] ECR I-4023, para. 13.

¹⁶⁸ European Commission, 'Principle of proportionality' (EUR-Lex) <<https://eur-lex.europa.eu/EN/legal-content/glossary/principle-of-proportionality.html>> accessed 24 April 2026.

¹⁶⁹ *Ibid.*

always necessary or appropriate. The CSDDD instead emphasises ongoing engagement, mitigation and remediation, while treating disengagement as a measure of last resort.¹⁷⁰ This suggests that, in at least some situations, comparable human rights and environmental objectives may also be pursued through continued supplier engagement and long-term risk mitigation rather than immediate exclusion. The coexistence of these approaches therefore raises broader questions regarding the coherence and proportionality of overlapping EU due diligence frameworks, particularly given the potential unintended consequences of disengagement for smallholders, Indigenous peoples and other rightsholders in producer countries.

Finally, a strict zero-risk compliance approach may raise concerns regarding proportionality *stricto sensu*. This requires that the disadvantages caused by a measure are not excessive in relation to the aims pursued.¹⁷¹ A results-based interpretation would impose significant burdens on companies and their suppliers, including the risk of exclusion from the EU market where full compliance cannot be demonstrated. At the same time, it will produce negative consequences for rightsholders, particularly where companies disengage from high-risk regions rather than invest in improving conditions. While a strict approach may signal zero tolerance, it does not necessarily lead to better outcomes and may, in practice, worsen existing inequalities.

The Commission's updated 2026 guidance attempts to address some of these proportionality concerns by introducing a more differentiated approach to due diligence obligations. It confirms that the extent of information collection and verification should depend on factors such as the characteristics of the supply chain, the level of risk identified and the country-risk classification under Article 29.¹⁷² Operators sourcing entirely from low-risk countries may also rely on simplified due diligence procedures. Nevertheless, operators remain responsible for assessing the credibility, reliability and sufficiency of the information collected.¹⁷³ In practice, this may still create substantial evidentiary burdens, particularly in supply chains characterised by weak governance, informal land tenure systems or corruption risks. The guidance itself recognises that operators may need to undertake enhanced scrutiny where corruption or document falsification risks are present.¹⁷⁴ As a result, the practical pressure to avoid legally or politically complex sourcing contexts may still remain significant despite the Commission's attempt to introduce proportionality into the due diligence process.

¹⁷⁰ Directive (EU) 2024/1760 (n 97) recitals 31, 38, 40, 50, 57, 61, 65 and arts 5 and 13.

¹⁷¹ Aharon Barak, 'Proportionality *stricto sensu* (balancing)' in: *Proportionality: Constitutional Rights and Their Limitations* (Cambridge University Press 2012) 340-370.

¹⁷² European Commission, 'Approval of the updated content of a draft Commission Notice on the Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products' (n 15) 18-20.

¹⁷³ *ibid.*

¹⁷⁴ *ibid.*

3.4 Ambiguity of the concept of negligible risk

As discussed in Chapter 2, according to the European Commission, negligible risk should be understood as a situation in which, following a full risk assessment and, where appropriate, the adoption of mitigation measures, the product shows ‘no cause for concern’ as regards compliance with Article 3 of the Regulation.¹⁷⁵ So far, the concept of negligible risk remains inherently uncertain and the European Commission has been criticised for its ambiguity. Article 10(2) EUDR provides a list of risk assessment criteria, including country risk, governance conditions, the presence of Indigenous peoples and supply chain complexity,¹⁷⁶ but this list is explicitly non-exhaustive.¹⁷⁷ Operators may rely on additional criteria, and must also consider broadly framed factors such as corruption, weak enforcement or ‘any information’ indicating risk.¹⁷⁸ Crucially, the Regulation does not specify where the threshold between negligible and non-negligible risk lies, leaving significant discretion to operators.

Although stakeholders have pointed out that the notion of negligible risk lacks sufficient clarity, similarly to the EUTR,¹⁷⁹ the Commission’s updated 2026 guidance does not substantially clarify the threshold between negligible and non-negligible risk, but instead repeats the existing definition that products must show ‘no cause for concern’.¹⁸⁰ At the same time, discussions determining whether a situation can or cannot be effectively mitigated to reach a negligible level are already taking place. For instance, conclusions adopted in expert group discussions under the EUTR framework have found that, in certain countries such as Myanmar, Belarus and the Russian Federation, the structural conditions are such that the risk of illegality cannot be effectively mitigated to a negligible level.¹⁸¹ Overall, while the concept of negligible risk is intended to provide a flexible, risk-based standard, its indeterminate nature creates legal uncertainty and can have important implications for how the Regulation operates in practice, particularly in high-risk or weak governance contexts.

The analysis in this chapter has shown that the legality requirement under the EUDR raises several interconnected interpretative challenges. Although the Regulation expands earlier legality-based approaches by referring to human

¹⁷⁵ European Commission, *Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products* [2025] OJ C/2025/4524, section 4(b) <https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=OJ:C_202504524> accessed 19 May 2026.

¹⁷⁶ Regulation (EU) 2023/1115 (n 7) art 10.

¹⁷⁷ European Commission, *Impact Assessment* (n 35).

¹⁷⁸ *ibid.*

¹⁷⁹ *ibid.*

¹⁸⁰ European Commission, ‘Approval of the Updated Content’, 13.

¹⁸¹ European Commission, *26th Meeting of the Expert Group/Multi-Stakeholder Platform on Protecting and Restoring the World’s Forests (EUTR–FLEGT)* (11 April 2024) <<https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=53256&fromExpertGroups=3282>> accessed 23 May 2026.

rights protected under international law, uncertainty remains regarding the precise scope of those protections and the extent of due diligence required to demonstrate ‘negligible risk’ in practice. The chapter has further demonstrated that legality-based due diligence does not necessarily guarantee substantive environmental or human rights protection, particularly where domestic legal frameworks are weak, incomplete or selectively enforced. At the same time, the EUDR adopts a more exclusionary compliance model than broader due diligence frameworks such as the CSDDD, creating potential tensions for companies subject to both instruments. These interpretative difficulties are also relevant from the perspective of proportionality under EU law, especially given the practical pressures that strict compliance expectations may create in complex global value chains. As the following chapter demonstrates, these ambiguities may directly influence corporate sourcing practices and produce significant consequences for smallholders, Indigenous peoples and other vulnerable rightsholders in producer countries.

