

The new EU Framework for Forest Monitoring and Strategic Plans

ClientEarth's call for an effective regulation to protect EU forests

Contents

Key messages	2
Introduction	3
Building public trust in forest management	5
Public participation concerning Strategic plans for forests	6
Access to justice	7
Case study: how does public access to information about Polish forests look in practice? ..	8
Improving the accessibility of data on European forests.....	9
Increasing the use of remote sensing data in forest monitoring.....	9
Public and common forest data platform at EU level	10
Development of standardised approaches	11
Tools for a non-specialist audience	11
Facilitation of multi-stakeholder dialogue.....	12
Ensuring synergies with EU nature conservation and restoration laws.....	13
Enhancing the enforcement of laws tackling deforestation and illegal logging	14
Strengthening due diligence systems	15
Empowering competent authorities	15
Empowering the public to support good enforcement.....	16
Better reporting of Member States.....	16
Recommendations.....	17

Key messages

ClientEarth warmly welcomes the European Commission's intention to develop a legislative proposal for a new EU Framework for Forest Monitoring and Strategic Plans.

As part of our response to the public consultation launched on 25 August 2022, the present brief seeks to bring to the attention of the Commission three issues that will be crucial in unlocking the potential of this new framework, but have received no or insufficient attention in the online questionnaire accompanying the consultation: **(1)** access to information, public participation and access to justice; **(2)** the accessibility of forest data, in particular remote sensing data and its effective use; and **(3)** the role of forest-related data in the implementation of EU legislation on nature conservation and restoration and on illegal logging and deforestation.

In particular, ClientEarth believes that, in order to be properly effective, the Commission's regulatory proposal should:

- require Member States, as part of their decision-making process for adopting strategic forest plans, to carry out an obligatory strategic environmental assessment and to conduct public consultations following compulsory criteria that guarantee a meaningful participation of members of the public;
- oblige Member States to provide access to justice to members of the public with regards to strategic plans for forests alleged to be in breach of the law;
- grant members of the public access to justice to challenge a Member State's inaction to gather and disseminate required information about forests, or whenever a request for environmental information was ignored, wrongfully refused, inadequately answered, or otherwise not dealt with;
- specify concrete measures to improve the accessibility of remote sensing data on forests by making such data publicly available, in real time, through tools accessible to a non-specialised audience, by creating a public, common and collaborative platform to support forest monitoring, by developing standardised approaches on forest information and remote sensing data, and by linking Earth observation-based services with the EU's forest-related legislation;
- display synergies with the Nature Directives and the Commission's proposal for a Nature Restoration Law and avoid a further multiplication and scattering of reporting mechanisms, by ensuring that monitoring obligations introduced in the proposed new EU Framework for Forest Monitoring and Strategic Plans are coherent with and feed into the reporting and monitoring obligations under those instruments;
- contribute to fulfilling the various obligations deriving from the Commission's proposal for a Nature Restoration Law by facilitating the collection of and access to data and scientific evidence;
- enhance the enforcement of the current EU Timber Regulation and the future EU deforestation regulation, by helping operators to access information required to conduct their due diligence obligations, by empowering the Member States to monitor compliance with these instruments and by enabling the public to support their good enforcement, through public access to actual, complete and harmonised data on EU forests;
- integrate the data on EU forests with the Information System which will be put in place by the future EU regulation on deforestation-free products ('draft Deforestation Regulation').

Introduction

EU forests are under threat. Although the area of EU forest cover has apparently grown in recent decades, the capacity of EU forests to sequester carbon dioxide from the atmosphere decreased by 28% just between 2013 and 2018¹. Most of the timber consumed in the EU comes from domestic forest lands² – but a variety of nature protection laws and other regulations against illegal logging that are in force in Member States do not guarantee that the volumes harvested inside the EU come from either legal or sustainable sources. Indeed, forestry crime or forest mismanagement constitute a serious problem in the EU. Cyprus, Greece and Latvia have been analysed in this context³, as well as Bulgaria⁴ and Slovakia⁵. The examples of the logging of Poland's and Romania's EU-protected forests⁶, and the widespread criticism of the Swedish forestry model⁷ demonstrate that balancing between the conservation of natural resources and the economic use of them can be challenging for many governments. Properly addressing this problem is crucial for the sake of our survival: letting our forests deteriorate undermines the key role that trees – especially mature, old trees – play in the fight against climate change and biodiversity loss.

In this light, ClientEarth welcomes the European Commission's initiative to propose a new regulation concerning Forest Monitoring and Strategic Plans. This regulation has the potential to be a landmark piece of environmental legislation. This is an opportunity to finally view EU forests holistically and recognise and learn about all their functions from providing breeding sites and resting places for wild animals, through absorbing CO₂ and filtering the chemicals from the air, to retaining water and providing timber in a sustainable and responsible manner.

A new EU Framework for Forest Monitoring and Strategic Plans is essential to support and achieve the EU's environmental objectives inherent in the forest-related EU laws and policies. It is also important to ensure public confidence in the EU's environmental governance and increase public engagement in forest monitoring and protection. It will improve the current EU reporting mechanisms on forests⁸, which are scattered throughout different regulatory frameworks, are limited and inconsistent and impede public

¹ European Court of Auditors, EU funding for biodiversity and climate change in EU forests: positive but limited results, p. 30, available at https://www.eca.europa.eu/Lists/ECADocuments/SR21_21/SR_Forestry_en.pdf.

² In 2020, according to FAO data, roundwood and industrial roundwood production in the EU accounted for 602 361 000 m³ (approx. 83%), while roundwood and industrial roundwood imports to the EU accounted for 118 151 m³ (approx. 17%). See also G.J. Nabuurs, Does the EU rely on Russia for its wood? (Is de EU voor haar hout afhankelijk van Rusland?), available at <https://www.wur.nl/nl/nieuws-wur/Show/Is-de-EU-voor-haar-hout-afhankelijk-van-Rusland.htm>.

³ K. Kindji (2021), Internal and external dimension of illegal logging: legal issues and solutions, p. 25, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/700009/IPOL_STU\(2021\)700009_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/700009/IPOL_STU(2021)700009_EN.pdf).

⁴ WWF (2020), EU Forest Crime Initiative. Gap Analysis: Bulgaria, p. 13, available at <https://www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/EU-Forest-Crime-Initiative-Bulgaria-GAP-Analysis.pdf>. See also Fitness Check, p. 21.

⁵ WWF (2020), EU Forest Crime Initiative. Gap Analysis: Slovakia, p. 14, available at <https://www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/EU-Forest-Crime-Initiative-Slovakia-GAP-Analysis.pdf>.

⁶ Read more at <https://www.clientearth.org/latest/latest-updates/stories/saving-bialowieza/> and <https://www.clientearth.org/latest/press-office/illegal-logging-of-romania-s-natural-forests-increases-despite-court-threat-new-report/>.

⁷ Swedish forestry model which allows clear-cuts and replacing natural woodlands with monocultures has been widely criticised in the public debate. See e.g. R. Orange (2021), Sweden's green dilemma: can cutting down ancient trees be good for the Earth?, available at <https://www.theguardian.com/environment/2021/sep/25/swedens-green-dilemma-can-cutting-down-ancient-trees-be-good-for-the-earth>. M. Westberg (2021), 'Forests are not renewable': the felling of Sweden's ancient trees, available at <https://www.theguardian.com/environment/gallery/2021/apr/16/forests-felling-swedens-ancient-trees-biodiversity-sami-environment>.

⁸ Forest monitoring and reporting mechanisms are available under the Nature Directives, and Land Use, Land Use Change and Forestry (LULUCF) Regulation.

access to information. An EU-wide observatory would help to monitor EU forests in an integrated way – as national forest inventories vary across Member States in both scope of the data and methodologies⁹.

In this respect, the new initiative should be aligned and contribute to achieving the ambitious goals set out in the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan¹⁰, the EU Forest Strategy¹¹ and the EU Biodiversity Strategy¹². In order to be consistent with these policy objectives, the new Framework must also underpin the enforcement of the existing laws, including the EU Timber Regulation ('EUTR')¹³ and the Nature Directives¹⁴. Furthermore, the EU Framework for Forest Monitoring and Strategic Plans should consider and contribute to the operational effectiveness of the future relevant laws that are currently under development, namely the draft Deforestation Regulation¹⁵ and the proposed regulation on Nature Restoration ('NRL proposal')¹⁶.

At ClientEarth we have a long-standing commitment to forest protection. We are concerned with the protection of forest ecosystems, old-growth forests and forest species, as well as the legality and transparency of the timber market, access to forest information and access to justice in forest-related matters.

In this paper, we wish to draw attention to the issues that, in terms of our experience and knowledge, are key to unlock the potential of the new EU Framework for Forest Monitoring and Strategic Plans. However, these issues have not been – either sufficiently or at all – touched upon in the online questionnaire provided by the Commission, accompanying the public consultation on the framework.

We call on the Commission to take into account the missing issues, such as:

- building public trust in forest management through access to information, public participation and access to justice;
- the accessibility of forest data, in particular remote sensing data and its effective use; and

⁹ Y. Paillet, J. Parvainen, M. Gosselin, F. Gosselin, M. Lier (2013), Monitoring forest biodiversity in Europe: state of the art, challenges, and opportunities [in:] D. Kraus, F. Krumm (eds.), Integrative approaches as an opportunity for the conservation of forest biodiversity, p. 245-246, available at www.integrateplus.org/uploads/images/Mediacenter/integrate_book_2013.pdf.

¹⁰ European Commission (2003), Communication on Forest Law Enforcement, Governance and Trade (FLEGT) - Proposal for an EU Action Plan, COM/2003/0251 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52003DC0251>.

¹¹ European Commission (2021), Communication on New EU Forest Strategy for 2030, COM(2021) 572 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0572>.

¹² European Commission (2020), Communication on EU Biodiversity Strategy for 2030, COM(2020) 380 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1590574123338&uri=CELEX:52020DC0380>.

¹³ 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 (OJ L 295, 12.11.2010, p. 23–34).

¹⁴ The EU Birds and Habitats Directives, respectively, Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7–25), and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.07.1992, p. 7–50).

¹⁵ European Commission (2021), Proposal for a regulation of the European Parliament and 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, available at [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2021/0366\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2021/0366(COD)&l=en).

¹⁶ European Commission (2022), Proposal for a Regulation on nature restoration, https://environment.ec.europa.eu/topics/nature-and-biodiversity/nature-restoration-law_en

- the crucial role of complete and harmonised data on forests in the implementation and enforcement of relevant legislation, such as the EUTR and the draft Deforestation Regulation and the NRL proposal.

Building public trust in forest management

According to the description of the initiative on the new EU Framework for Forest Monitoring and Strategic Plans, the collected information on EU forests “will lead to more data-driven decision-making on forests. It is expected to increase public trust in forest management [...]”¹⁷.

In the context of these objectives, it is crucial that information on forests is promptly accessible to the general public. Even if the decision-making processes regarding forests are based on more timely and accurate data, this process alone will not increase public trust in forest management without efficient and effective public access to information.

Based on our experience in countries such as Poland or Romania, where most forest areas are in the public domain¹⁸, the lack of effective, institutional oversight and monitoring of state-owned forests, combined with the lack of transparency of institutions managing the majority of wooded land, constitute the main reasons for the lack of public trust.

For example, in Poland, forests belonging to the State Treasury are managed by the governmental organisation State Forests National Forest Holding (State Forests). State Forests carries out their activities on the basis of Forest Management Plans (FMPs) drafted for each local unit – a forest district. Although the content of FMPs is publicly available, State Forests notoriously denies citizens access to information about its actual current activities conducted on the basis of the plans¹⁹ (see more in the case study below). This prevents awareness and supervision by the community over their common good – Polish forests. Moreover, members of the public, including non-governmental organisations, are not able to challenge FMPs in an administrative review procedure or before court²⁰. The lack of access to justice in regard to FMPs is another issue that undermines public trust in forest management in Poland²¹.