4 The practical implications of zero-tolerance due diligence under the EUDR: smallholder exclusion and human rights consequences in producer countries

The due diligence model of the EUDR can affect corporate behaviour and corporate decisions significantly, when it comes to examining the compliance with the legality requirement among suppliers in producer countries. If operators are required to ensure that the risk of violations of relevant laws in their supply chains is negligible, compliance is no longer assessed based on the adequacy of their efforts, but on the actual outcome. In such a framework, even isolated or unintended violations would amount to non-compliance, regardless of the measures taken to prevent them. Although the updated 2026 Commission Guidance attempts to simplify compliance obligations through simplified due diligence regimes especially for micro and small operators and for low-risk countries, it does not substantially address concerns regarding supplier disengagement and the exclusion of smallholders from global value chains.¹⁸²

In the context of global agricultural and forestry supply chains, risks are often structural and cannot be fully controlled by individual actors. Issues such as poverty, unclear land tenure and weak law enforcement are common in many producer countries. In such cases, the requirement to guarantee legality may lead to precautionary exclusion, laying the groundwork for broader patterns of disengagement and market restructuring. These dynamics are explored further in the following sections. Such pressures may also affect companies whose business models are built around ethical sourcing, long-term supplier engagement and inclusive supply chains. The example of Tony's Chocolonely is discussed to illustrate the tensions that may arise between sustainability-oriented sourcing initiatives and the EUDR's exclusionary compliance logic.

4.1 Exclusion of smallholders and structural inequality

Forests are the foundation of livelihoods for a significant share of the world's population. According to the Food and Agriculture Organisation of the

¹⁸² European Commission, 'Approval of the updated content of a draft Commission Notice on the Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products' (n 180).

United Nations (FAO),¹⁸³ around 1.6 billion people depend on forests for their livelihoods, including 70 million Indigenous people. Smallholders, particularly Indigenous peoples and local communities (IPLCs), play a central role in EUDR covered supply chains, occupying around one quarter of the world's forests and contributing significantly to the production of key commodities such as coffee, cocoa and palm oil.¹⁸⁴ In the case of coffee, among the main countries exporting in the EU, smallholders account for a substantial share of production, reaching 70-95 per cent in countries such as Honduras, Ethiopia, Uganda and Vietnam.¹⁸⁵ In the case of cocoa, production is likewise heavily dependent on smallholders, with around 90 per cent of global cocoa output relying on 5 to 6 million smallholders mainly in West Africa and Indonesia.¹⁸⁶

A similar pattern can be observed in the palm oil sector. The six main exporter countries supplied approximately 97 percent of total EU imports in 2020, with Indonesia and Malaysia alone accounting for around 73 percent.¹⁸⁷ In both countries, a significant proportion of production remains in the hands of smallholders, who manage between 28 and 42 percent of oil palm plantations.¹⁸⁸ While large-scale industrial plantations play a major role in this sector, smallholder participation remains significantly important. Since beef, soya and wood are among the EUDR-covered commodities that are majorly produced in larger entities rather than in small farms, coffee, cocoa and palm oil productions remain in the centre of the discussion regarding smallholders.¹⁸⁹

At the same time, smallholders' livelihoods are often highly vulnerable and closely tied to continued access to global markets. Structural barriers make compliance with stringent due diligence requirements particularly difficult for smallholders. These include low education levels, limited financial resources, land tenure insecurity, limited access to information, low levels of organization and risk-averse attitudes towards land use systems requiring long term commitment.¹⁹⁰ These conditions have historically excluded

¹⁸³ Food and Agriculture Organisation of the United Nations, *The State of the World's Forests 2022: Forest Pathways for Green Recovery and Building Inclusive, Resilient and Sustainable Economies* (FAO 2022).

¹⁸⁴ Eliza Zhunusova and others, 'Potential Impacts of the Proposed EU Regulation on Deforestation-Free Supply Chains on Smallholders, Indigenous Peoples, and Local Communities in Producer Countries Outside the EU' (2022) 143 *Forest Policy and Economics* 2.

¹⁸⁵ *ibid.*

¹⁸⁶ *ibid.*

¹⁸⁷ *ibid.*

¹⁸⁸ *ibid.*

¹⁸⁹ *ibid.*

¹⁹⁰ *ibid* 3.

smallholders from certification schemes and sustainability standards even before the EUDR was proposed.¹⁹¹

Empirical evidence from recent field studies further illustrates the structural barriers faced by smallholders in complying with the EUDR. A survey of over 1,300 coffee-producing households in Vietnam reveals significant disparities in education, access to information and land documentation, particularly between ethnic majority (Kinh) farmers and ethnic minority groups.¹⁹² Educational attainment is considerably lower among ethnic minorities, with over 45 per cent having only primary education or less, compared to significantly higher levels among Kinh farmers.¹⁹³ Certification rates also remain extremely low overall, with only 5.5 per cent of surveyed households participating in recognised schemes, and an even lower proportion among ethnic minorities.¹⁹⁴

Access to information on the EUDR is similarly limited. Only around 25 per cent of households reported any access to EUDR-related information, and levels of understanding were generally low, with the vast majority of farmers unable to demonstrate meaningful comprehension of the regulation.¹⁹⁵ The limited access to information is a result of both the lack of institutional outreach but also the farmers' misconception that compliance is the responsibility of downstream companies rather than producers themselves.¹⁹⁶