¹⁷ The description of the initiative on the EU Framework for Forest Monitoring and Strategic Plans available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13396-EU-forests-new-EU-Framework-for-Forest-Monitoring-and-Strategic-Plans_en

¹⁸ The State Forests Information Centre (2015), Forests in Poland 2015, p. 5, available at <https://www.lasy.gov.pl/pl/informacje/publikacje/in-english/forests-in-poland/forests-in-poland-2015>; Nichiforel, L., Bouriaud, L., Dragoi et al. (2015) Forest Land Ownership Change in Romania, table 1, p. 8, available at https://facesmap.boku.ac.at/library/FP1201_Country%20Report_ROMANIA.pdf

¹⁹ Polish administrative courts have ruled several times against the denial of environmental information by State Forests, see for example: the judgement of the Regional Administrative Court in Poznań from 28 October 2021, IV SA/Po 520/21. Read more at <https://siecobywatelska.pl/tajny-jak-lesniczy/> (in Polish). More in the case study provided in this paper.

²⁰ In December 2020 the European Commission referred Poland to the CJEU over the lack of access to justice with regard to FMPs. Read more at https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2152

²¹ In December 2020, the Commission referred Poland to the CJEU over, among other issues, lack of effective judicial protection of the public with regards to the forest management plans that may have significant effects on Natura 2000 sites. Similar problems exist also in other Member States. For example, in Romania, even the access to FMPs is limited as they tend not to be disclosed to the general public. In extreme, although not uncommon cases, FMPs drafted for Romanian forests have been in force many years before appropriate assessment procedures are even initiated. Read more at <https://www.clientearth.org/latest/latest-updates/news/romania-facing-legal-action-over-destruction-of-europe-s-last-natural-forests/>

EU forests are often managed in a superficial manner, meaning that FMPs or their equivalents in other Member States are either not correctly implemented or they have never been developed²². However, the lack of information and poor access to justice do not allow the public to monitor the process of implementation and react when a risk of non-compliance is detected.

The arbitrary, opaque and confusing nature of forest management, the systemic barriers limiting access to information regarding forestry practices, as well as limited access to justice all lead to distrust and scepticism among EU citizens. The social context has already changed, with the public demanding greater accessibility of environmental information and accountability of public bodies and private entities²³.

A new EU Framework for Forest Monitoring and Strategic Plans has the potential to improve the situation and build public trust in both forest management and the authorities in charge. To achieve this, **the regulation should ensure that the new obligations imposed on Member States are at all levels accompanied by effective public rights regarding access to information, public participation and access to justice as set out in the Aarhus Convention²⁴.**

Public participation concerning Strategic plans for forests

As forests cover almost 50% of EU land²⁵ (with the majority of Member States having at least 30% of their land covered with forests²⁶), strategic plans for forests will have significant effects on EU environment, including on biodiversity, climate, clean air and soil.

Under the new regulation, strategic plans for forests and the forest-based sector would explicitly fall within the definition of ‘plans and programmes’ in Article 2(a) of the Strategic Environmental Assessment (‘SEA’) Directive²⁷. According to Article 3(2)(a) of the SEA Directive, such plans should be subject to all the requirements of the SEA Directive, including the conduct of an obligatory environmental assessment and public consultations at the earliest stage of the decision-making process. It would be of particular importance for the new regulation to exclude the possibility of Member States to arbitrarily decide if – for certain areas – an environmental assessment is needed or not, as envisaged in Article 3(3) of the SEA Directive. This could be a serious loophole that would undermine the general effectiveness of the new regulation.

²² E. Vadell et al, Forest management practices in Spain: Understanding past trends to better face future challenges, *Forest Ecology and Management*, Volume 524, 2022, available at <https://doi.org/10.1016/j.foreco.2022.120526>.

²³ This has been reflected in European politics – the most recent example is the result of the vote of the European Parliament for a strong EU Deforestation law on 13 September 2022.

²⁴ Implemented to the EU law by the Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Union institutions and bodies.

²⁵ According to Eurostat (2020): In 2020, there were an estimated 180 million hectares of forests and other wooded land in the EU-27, corresponding to around 5% of the global forested area. This area covered by forests and other wooded land equated to 45.1% of the EU-27’s land area (in other words the total surface area excluding lakes and large rivers (...)). See more at Eurostat (2020), *Agriculture, forestry and fisheries. 2020 edition*, p. 87, available at <https://ec.europa.eu/eurostat/documents/3217494/12069644/KS-FK-20-001-EN-N.pdf>.

²⁶ *Ibidem*, p. 89.

²⁷ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

The decision-making process of drafting strategic plans for forests must be clear and accessible to all interested stakeholders. To achieve this, the new regulation should provide for a set of obligatory criteria to be fulfilled by Member States that would make public consultations meaningful, such as:

- Member States must guarantee that members of the public are able to read and express their opinion on the draft strategic plans on forests (with the accompanying reports) at the earliest stage possible;
- Member States must either integrate the opinions of the public into the draft plans or present substantiated reasons for not taking these opinions into account during the decision-making process;
- Member States must publicise the plans once adopted, along with a summarising or explanatory statement, including the reasons for choosing one plan over other reasonable alternatives.

Access to justice

Sadly, the implementation and enforcement of environmental laws are rarely treated as a priority by state authorities, with the consequence that the competent authorities appointed to be responsible for enforcement often struggle with personnel and budgetary shortcomings. Thus, even strongly worded provisions do not guarantee that they will be properly enforced at national level. Consequently, these provisions should be safeguarded by ones which would explicitly guarantee access to justice for members of the public in regard to public participation, access to information and other acts or omissions by private persons and public authorities which contravene provisions of law relating to forests:

- In addition to taking an active role through public consultation in the decision-making process for strategic plans for forests, **members of the public, including non-governmental organisations, should be able to challenge strategic plans for forests through administrative review procedures or before court**, as required by Article 9(3) of Aarhus Convention. This should cover situations where the plan is alleged to be in breach of certain provisions of the law (e.g. the plan violates nature protection laws), or of procedural requirements (e.g. the plan has not been properly consulted with the public). The new regulation should explicitly set out the obligation to provide access to justice for members of the public with regard to Strategic plans for forests in order to avoid situations such as that in Poland, where civil society has been deprived of the possibility to challenge FMPs for years.
- Members of the public should also have access to justice regarding environmental information related to forests, gathered and actively disseminated in accordance with Article 5 of the Aarhus Convention. Complete, aggregated and harmonised data on EU forests is crucial to properly protect the environment but also to conduct ethical businesses and – in many Member States, where forests are owned by a state treasury – to monitor and control how the public wealth of forests is managed. Member States should be obliged not only to conduct monitoring activities and gather relevant information, but also to make this information publicly available. Consequently, under the new regulation, **any natural or legal person should be able to challenge the inaction of a Member State to gather and disseminate the required information about forests** before a court of law or another independent and impartial body established by law, as an omission that contravenes provisions of law relating to the environment under Article 9(3) of Aarhus Convention. Access to justice for members of the public should be also granted whenever a request for environmental information was ignored, wrongfully refused, whether in part or in full, inadequately

answered, or otherwise not dealt with in accordance with the provisions of Article 4 of Aarhus Convention, as required by Article 9(1) of Aarhus Convention.

Ensuring that access to justice is explicitly guaranteed in the new framework would grant the public with an effective tool to hold Member States accountable for their legal omissions in regards to forest monitoring and strategic planning.

Case study: how does public access to information about Polish forests look in practice?

Almost 80% of Polish forests are managed by a governmental organisation – State Forests, on behalf of the Polish State Treasury²⁸ – who holds a dominant, near-monopoly position in the Polish timber market²⁹, while also assigned with the duty to protect public forests.

Given the independent, quasi-governmental position of State Forests in Poland and its track record of forest mismanagement (the cases of illegal logging in the protected forests in Białowieża³⁰ and of other forest misgovernance reported in regards to other parts of Poland³¹ are telling), **transparency regarding the organisation’s activities should be of crucial importance**. Unfortunately, this is not the case: State Forests has consistently denied Polish citizens access to information about public forests. This is even more troubling, as the control of Polish competent authorities over the activities State Forests is highly ineffective³². This means that neither public or state authorities have the means to verify the legality of the activities of State Forests.

ClientEarth has been exposed to this lack of transparency when trying to verify information about the reported misconduct of State Forests in Puszcza Karpacka (a 315,000-hectare forest complex in southern Poland which is home to a variety of primary species and habitats but is subject to extensive commercial logging by State Forests). In 2021, following alarming reports from the scientific world and the media³³,

²⁸ The Polish Central Statistical Office (2021), Forestry in 2020, p. 1, available in Polish at https://stat.gov.pl/files/gfx/portalinformacyjny/pl/defaultaktualnosci/5510/3/2/1/lesnictwo_w_2020_r.pdf.

²⁹ In 2011, a Polish court expressly confirmed that State Forests holds ‘a very strong dominant position’ in the Polish timber market (ruling of the Court of Competition and Consumer Protection of 21 January 2011, ref. no. XVII AmA 115/10).

³⁰ The judgement of the CJEU of 17 April 2018 in Commission v Republic of Poland (C-441/17, ECLI:EU:C:2018:255). See more at <https://www.clientearth.org/latest/latest-updates/stories/saving-bialowieza/>.

³¹ Apel w sprawie Puszczy Karpackiej Komitetu Biologii Środowiskowej i Ewolucyjnej Polskiej Akademii Nauk – PAN (2021), available at <https://naukadlaprzyrody.pl/2021/03/31/apel-w-sprawie-puszczy-karpackiej-komitetu-biologii-srodowiskowej-i-ewolucyjnej-pan/>. M. Suchorabski (2019), Wycinka starodrzewów w Karpatach trwa. Za dziesięć lat Bieszczadzki Park Narodowy stanie się

wyspą, available at <https://serwisy.gazetaprawna.pl/ekologia/artykuly/1425235.puszcza-karpacka-wycinka-starodrzewow-bieszczadzki-park-narodowy-jak-wyspa.html>. Stowarzyszenie Pracownia na rzecz Wszystkich Istot (2021) Lasy poza kontrolą. Raport o wybranych nieprawidłowościach gospodarki leśnej w obszarach cennych przyrodniczo w Polsce, available at https://pracownia.org.pl/upload/filemanager/pracownia.org.pl/Dokumenty/Improper_forest_management_Poland.pdf

³² ClientEarth (2022), Analysis of the Implementation and Enforcement of the EU Timber Regulation in Poland, available at <https://www.clientearth.pl/media/wvplxq0q/implementation-and-enforcement-of-the-eu-timber-regulation-in-poland.pdf>

³³ Letter of the Polish Academy of Sciences against the logging in the Carpathians Region (2021), available at <https://naukadlaprzyrody.pl/2021/03/31/apel-w-sprawie-puszczy-karpackiej-komitetu-biologii-srodowiskowej-i-ewolucyjnej-pan/>. M. Suchorabski, Wycinka starodrzewów w Karpatach trwa. „Za dziesięć lat Bieszczadzki Park

ClientEarth submitted three requests for environmental information to three forest districts located in Puszcza Karpacka, concerning issues of nature protection measures at the sites of harvesting and the details of timber logging and trade. All three districts denied our requests, on the ground that the requested information did not fall within the definition of ‘environmental information’.

In 2022, ClientEarth filed the same requests but the essential questions asked were again left without proper response. Even though our requests were all identical and the forest units of State Forests are all bound by the same laws in regards to disclosing environmental information, each of the forest districts applied different strategies in providing incomplete and negative responses to our requests – which have resulted in ClientEarth launching four separate court proceedings that are currently ongoing.

This particular battle over information about the valuable Puszcza Karpacka is both time- and cost-consuming. As an environmental organisation, we have some limited resources to pursue such proceedings, and it is clear that the majority of the public has even more restricted means to do so. Hence, ensuring the public accessibility of data on EU forests is crucial to provide citizens and civil society with access to information about their environment³⁴ and help them spot cases of non-compliance with EU and national laws.

Improving the accessibility of data on European forests

Increasing the use of remote sensing data in forest monitoring

In 2017, in relation to illegal logging in the Białowieża Forest in Poland, the CJEU stated that the satellite images of the protected forest area presented are “sufficient [...] to raise doubts that Poland has complied fully with the order [...] of the Court [...] or that it intends to comply with the present order [...]”³⁵. The Białowieża Forest case has proven that remote sensing can be a powerful and reliable forest monitoring tool in the EU.