Most critically, compliance with the legality requirement is constrained by persistent challenges related to land documentation. While approximately 71 per cent of surveyed coffee plots were covered by formal land use rights certificates, a substantial proportion relied on informal documentation (21.85 per cent) or lacked documentation altogether (6.59 per cent).¹⁹⁷ According to the case study, coffee-producing enterprises have already started restructuring their supply chains in response to the EUDR.¹⁹⁸ In certain instances, they have cut ties with households that do not meet the requirements, especially when they lack land titles.¹⁹⁹ Informal titles are also usually not sufficient, and they place smallholders at risk of exclusion.²⁰⁰

Similar challenges are observed in other producer countries, such as Peru, where fragmented legal frameworks and weak land governance further

¹⁹¹ *ibid.*

¹⁹² Truong Quang Hoang and others, 'Navigating EU Deforestation Regulation Compliance: Challenges for Coffee Smallholders in Vietnam' (2026) 35(1) *Forests, Trees and Livelihoods*.

¹⁹³ *ibid.* 68.

¹⁹⁴ *ibid.*

¹⁹⁵ *ibid.* 69.

¹⁹⁶ *ibid.*

¹⁹⁷ *ibid.* 70.

¹⁹⁸ *ibid.* 71.

¹⁹⁹ *ibid.*

²⁰⁰ *ibid.*

complicate compliance with the EUDR.²⁰¹ In the Peruvian Amazon, many smallholders cultivate coffee and cocoa on land classified as forest land without holding the required agroforestry concessions, making it unlikely that they can meet the legality requirement despite using their land for many years.²⁰² Moreover, the absence of effective land use planning policies and limited interaction between central authorities and local communities contribute to persistent tenure insecurity and legal ambiguity.²⁰³

Considering the current text of the EUDR with limited guidance on its interpretation, companies must guarantee that products placed on the market present no or only negligible risk of non-compliance. In this context, faced with the risk of non-compliance, a possible response when dealing with smallholders in complex, high-risk sourcing areas is not to invest in engagement and support, but to disengage entirely. The Commission's own impact assessment acknowledged this risk explicitly, noting that EU operators are likely to react to the new regulation by shortening and simplifying supply chains, reducing the number of smallholder suppliers and instead sourcing from larger agricultural enterprises.²⁰⁴

The pattern of disengagement from smallholder-dependent supply chains is a pattern documented in the context of other compliance-driven frameworks. Experiences from other export standard regimes show that strict compliance requirements consistently produce smallholder exclusion. In Kenya, for example, smallholders' contribution to green bean production fell from 60 to 30 percent between 1980 and 2003 as leading exporters dropped smallholders to comply with EU food safety protocols.²⁰⁵

One of the most important issues identified in smallholder compliance efforts is the high costs required as opposed to the lack of resources that small farms and entities usually deal with. At the same time, high compliance costs have historically failed to translate into meaningful price premiums for smallholders.²⁰⁶ Research on certification schemes, the primary compliance mechanism available to smallholders, explains a distinction between the premium price, which reflects quality improvements from training, and the premium fee, which is the direct financial bonus for certification

²⁰¹Jimena Solar, Yovita Ivanova and Christoph Oberlack, 'Human Rights and Environmental Due Diligence Regulations for Deforestation-Free Value Chains? Exploring the Implementation of the EU Regulation on Deforestation-Free Products in the Cocoa and Coffee Sectors of Peru' (2025) 16 *Global Policy*.

²⁰² *ibid* 608.

²⁰³ *ibid*.

²⁰⁴European Commission, *Commission Staff Working Document Impact Assessment: Minimising the Risk of Deforestation and Forest Degradation Associated with Products Placed on the EU Market* SWD(2021) 326 final, pt 1, 62-63.

²⁰⁵ Zhunusova and others (n 184) 4.

²⁰⁶ *ibid*.

participation.²⁰⁷ In practice, farmers do not always receive a premium fee for their certified products, and where they do, the difference compared to non-certified products of the same quality is very small, discouraging uncertified farmers from joining and demotivating certified farmers from staying in the programme.²⁰⁸

In the palm oil sector, independent smallholders participating in certification schemes reported very high compliance costs, including establishing internal control systems, acquiring land titles and preparing audit documentation, while cocoa farmers receive only 3 to 7 percent of the retail price of a chocolate bar, suggesting that compliance burdens are rarely offset by corresponding income gains at farm level.²⁰⁹ Overall, Glasbergen's research, as cited in Carballido et al., concludes that 'there are marginal and uneven economic benefits, uncertain premiums and high costs. There is low understanding and weak organisation, and the transformative capacity of certification alone is limited.'²¹⁰ Therefore, any assumption that the EUDR compliance infrastructure will protect smallholders by generating price premiums does not seem very realistic based on the current picture of certification schemes.

The EUDR's cut-off date of 31 December 2020²¹¹ was designed to ensure that smallholders currently farming on already-cleared land would not be excluded from the EU market, thereby limiting the regulation's adverse social impacts. The Commission's impact assessment presented this as a significant safeguard, noting that it would ensure that nearly all current commodity production from exporting countries could still meet the deforestation-free requirement.²¹² However, the cut-off date does not resolve the compliance burden associated with the legality requirement, which applies regardless of when land was cleared. Smallholders must still demonstrate that their production complies with all applicable legislation, including land use rights, labour standards and FPIC obligations and must provide geolocation data and documentary evidence. For those operating under informal or customary arrangements, this documentation is often unavailable regardless of the cut-off date. The cut-off date therefore addresses only the deforestation-free dimension of the EUDR's requirements while leaving the legality dimension largely unresolved.

²⁰⁷ Pieter Glasbergen, 'Smallholders Do Not Eat Certificates' (2018) 147 *Ecological Economics* 243, 246-247.

²⁰⁸ *ibid.*

²⁰⁹ Zhunusova and others (n 184) 4.