However, the use of remote sensing in detecting non-compliance with the environmental *acquis* in the EU has been limited to date. The frequent cases of lack of access to information, lack of coordination between relevant initiatives, as well as the fact that data is often presented in ways that are difficult to decode for a non-specialised audience, create barriers to the effective use of remote sensing technologies to support the protection of our forests.

Therefore, a strong focus on utilizing these technologies for forest monitoring in the EU Forest Strategy is a welcome step forward³⁶. The anticipated new legislative proposal on an EU Framework for Forest Monitoring and Strategic Plans should uphold and reinforce the level of ambition presented in the Forest Strategy and specify the concrete measures necessary to ensure that the potential of remote sensing data is fully realised.

Narodowy stanie się wyspa” (2019), available at <https://serwisy.gazetaprawna.pl/ekologia/artykuly/1425235.puszcza-karpacka-wycinka-starodrzewow-bieszczadzki-park-narodowy-jak-wyspa.html>.

³⁴ In Poland, the right to environmental information is guaranteed by the Constitution.

³⁵ CJEU Order of 20 November 2017 in Case C-441/17 R, *Commission v Poland*, paragraph 112.

³⁶ See point 4 of the EU Forest Strategy for 2030 available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021DC0572&from=EN>

In 2021, ClientEarth conducted a survey, which resulted in over 50 Europe-based environmental scientists and organisations expressing their needs and sharing problems they face in relation to the access and use of forest information, with emphasis on remotely-sensed data³⁷. Building on the findings of the survey and on our own experience, we have developed a set of recommended actions that are essential to ensure effective monitoring of European forests based on remote sensing data. The new EU Framework for Forest Monitoring and Strategic Plans should focus on:

- making the remote sensing data on forests both publicly available and easily accessible to non-specialised audience;
- ensuring the effective use of remote sensing data on forests by making them available in real time, rather than relying solely on staggered reporting mechanisms;
- creating a public and common EU-wide platform to support forest monitoring efforts, which will be paired with development of participatory and collaborative tools;
- developing standardised approaches on forest information and remote sensing data;
- linking Earth observation-based services with the EU's forest-related legislation to better monitor and enforce the EU law.

The implementation of these actions would contribute to the democratization of forest governance and the decline in non-compliance with both the existing EU legislation (in particular with the Nature Directives and the EUTR), as well as the new EU initiatives (i.a. the draft Deforestation Regulation and the NRL proposal). ClientEarth urges the Commission to give serious consideration to EU citizens' needs for increased accessibility of remote sensing data and comprehensively address these needs in the legislative proposal for the new EU Framework for Forest Monitoring and Strategic Plans.

Public and common forest data platform at EU level

The use of remote sensing technologies for tracking environmental enforcement and detecting non-compliance is growing. There is a wide range of projects aimed at exploiting their potential, both within the EU and globally, focusing on monitoring of forest cover changes³⁸. These initiatives are undertaken by a variety of stakeholders, including scientific institutions, international organisations and private entities. However, holistic information remains difficult to find and integrate due to scattered data sources, various incompatibilities in formats, data models, data fragmentation, and non-existing or inappropriate data policies.

At the same time, national institutions, who usually tend to be trusted and authoritative information sources, only rarely provide remote sensing databases tracking forest cover loss: just 15.4% of respondents to the survey, conducted by ClientEarth in 2021, knew of the existence of such database in their country, and

³⁷ The results of ClientEarth's survey are not published, but can be shared on request.

³⁸ See for example: Digital Dryads; enviroLENS; Global Forest Watch; the FAO's global Forest Resource Assessments; examples of maps based on EO concerning forest biomass estimates; ForBioSensing; SkyTruth; Monitoring of the Andean Amazon Forest (MAAP project).

only 23% of these databases are considered up-to-date. The national remote sensing forest databases have also received low scores in terms of credibility³⁹ and completeness⁴⁰.

For remote sensing data to achieve its potential to support forest monitoring efforts in the EU, **a public and common EU-wide platform needs to be created and used to coordinate action** in the long run. The establishment of such platform should facilitate the full spectrum of stakeholders to feel engaged and motivated to work in unison. The institutional leadership of the EU is essential for these efforts to be coordinated and delivered upon. The Copernicus Programme managed by the European Commission and the European Environment Agency enjoy sufficient credibility to deliver unbiased forest-related remote sensing data. The European Commission, in its roles of proposing and enforcing environmental legislation, is in the best position to coordinate European efforts to improve forest monitoring, often carried out as an obligation arising from EU law.

The natural base for the public EU-wide platform providing forest information and remote sensing products is the Forest Information System for Europe (FISE), that should be further developed in accordance with the objectives of the 2030 Forest Strategy.

Development of standardised approaches

Such a platform, covering information on forest areas across multiple European countries, would have to be supported by the development of standardised approaches on forest information and remote sensing data. Remote sensing is a very diverse field, and there is a plethora of data formats, distribution methods and processing techniques⁴¹. Potential users are mostly unfamiliar with the large variety of imagery and methodologies that are available, making it impossible for them to find the most suitable method for their needs. A harmonisation of approaches across the European Union, as an interdisciplinary collaboration between research communities, policy-makers and environmental organisations could pave the way for remote sensing products that are best suited for effective forest monitoring and applicable across the whole EU.

Tools for a non-specialist audience

Investments in creating a common platform, employing standardised approaches must be paired with the development of easy-to-use applications that accommodate everyone seeking information on European forests. Potential users of the platform are unlikely to want to be burdened with the need for new software or extensive, long training sessions to learn to work with remote sensing. The remote sensing products and services should therefore be user-friendly and intuitive. The non-expert public should be able to make sense out of the avalanche of data to identify forest areas of interest or spot changes in forest cover. The implementation of additional tools and features facilitating public participation and forest monitoring is necessary.

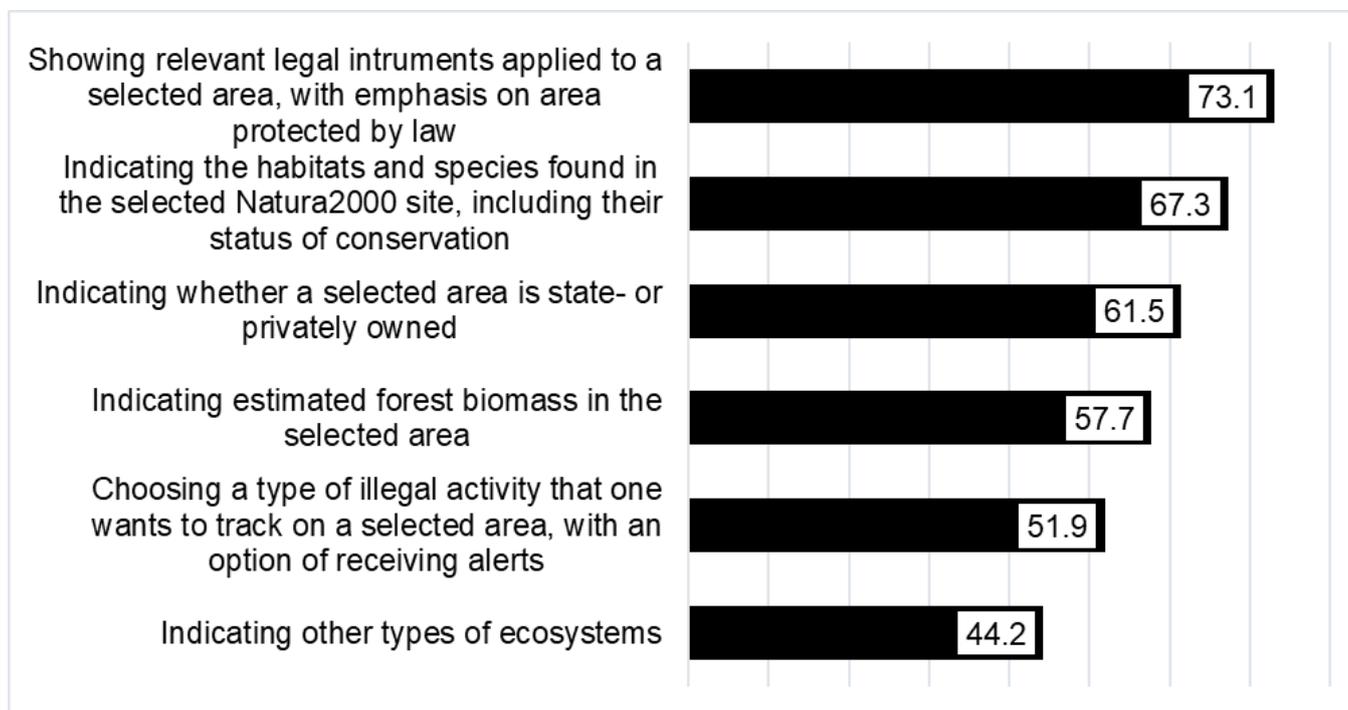
In ClientEarth's survey in 2021, we asked the respondents which tools and features they would like to find on the EU platform providing forest information, including remote sensing data. Over 70% of respondents requested data visualisation and data analyses, features that turned out to be more relevant for potential users than published raw data (58.8%). Remaining features selected by the respondents included thematic

³⁹ 29.2% of respondents have found the information in the bases credible

⁴⁰ 28% of respondents have found the information in the bases complete.

⁴¹ Lehmann, A.; Chaplin-Kramer, R.; Lacayo, M. et al. (2017). Lifting the Information Barriers to Address Sustainability Challenges with Data from Physical Geography and Earth Observation. *Sustainability* 9 (5), p. 858.

reports (64.7%), citizen science data & knowledge base (49%), alert mechanisms for areas selected by the user (41.2%) and a forum for stakeholders (33.3%). The answers to the additional question on preferences on data visualisation tools are presented in the chart below.



It is important to note that almost three quarters of respondents requested a function that would identify the relevant legal instruments that apply to a selected forest area. Today, the remote sensing products do not seem to be developed with the applicable regulatory or legal sectors in mind⁴². However this can be changed through improved cooperation between remote sensing scientists, environmental lawyers and policy makers. A cross-sectoral EU-wide platform providing remote sensing data on forests could fill the communication gaps between those who produce and deliver information and users or potential users. As explained below, the opportunity could also now be taken to incorporate and encourage the use of scientific tools and technological developments in the policy and regulatory frameworks currently under development in the EU.

Facilitation of multi-stakeholder dialogue

Making the platform a clear and inclusive hub for promoting dialogue between all actors engaged with forest policies across Europe would be invaluable. It can be done by introducing collaborative discussion forums or regular meetings of the community of users of the platform. This form of cooperation could result in numerous positive developments, such as:

- Increased awareness about the range of solutions based on remote sensing-derived information, including its potential to detect non-compliance;
- Consequently, an increased level of compliance with European law;

⁴² Purdy, R. (2010). Satellite Monitoring of Environmental Laws: Lessons to Be Learnt from Australia. *Centre for Law and the Environment Research Report*.

- Remote sensing products being better tailored to the needs of stakeholders in the forestry sector;
- Increased transparency and trust of the public, better coordinated forest monitoring, improved sharing and exchange of information;
- Knowledge transmission and sharing best practices among policy makers, remote sensing experts, forest managers, environmental organisations and scientists.

Ensuring synergies with EU nature conservation and restoration laws

On 22 June 2022, the European Commission presented its proposal for the new Regulation on nature restoration⁴³. The NRL proposal primarily constitutes the EU's recognition of the benefits of ecosystem restoration to biodiversity, particularly through the realization that conservation alone is not enough given the current state of Europe's nature, but rather that biodiversity loss should be reversed in order to bring the EU on a path to recovery. Furthermore, the NRL proposal aims at addressing the climate crisis, both in terms of climate change mitigation, but also from a disaster risk resilience and reduction perspective.

This will be brought about, *i.a.*, through the improvement of the ecological condition of carbon-rich terrestrial areas, including forests. The NRL proposal sets out specific objectives for forests, such as the objective of seeing an 'increasing trend' in forests in relation to indicators listed in Article 10(2) of the proposal. These indicators include the amount of deadwood, the share of forests with uneven-aged structure, forest connectivity and the stock of organic carbon. The 'satisfactory level' – a final step of the 'increasing trend' – for each of these indicators should be set by 2030, based on the latest scientific evidence (Article 11(3) of the NRL proposal).