²¹⁰ Aroa Carballido, Ana Arias, Jose Luis Ares-Sainz, Gumersindo Feijoo and Maria Teresa Moreira 'Inclusive by design? Rethinking sustainability standards and certification schemes for smallholders' (2025) 24 *Journal of Agriculture and Food Research* 102470, 2.

²¹¹ Regulation (EU) 2023/1115 (n 7) recitals 45-46.

²¹² European Commission, *Impact assessment* (n 204) 63.

The Regulation's compliance architecture also creates incentives for market consolidation. As operators seek to reduce transaction costs, they are incentivised to source from fewer, larger suppliers who can provide standardised documentation at scale. The country benchmarking system reflects this: by creating lower compliance costs for low-risk countries, it generates additional incentives for operators to disengage from standard and high-risk sourcing areas entirely rather than invest in improving conditions there.²¹³ Quoting the European Commission:

‘By singling out low and high-risk countries, the Commission would facilitate the risk assessment that companies need to do as part of their due diligence obligations. The availability of simplified due diligence for operators sourcing from low-risk countries is also expected to reduce compliance costs’.²¹⁴

The Commission acknowledged that the EUDR will create new compliance-related jobs,²¹⁵ but this benefit accrues primarily to actors with capacity to build or access such systems, large enterprises, monitoring organisations and certification bodies. First-tier producers who lose their connection to EU supply chains, smallholders, and local processors, are precisely those who will not benefit from compliance-related employment growth. The net employment effect at the local level in producer countries is therefore likely to be negative.

The Peruvian case also raised concerns for potential unintended consequences in this regard. Since the EU market accounts for around 50 per cent of Peruvian coffee production and 40 per cent of cocoa production, inability to comply with EUDR requirements may redirect trade towards non-EU markets with lower sustainability standards.²¹⁶ More seriously, where compliance becomes too complex or costly, smallholders may be pushed out of formal value chains altogether. In Peru, cocoa and coffee production has partly developed as an alternative to coca cultivation through state-supported programmes aiming to combat illegal cultivations.²¹⁷ If producers are unable to remain in these formal markets, there is a risk that some may return to illegal activities. This may not only result in undermining livelihoods, but also to counteracting the EUDR's environmental and social objectives.

4.2 Indigenous peoples and land rights

While smallholders in general face exclusion from EUDR supply chains, it is crucial to discuss the structural barriers that can affect Indigenous peoples, whom the EUDR aims to protect with the legality requirement.²¹⁸ Indigenous

²¹³ *ibid* 42.

²¹⁴ *ibid*.

²¹⁵ *ibid* 62.

²¹⁶ Solar and others (n 201) 609.

²¹⁷ *ibid*.

²¹⁸ Regulation (EU) 2023/1115 (n 7) art 2(40) (f) and (g)

peoples are generally understood as socially and culturally distinct groups who self-identify as such and maintain strong ancestral ties to lands, territories and natural resources, alongside their own governance systems, knowledge and cultural practices.²¹⁹ For many Indigenous communities, land has been the basis of livelihood, culture, identity, political autonomy and spiritual life for generations.²²⁰

However, in many cases their rights are not fully recognized under domestic legal systems and the land that they traditionally own lacks official land titles. While Indigenous people's customary rights are exercised over approximately half of the world's lands, only about 20% of those territories are formally recognized as their own.²²¹ Furthermore, although their ties with their lands are internationally protected under the ILO Convention No. 169²²² as well as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP),²²³ national legal frameworks often contradict or override those customary systems causing marginalisation.²²⁴ This gap is particularly significant in the context of the EUDR, given that the legality requirement refers primarily to rights that are applicable under the law of the country of production. In this respect, it is concerning that many major producer countries have not fully incorporated these international instruments into their domestic legal systems, even if they have adopted them, limiting this way their practical effect. This is particularly evident in settler-colonial and post-colonial contexts, where state laws on land tenure, benefit sharing and forest management activities tend to legitimise the sovereignty of the state over Indigenous territories.²²⁵ In doing so, they deny the full autonomous standing of Indigenous structures, authorities and institutions in land and nature governance.²²⁶

Empirical evidence from the case study in Peru showed that Indigenous communities in the Amazon face ongoing conflicts with third parties engaging in activities such as illegal logging, mining and land trafficking within their territories.²²⁷ In such contexts of weak protection, the requirement to demonstrate compliance with domestic legality may not

²¹⁹ Anne Larson and others, 'Land Rights of Indigenous Peoples and Local Communities' in *The Land Gap Report* (2022) 53.

²²⁰ *ibid.*

²²¹ *ibid.*

²²² Indigenous and Tribal Peoples Convention 1989 (No 169) (adopted 27 June 1989, entered into force 5 September 1991) 1650 UNTS 383.

²²³ United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007).

²²⁴ Larson and others (n 219).

²²⁵ Elke Verhaeghe and Sabaheta Ramcilovic-Suominen, 'Transformation or More of the Same? The EU's Deforestation-Free Products Regulation through a Radical Transformation Lens' (2024) 158 *Environmental Science and Policy* 103807, 4.

²²⁶ *ibid.*

²²⁷ Solar and others (n 201) 608.

operate as a safeguard, but instead risks perpetuating existing inequalities by excluding Indigenous communities from EUDR-covered supply chains.