At present, a lack of shared monitoring and standardised methodologies means there is no common understanding among Members States about the current condition of EU forests. Solid and harmonised baseline data is needed to track changes in forest conditions and set 'satisfactory levels' according to the latest scientific evidence.

Article 17 of the NRL proposal only partially responds to these needs. This provision defines the rules for monitoring of the state of progress in the implementation of the NRL proposal. For example, Article 17(8) states that "Member State monitoring systems (...) shall maximise the access and use of data and services from remote sensing technologies, earth observation (Copernicus services), in-situ sensors and devices, or citizen science data (...)". Further, Article 17(9)(b) indicates that the Commission may adopt implementing acts to specify the methods for monitoring the indicators for forest ecosystems listed in Article 10(2).

With the new restoration targets and monitoring obligations arising from the Nature Restoration Law, there is a risk of further multiplying and scattering of forest related data and reporting mechanisms. This can be prevented if monitoring and reporting under the Nature Restoration Law and the Nature Directives are combined and harmonised in the new EU Framework for Forest Monitoring. This should happen at the earliest possible stage. The Forest Monitoring Framework has a key role to play here – it has the potential to provide stakeholders with timely, harmonised, interoperable

⁴³ The Commission's proposal for the new Nature Restoration Law available at https://environment.ec.europa.eu/publications/nature-restoration-law_en

data on the condition of forest ecosystems, and consequently, to reduce administrative burdens associated with the monitoring and reporting processes.

To this end, ClientEarth recommends that the new EU Framework for Forest Monitoring and Strategic Plans should **ensure the continued applicability of and avoid overlaps with the future Nature Restoration Law and the Nature Directives**. This means in particular that:

- Monitoring and reporting under the above instruments should be **integrated and synergistic**. Monitoring obligations introduced by the new EU Framework for Forest Monitoring should feed into the reporting obligation under Article 17 of the Habitats Directive, as well as under monitoring obligation under Articles 17 of the NRL proposal to avoid duplication of work, data inconsistencies, or additional burden to Member States.
- The new EU Framework for Forest Monitoring and Strategic Plans should contribute to fulfilling the various obligations deriving from the NRL proposal by **facilitating the collection of and access to data and scientific evidence**. This data can later be used in setting the 'satisfactory levels' for indicators of the condition of the forest ecosystem (Article 11(3)), in quantifying restoration areas (Article 11(2)(a)(iv)) or in monitoring and reporting (respectively Article 17(5) and Article 18(2) of the NRL proposal).

Enhancing the enforcement of laws tackling deforestation and illegal logging

The EU is one of the largest consumers and a significant producer of timber and timber products worldwide⁴⁴. Consequently, it has the power to influence market patterns and incentivise stronger demand for legal and sustainable commodities. Having acknowledged this impact, the EUTR in 2010 – a legal tool aimed to eliminate illegal wood from EU market⁴⁵. The EUTR is based on a due diligence process, which requires companies who first place the timber on the EU market (operators) to thoroughly investigate whether the products in their supply chain have been harvested in compliance with applicable laws. Better access to forest data comes out helpful for all involved in the fight against illegal timber flows: **operators gain additional evidence** to confirm the legality of their products, while **competent authorities and civil society obtain new tools to detect and hold accountable** the companies who perpetuate illegal timber harvest and trade.

⁴⁴ European Commission (2013), The impact of EU consumption on deforestation: Comprehensive analysis of the impact of EU consumption on deforestation, available at <https://ec.europa.eu/environment/forests/pdf/1.%20Report%20analysis%20of%20impact.pdf>. See also FAO (2020), Forest product consumption and production, available at <https://www.fao.org/forestry/statistics/80938@180723/en/>.

⁴⁵ 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 (OJ L 295, 12.11.2010, p. 23–34).

Strengthening due diligence systems

Building on the due diligence process⁴⁶ imposed by the EUTR, the draft Deforestation Regulation requires operators to conduct due diligence in order to ascertain that certain forest-risk commodities and related products placed on or exported from the EU market – including timber – are produced legally and are “deforestation-free”. Operators need to collect adequate and verifiable information demonstrating that these commodities and products are not linked to deforestation or forest degradation after a certain date and were not produced in non-compliance with applicable legislation⁴⁷.

The information that the operators are required to obtain both under the current EUTR and the proposed Deforestation Regulation must be supported by evidence. Public access to harmonised data on EU forests would, therefore, help operators to assess the authenticity of the information they have gathered during the due diligence process and more efficiently demonstrate that they are in compliance with the law.

Empowering competent authorities

The EUTR has had some success in reducing illegal logging imports to the EU⁴⁸, but data shows that it needs to be significantly strengthened⁴⁹, especially in regards to enforcement. Despite an estimated number of 3-4 million domestic EUTR operators in the EU⁵⁰, only 42,896 entities were checked against the requirements set out in the EUTR between 2015 and 2020⁵¹. This means that 99% of operators that were placing domestically-harvested timber on the EU market in this period were not subject to checks regarding the legality of their activities.

Most Member States have less than 20 full-time equivalent staff working on the enforcement of the EUTR and at least 10 Member States do not have a specific budget assigned for EUTR implementation⁵². In these circumstances, the core challenge is to better allocate and use the resources available to the relevant authorities so that they can achieve more effective enforcement. Complete and harmonised data on EU forests (e.g. the actual levels of logging in certain areas and relevant documents or laws that regulate the activities therein), would allow competent authorities to identify areas threatened with illegal logging and subsequently target compliance checks for operators who source timber from the most fragile

⁴⁶ Due diligence is a process of identifying, assessing and mitigating the risk of placing illegally harvested timber on the EU market. First, operators have to collect information that may sufficiently prove the legality of the timber (identification). Second, operators must assess the information which they have so gathered to determine whether they are reliable and demonstrate the legality of the products (assessment). At this point, if they have not raised any non-negligible doubts, they can place the products on the EU market. But if they have come across any issues that deem further investigation, they are obliged to continue with the third phase of the due diligence process, which requires reducing the identified risks to a negligible level (mitigation).

⁴⁷ Article 9(1)(g) and (h) of the draft Deforestation Regulation.

⁴⁸ The EUTR is estimated to have led to a reduction in imports of illegally harvested timber of between 12 and 29 percent. Commission Staff Working Document – Fitness Check on the EUTR and the FLEGT Regulation (2021), p. 21, available at https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en.