4.3 Labour complexities and informality

The formal forestry sector provides more than 45 million jobs globally, with an additional 41 million in the informal sector.²²⁸ In many EUDR-covered supply chains, labour informality is structural: informal employment in the agricultural sector reaches approximately 99.1 per cent in Côte d’Ivoire, 97.6 per cent in Ghana and 94.6 per cent in Ethiopia.²²⁹ Agricultural labour is commonly associated with low incomes, insecure working conditions, weak labour-rights enforcement, gender inequality and limited access to social protection.²³⁰ Recent joint research by the FAO and ILO similarly highlights that agricultural employment in Latin America remains characterised by structural informality, precarious employment conditions and weak institutional enforcement of labour rights despite the sector’s major contribution to global food production.²³¹

Against this background, the EUDR places labour rights in the relevant legislation of the country of production list that the legality requirement includes. However, the precise scope of labour rights protection is unclear due to the limitations that those rights should ‘specifically impact or influence the legal status of the area in which the commodities were produced’ and to be relevant to the environmental objectives of the Regulation.²³² This ambiguity has generated concerns among stakeholders regarding whether labour rights protections risk being ‘sacrificed’ within the EUDR’s legality framework.²³³

At the same time, the EUDR’s exclusionary compliance logic may not contribute to improving labour conditions in producer countries. In agricultural sectors already characterised by informality and weak labour rights enforcement a zero-tolerance approach does not guarantee - or even leave room for hope- that those systems will change for the better. As discussed throughout this chapter, exclusion from EU-oriented supply chains

²²⁸ European Commission, *Commission Staff Working Document -Impact Assessment: Minimising the Risk of Deforestation and Forest Degradation Associated with Products Placed on the EU Market* SWD(2021) 326 final, pt 1, 16.

²²⁹ Our World in Data, ‘Share of workers in informal employment in the agricultural sector’ (2024) <<https://ourworldindata.org/grapher/informal-employment-in-agriculture?tab=table&time=latest&country=GHA~CIV&mapSelect=GHA~CIV>> accessed 21 May 2026.

²³⁰ International Labour Organization and Food and Agriculture Organization of the United Nations, *Summary of Decent Work and Informality in the Agricultural Sector in Latin America 2019–2023* (ILO and FAO 2026) 7.

²³¹ *ibid* 8.

²³² European Commission, ‘Approval of the Updated Content’, 17.

²³³ Preferred by Nature, ‘Has the EUDR Guidance Sacrificed Labour Rights?’ (Preferred by Nature, 2024) <<https://www.preferredbynature.org/news/has-eudr-guidance-sacrificed-labour-rights>> accessed 19 May 2026.

may push producers and workers towards more informal or less regulated markets characterised by lower levels of scrutiny, weaker labour protections and increased economic vulnerability.²³⁴ In this respect, the EUDR risks intensifying existing structural inequalities rather than improving labour rights protection in producer countries, despite the Regulation's broader sustainability objectives.

4.4 Human rights risks of supply chain disengagement

The exclusion of smallholders and IPLCs from EUDR-covered supply chains may affect the enjoyment of a range of rights protected under international human rights law. This section examines how the documented patterns of disengagement, land consolidation and livelihood loss connect to specific rights and obligations.

4.4.1 The right to an adequate standard of living, the right to food and the right to work

The most immediate human rights consequence of smallholder exclusion is the threat to livelihoods and food security. For millions of smallholders whose income depends on access to high-value export markets, loss of EU market access directly threatens their ability to meet basic needs. This engages the right to an adequate standard of living under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which includes the right to food and the right to continuous improvement of living conditions.²³⁵ The ICESCR has interpreted this right to require states and, by extension, actors whose conduct states regulate, to avoid measures that foreseeably deprive people of existing access to food and income.²³⁶ Where EU regulation drives supply chain consolidation that excludes smallholders from markets on which they depend for subsistence, this standard is engaged. At the same time, such exclusion also affects the right to work under Article 6 ICESCR, which protects the right of individuals to gain a living by work freely chosen or accepted.²³⁷

Beyond the general protections under the ICESCR, the situation of smallholders is also specifically addressed under the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP). The Declaration defines peasants broadly as individuals engaged in small-scale agricultural production, often relying on family or community-based labour and maintaining a particular dependence on and

²³⁴ Solar and others (n 201) 609.

²³⁵ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 11.

²³⁶ UN Committee on Economic, Social and Cultural Rights, *General Comment No 12: The Right to Adequate Food* (12 May 1999) UN Doc E/C.12/1999/5, para 27.

²³⁷ ICESCR (n 235) art 6.

attachment to land.²³⁸ It further recognises, inter alia, their right to food and food sovereignty, to equal access to, use and control of land and natural resources, as well as to decent employment, fair remuneration and access to income-generating activities.²³⁹ In addition, UNDROP emphasises the right of peasants to participate, directly or through representative organisations, in decision-making processes affecting their land, livelihoods and working conditions.²⁴⁰ If smallholders are pushed out of export-oriented agricultural markets without viable alternatives, their ability to sustain their livelihoods through their work is directly undermined.

4.4.2 The right to property and protection against arbitrary dispossession

Supply chain consolidation creates incentives for large-scale enterprises to acquire compliant agricultural land, intensifying existing land conflicts with smallholders and IPLCs. ‘Land grabbing’, i.e. the acquisition or control of land by public or private actors through legal or illegal means is a risk, is already a problem.²⁴¹ This practice has historically targeted local communities, particularly smallholders and Indigenous peoples, especially where land rights are insecure, further increasing the risk of dispossession and loss of control over ancestral lands. Those risks engage the right to property under Article 17 of the Universal Declaration of Human Rights²⁴² and the prohibition of arbitrary dispossession implied through the right to housing under Article 11 ICESCR.²⁴³ For IPLCs specifically, land rights carry additional protection under Article 26 of UNDRIP, which recognises the right of Indigenous peoples to lands, territories and resources they have traditionally owned, occupied or used, regardless of whether those rights are formally registered under domestic law²⁴⁴.

4.4.3 Indigenous peoples' rights: FPIC and self-determination

The human rights implications are crucial for Indigenous peoples, whose relationship to land and forest resources is protected by a distinct body of international law. UNDRIP,²⁴⁵ as well as ILO Convention No. 169²⁴⁶ require that the Free, Prior and Informed consent of Indigenous peoples be obtained before projects affecting their lands and resources are undertaken. Where

²³⁸ UN General Assembly, *United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas* (17 December 2018) UN Doc A/RES/73/165, art 1.

²³⁹ *ibid* art 4.

²⁴⁰ *ibid* art 10.

²⁴¹ Katelyn Baker-Smith and Szocs Boruss Miklós Attila, *What Is Land Grabbing? A Critical Review of Existing Definitions* (Eco Ruralis, August 2016) 2.

²⁴² Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 17.

²⁴³ ICESCR (n 235).

²⁴⁴ United Nations Declaration on the Rights of Indigenous Peoples (n 223) art 26.

²⁴⁵ *ibid* arts 10, 11, 19, 28, 29 and 32.

²⁴⁶ Indigenous and Tribal Peoples Convention 1989 (No 169) (n 222).

EUDR-driven supply chain consolidation displaces Indigenous communities from forest areas without consultation, this right can be violated. The right to self-determination under Article 3 UNDRIP²⁴⁷ and common article 1²⁴⁸ of both ICCPR and ICESCR is also engaged, as displacement from traditional territories and loss of economic independence undermine Indigenous peoples' ability to freely pursue their economic, social and cultural development.

4.5 Tony's Open Chain: the compliance paradox of deep supply chain engagement

Tony's Chocolonely is a Dutch chocolate company focused on addressing exploitation in the cocoa sector and promoting better life conditions for cocoa farmers²⁴⁹. Tony's characteristic unequally divided chocolate bars were inspired by the unequal distribution of profit in the chocolate industry,²⁵⁰ which the company aims to change.

The company developed 'Tony's Open Chain' as a collaborative sourcing initiative aimed at transforming cocoa supply chains through long-term partnerships with cooperatives and other companies.²⁵¹ The initiative seeks to facilitate efficient supply chain mapping allowing other companies ('Mission Allies') to source cocoa through Tony's sourcing model, which combines traceability, human rights due diligence and farmer support measures.²⁵² Tony's Open Chain presents itself as a cooperative-centred and long-term sourcing model that aims to combine an enhanced quality of cocoa production with improved living, working and economic conditions for local farmers.²⁵³

The initiative is relevant to this chapter not only as an example of engagement-based due diligence, but because it illustrates a structural tension at the heart of the EUDR's compliance logic. Companies that invest in deep supply chain transparency, long-term relationships and active risk identification may, under a strict reading of the negligible risk threshold, face great compliance difficulties that could eventually limit valuable efforts aimed at improving human rights, labour conditions and livelihoods for vulnerable farming communities.

²⁴⁷ United Nations Declaration on the Rights of Indigenous Peoples (n 223) art 3.

²⁴⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) and ICESCR (n 223) art 1.

²⁴⁹ Tony's Chocolonely, 'Frequently asked questions' <<https://tonyschocolonely.com/pages/faqs>> accessed 21 May 2026.

²⁵⁰ *ibid.*

²⁵¹ Tony's Open Chain <<https://www.tonysopenchain.com/>> accessed 8 May 2026.

²⁵² Edith Tea and others, 'Putting smallholder farmers at the heart of EUDR implementation' <<https://trase.earth/insights/putting-smallholder-farmers-at-the-heart-of-eudr-implementation>> accessed 23 May 2026.

²⁵³ Tony's Open Chain (n 251).

The initiative is based primarily in Côte d'Ivoire and Ghana, two countries that together account for around 60 per cent of global cocoa production and where millions of smallholder farmers continue to face structural poverty and exploitation.²⁵⁴ Under the EUDR country benchmarking system, Côte d'Ivoire is currently classified as a standard-risk country, while Ghana has been designated as low-risk.²⁵⁵ According to Tony's Open Chain, inequality within cocoa supply chains contributes directly to issues such as illegal labour, deforestation and economic insecurity, with low farm-gate prices and unstable incomes pushing farmers towards harmful coping mechanisms, including reliance on child labour and environmentally harmful production practices.²⁵⁶

In response, Tony's Open Chain has developed a sourcing model structured around five 'Sourcing Principles': traceability, payment of a higher price, long-term commitments, strengthening farmer cooperatives and improving quality and productivity.²⁵⁷ The company describes this approach as moving beyond traditional certification schemes by shifting responsibility from individual farmers to shared responsibility across the entire supply chain.²⁵⁸

In the context of the 'long-term commitments' and the 'strong farmers' sourcing principles, Tony's works closely with partner cooperatives, undertaking five-year commitments with them and supporting them financially to invest in their businesses.²⁵⁹ Tony's Open Chain states that all cocoa within its supply chain is fully traceable through its 'BeanTracker' system and GPS polygon mapping.²⁶⁰ Importantly, the company emphasises that data ownership remains with the cooperatives, allowing them to participate actively in decision-making and implementation processes.²⁶¹

The initiative further seeks to address one of the key concerns identified throughout this thesis: the financial burden of compliance on smallholders. Tony's Open Chain recognises that traceability, mapping and due diligence obligations create additional administrative and operational costs for cooperatives and farmers. To address this, the company pays a cooperative management fee intended to support implementation costs related to traceability, monitoring and organisational capacity-building. In 2023/24,

²⁵⁴ Tony's Open Chain, *Tony's Open Chain Impact Report 2023/2024* (4 February 2025) <<https://www.tonysopenchain.com/news/tony-s-open-chain-impact-report-2023-24>> accessed 8 May 2026.

²⁵⁵ European Commission, 'Country Classification List' (Green Forum 2025) <https://green-forum.ec.europa.eu/nature-and-biodiversity/deforestation-regulation-implementation/eudr-cooperation-and-partnerships/country-classification-list_en> accessed 8 May 2026.

²⁵⁶ Tony's Open Chain, *Tony's Open Chain Impact Report 2023/2024* (n 254).

²⁵⁷ *ibid* 19.

²⁵⁸ *ibid* 16.

²⁵⁹ *ibid* 3.

²⁶⁰ *ibid*.