⁴⁹ On the effectiveness of the EUTR and how to improve it see ClientEarth (2020), Illegal logging – evaluation of EU rules (fitness check) - EUTR and FLEGT Regulation, available at <https://www.clientearth.org/latest/documents/illegal-logging-evaluation-of-eu-rules-fitness-check-eutr-and-flegt-regulation/>.

⁵⁰ European Commission (2021), Commission Staff Working Document – Fitness Check on the EUTR and the FLEGT Regulation, p. 15, available at https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en.

⁵¹ Ibidem, p. 13.

⁵² European Commission (2020), Report from the Commission to the European Parliament and the Council on the EU Timber Regulation. Biennial report for the period March 2017 - February 2019, point 2.6, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601880684249&uri=COM:2020:629:FIN>.

sites. Additionally, such data could also improve the preparation of accurate risk-based plans for checks, an essential requirement for competent authorities that is set out in both the current EUTR and the upcoming draft Deforestation Regulation⁵³.

Under the proposed new EU Framework for Forest Monitoring and Strategic Plans, data on forests should be integrated with the centralised ‘information system’ referred to in Article 31 of the draft Deforestation Proposal that is proposed to be established by the European Commission to receive and store the due diligence statements submitted by operators, and potentially annual reports from Member States regarding implementation and enforcement in their jurisdiction. The addition of data on forests in this information system would guarantee an effective tool for timely and efficient control over timber enterprises.

Empowering the public to support good enforcement

The public (individuals, non-governmental organisations, but also market actors) should be actively involved in the fight against illegal logging, providing much-needed support to under-resourced competent authorities. Articles 8(4) and 10(2) of the EUTR set out a mechanism that facilitates such support through the submission of substantiated concerns – complaints made by third parties to inform competent authorities of potential cases of non-compliance. Available data indicates that this legal tool is indeed effective: the majority of substantiated concerns received by Member States in 2017-2019 resulted in compliance checks and subsequent enforcement actions⁵⁴. This clearly shows that the substantiated concern mechanism has been useful and that its potential should be further harnessed. This would include, i.a., obliging the authorities to properly handle the concerns and ensuring access to justice⁵⁵, but most importantly – in the context of the EU Framework for Forest Monitoring and Strategic Plans – the public must be given the factual means to effectively put this mechanism into practice. This requires access to actual and relevant information on forests that would help the public to effectively monitor forest governance and immediately react in case of any risk of non-compliance.

Better reporting of Member States

National reports submitted by Member States under the obligation set out in Article 20 of the EUTR are far from perfect in terms of completeness and clarity. They contain many gaps regarding major elements of EUTR enforcement, such as data on operators, details of compliance checks and subsequent enforcement actions, and clear information about personnel and financial capacity of competent authorities. The weaknesses of the current reporting scheme have been identified by the European Court of Auditors⁵⁶ and consequently recognised by the Commission⁵⁷. Setting up a public and common EU-wide platform under

⁵³ Respectively, Article 10(2) of the EUTR and Article 14(3) of the draft Deforestation Regulation.

⁵⁴ Between 2017 and 2019, Member States reported receiving 480 substantiated concerns regarding the non-compliance of operators and traders with their obligations under the EUTR. Out of the total of 480 substantiated concerns submitted in this period, most triggered compliance checks, resulting in more than 600 enforcement actions (including notices of remedial actions and penalties). See more at UNEP-WCMC, EUTR Analysis 2019 Background analysis of the 2017-2019 national biennial reports on the implementation of the European Union’s Timber Regulation (Regulation EU No 995/2010), p. 2, available at <https://ec.europa.eu/environment/forests/pdf/EUTR%20Analysis%202017-2019.pdf>.

⁵⁵ On substantiated concerns, see ClientEarth (2020), Illegal logging – evaluation of EU rules (fitness check) - EUTR and FLEGT Regulation, available at <https://www.clientearth.org/latest/documents/illegal-logging-evaluation-of-eu-rules-fitness-check-eutr-and-flegt-regulation/>.

⁵⁶ European Court of Auditors (2021), Special Report: EU funding for biodiversity and climate change in EU forests: positive but limited results, p. 25, available at https://www.eca.europa.eu/Lists/ECADocuments/SR21_21/SR_Forestry_EN.pdf.

⁵⁷ Draft Deforestation Regulation, p. 16.

the Framework for Forest Monitoring and Strategic Plans, with harmonised and aggregated information on forests (see above), could help filling these gaps, and provide some clarity to the general implementation and enforcement of EU legislation on illegal logging.

Recommendations

- Ensure that the procedural rights of the public are explicitly guaranteed by the new framework, in accordance with the Aarhus Convention. This would include: access to timely and accurate information about forests (by requiring Member States to provide complete and updated data); access to public participation in the drafting process of strategic plans for forests (by requiring Member States to apply specified criteria to ensure the effectiveness of public consultations); and access to justice by providing the public with the right to challenge strategic plans for forests in a court of law or an equivalent body, or inaction in actively disseminating required information, or wrongful handling of requests for environmental information.
- Create a public and common EU-wide platform to support forest monitoring efforts, which will be paired with development of participatory and collaborative tools. The platform should make the remote sensing data available in real time, while other forest data or compiled information should be made available without undue delay.
- Ensure the effective use of the forest data by putting in place easy-to-use applications that accommodate the members of general public seeking information on European forests, by developing standardised approaches on forest information and remote sensing data, linking Earth observation-based services with EU's forest-related legislation and improving cooperation between remote sensing and other data scientists and environmental lawyers and policy makers.
- Ensure that the new EU Framework for Forest Monitoring and Strategic Plans feeds into the monitoring and reporting mechanisms under the Nature Directives and the NRL proposal to avoid duplication of work, data inconsistencies, or additional burden to Member States. In addition, the new framework should contribute to fulfilling the obligations derived from the NRL proposal and the Nature Directives by facilitating the collection of and access to data and scientific evidence.
- Ensure that the new EU Framework for Forest Monitoring and Strategic Plans is fully aligned with the future Deforestation Regulation, by integrating the new public and common EU-wide platform under the Framework with the 'information system' referred to in Article 31 of the draft Deforestation Proposal.

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