²⁶¹ *ibid*.

these payments reportedly exceeded EUR 1.4 million across Côte d'Ivoire and Ghana.²⁶² In addition, the company applies Fairtrade's Living Income Reference Price (LIRP), which aims to provide farmers with a higher and more stable income capable of supporting sustainable livelihoods.²⁶³

The model also places significant emphasis on long-term engagement and remediation rather than immediate exclusion from supply chains. Tony's Open Chain explicitly links its human rights approach to the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, recognising that businesses must identify, prevent, mitigate and remediate adverse human rights impacts.²⁶⁴ Importantly, the company states that the increased transparency and traceability required under instruments such as the EUDR and the Forced Labour Regulation should not merely reveal risks, but should also encourage companies to 'act on the issues they find'.²⁶⁵ The reports indicate that the company prioritises identifying risks and supporting remediation over excluding farmers from the supply chain.

Capacity-building is another top priority. Partner cooperatives receive support for agroforestry development, labour brigades, coaching systems and climate resilience projects.²⁶⁶ Coaches work directly with farmers to develop individual farm plans, improve productivity and encourage more sustainable farming practices.²⁶⁷ Through these long-term investments, Tony's Open Chain aims to fight structural poverty, which it identifies as one of the root causes of environmental degradation and human rights violations within cocoa supply chains.

At the same time, the company acknowledges that this process is complex and requires long-term commitment. Tony's Open Chain operates in the cocoa sector, one of the commodities most closely associated with structural poverty, child labour, land insecurity and smallholder dependence, as discussed throughout this thesis. Cocoa production in Côte d'Ivoire and Ghana relies heavily on millions of smallholder farmers whose livelihoods are closely connected to continued access to EU markets. As a result, the risk of exclusion and disengagement is significantly more pronounced in cocoa supply chains, making efforts aimed at inclusion and long-term cooperation particularly important. Despite reporting improvements in some areas, including reductions in child labour prevalence and increases in living income indicators among long-term partner cooperatives, the company recognises that many systemic problems remain unresolved. The reports repeatedly mention that addressing poverty, deforestation and labour exploitation

²⁶² *ibid* 26.

²⁶³ *ibid* 33.

²⁶⁴ *ibid* 47.

²⁶⁵ Tony's Open Chain, *Tony's Open Chain Impact Report 2024/2025* 17.

²⁶⁶ *ibid* 64, 73,

²⁶⁷ *ibid*.

requires long-term structural transformation and continuous collaboration between companies, cooperatives and governments.²⁶⁸ In this regard, Tony's Open Chain continues to grow every year²⁶⁹ and keeps encouraging more companies to join the initiative as 'Mission Allies' in order to scale its impact.

Overall, Tony's Open Chain does everything that the broader EU HREDD framework would seem to encourage: it maps supply chains to the farm level, reveals challenges and structural limitations, maintains long-term relationships with cooperatives, funds capacity-building, absorbs compliance costs on behalf of farmers and documents risks rather than concealing them. This approach towards improving smallholders' livelihoods is a continuous effort that cannot bring results overnight. Yet it is precisely this approach that creates a compliance vulnerability under the EUDR's negligible risk logic that less transparent sourcing models do not face. A company that knows less about its supply chain, because it has looked less carefully, may find it easier to declare negligible risk than one that has invested years in understanding exactly where the problems are and how deep they run. This creates the impression that rather than encouraging companies to invest in improving conditions throughout their supply chains, the EUDR creates incentives to disengage from precisely the contexts where improvement is most needed.

4.6 Discussion

The analysis of the practical and legal consequences above aims to highlight a paradox that runs throughout this thesis. While the Regulation through its legality requirement seeks to contribute to the protection of forests, forest-dependent communities and human rights, including those of smallholders and IPLCs, the risks associated with the compliance with this legality requirement ultimately fall back on the very same vulnerable communities it aims to protect.

Especially since legality is assessed by reference to national legislation, it is uncertain whether the Commission sufficiently accounts for the fact that many domestic legal frameworks in producer countries are incomplete, weakly enforced or subject to political and economic pressure. Earlier EU Forest governance initiatives under the FLEGT Action Plan and the Voluntary Partnership Agreements (VPAs) partly recognised these structural challenges by combining legality-based trade measures with broader accompanying measures aimed at improving governance systems in producer countries.²⁷⁰ These included technical and financial support, development of

²⁶⁸ *ibid.* 5-6.

²⁶⁹ *ibid.* 42.

²⁷⁰ European Commission, *FLEGT Briefing Notes*, 'What is FLEGT? (Briefing Note No 01)

<https://www.europarl.europa.eu/meetdocs/2014_2019/documents/dcam/dv/what_is_flegt/what_is_flegten.pdf> accessed 11 May 2026.

legality verification systems, stakeholder and community participation, policy reform for clearer legislation and independent monitoring.²⁷¹

On the other hand, the formal structure of the EUDR places comparatively greater emphasis on operator due diligence obligations and market-access conditionality. Nevertheless, recent Commission reports suggest that the implementation of the EUDR is increasingly accompanied by technical assistance programmes, traceability initiatives and governance-support mechanisms in producer countries. According to the Commission, producer countries are already using the EUDR as a catalyst to strengthen land-tenure systems, traceability frameworks, forest monitoring and legal clarity.²⁷² EU-supported initiatives such as SAFE, AL-INVEST Verde and MARKUP II further aim to support smallholders and national authorities in adapting to the Regulation's requirements.²⁷³ Similar efforts can also be observed in commodity-specific initiatives such as the EU Sustainable Cocoa Initiative, which combines traceability development, deforestation monitoring, farmer income support and multistakeholder cooperation in major cocoa-producing countries in West Africa.²⁷⁴ The Commission has also announced the creation of a repository of relevant legislation under Article 2(40) in order to improve legal clarity and facilitate compliance.²⁷⁵

At the same time, however, the effects of legality-based regulation may still remain uneven across producer countries, particularly considering that the above-mentioned initiatives cannot bring positive results overnight. Weak domestic legal frameworks may paradoxically facilitate continued access to the EU market if legality standards are lowered, selectively enforced or politically adapted to preserve export competitiveness. In such situations, formal compliance with domestic legality may not necessarily correspond to substantive environmental or human rights protection.

This is not hypothetical, but recent legislative developments in Peru illustrate how national legal frameworks may adapt in response to external market pressure.²⁷⁶ Amendments to forest legislation have reportedly legalised

²⁷¹ EU FLEGT Facility, 'Background: Ghana' (VPA Africa-Latin America Facility) <<https://flegtvpafacility.org/countries/ghana/background/>> accessed 11 May 2026

²⁷² European Commission, *Report from the Commission to the European Parliament and the Council: Simplification Review on the Regulation (EU) 2023/1115 on the Making Available on the Union Market and the Export from the Union of Certain Commodities and Products Associated with Deforestation and Forest Degradation (EUDR)* COM(2026) 191 final 4-6.

²⁷³ *ibid.*

²⁷⁴ European Commission, 'EU Sustainable Cocoa Initiative' (16 October 2025) <https://knowledge4policy.ec.europa.eu/global-food-nutrition-security/topic/sustainable-food-systems/deforestation-free-value-chains/eu-sustainable-cocoa-initiative_en> accessed 23 May 2026.

²⁷⁵ European Commission, 'Approval of the Updated Content' (n 15).

²⁷⁶ Environmental Investigation Agency, *Carving Up the Amazon: How Questionable Companies Bought and Cleared Vast Tracts of the Peruvian Amazon with Government*

previous unlawful deforestation linked to palm oil and cocoa production, allowing companies to continue operating with formal legality under domestic law, and avoiding exclusion from the EU market.²⁷⁷ If such patterns continue and expand across other producer countries, we might start seeing lowered legal standards not only relating to forest protection but also to human rights and labour rights safeguards in the national legal frameworks, so that producer countries maintain access to the EU market. This would not only undermine the effectiveness of the EUDR but could also contribute to human rights degradation in global supply chains.

The discussion above suggests that the human rights effectiveness of the EUDR cannot be assessed through its legal text alone. Even if the interpretative ambiguities identified in Chapter 3 were clarified, the structural conditions driving exclusion would remain. Smallholders without land titles, Indigenous communities whose rights are unrecognised under domestic law, and informal workers invisible to compliance systems are excluded because the legal and governance frameworks on which the Regulation depends do not adequately protect them. This is precisely why a due diligence model centred on continuous risk mitigation, long-term supplier engagement and genuine investment in improving human rights conditions throughout supply chains is better suited to the Regulation's protective ambitions than one focused on guaranteeing outcomes through exclusion.

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²⁷⁷ *ibid.*

5 Conclusion

This thesis has examined the legality requirement under the EU Deforestation Regulation and the human rights implications arising from the interpretative challenges surrounding the due diligence obligations it imposes on companies operating in global value chains. The thesis has sought to identify the key interpretative challenges embedded in the Regulation's structure and to assess their potential consequences for vulnerable actors in producer countries.

The thesis first demonstrated that the legality requirement constitutes the central entry point for human rights considerations within the EUDR. Through references to land-use rights, labour rights, human rights, Indigenous peoples' rights and the principle of Free, Prior and Informed Consent, the Regulation extends beyond its primary environmental objective. At the same time, the effectiveness of these protections remains dependent on the domestic legal frameworks of producer countries, many of which are characterised by weak governance, insecure land tenure and uneven enforcement. Where those frameworks are incomplete, formal compliance with the legality requirement does not necessarily correspond to substantive human rights protection.

Against this background, the thesis identified three interconnected interpretative challenges that the Regulation currently leaves unresolved. First, the ambiguity between obligations of means and obligations of results means that companies face genuine uncertainty about whether compliance requires a guaranteed outcome or a continuous and proportionate process of risk management. Because the consequences of non-compliance are severe - exclusion from the EU market - this uncertainty pushes companies toward the more demanding interpretation, incentivising disengagement from complex sourcing contexts rather than investment in improving conditions. Second, the coexistence of the EUDR and the CSDDD creates a structural tension for companies subject to both instruments simultaneously. The EUDR's negligible risk logic incentivises exclusion from high-risk suppliers, while the CSDDD requires continued engagement, mitigation and remediation as the norm, with disengagement only as a last resort. Third, the negligible risk threshold remains genuinely indeterminate.

The thesis further demonstrated that these interpretative challenges have concrete consequences for smallholders, Indigenous peoples and local communities in producer countries. Empirical evidence from Vietnam, Peru and West Africa confirms that the compliance burden associated with the legality requirement falls disproportionately on those least able to bear it: farmers without formal land documentation, Indigenous communities whose customary rights are not recognised under domestic law, and informal workers who are invisible in compliance systems entirely. The risk of supply chain disengagement and market consolidation is already documented in

early implementation responses and mirrors patterns observed under earlier compliance-driven frameworks.

The EUDR's challenges are both interpretative and structural. The Regulation seeks to protect forests and vulnerable communities through a legal compliance framework, in contexts where legality itself is often weak, uneven or subject to political manipulation. The question raised by this thesis is not whether market-access conditionality is an appropriate tool, but whether its current design adequately accounts for the contexts in which it operates. Resolving the interpretative ambiguities identified in this thesis through clearer Commission guidance, a more coherent articulation of the relationship between the EUDR and the CSDDD, and a more explicit threshold for negligible risk would reduce some of the pressures the Regulation currently generates on operators and suppliers. But it would not be sufficient on its own. Meaningful protection of the smallholders and Indigenous peoples at the end of these supply chains requires treating the Regulation as one component of a broader effort, one that pairs environmental objectives with sustained investment in producer-country governance, and that measures success not only by whether products reach the EU market in compliance, but by whether the communities most affected are better protected as a result.

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