

The new EU Framework for Forest Monitoring and Strategic Plans

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

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General remarks

Public debate focuses mainly on deforestation and illegal logging in the countries of the Global South, however, forestry crime is a common problem across the world – including the EU. Cyprus, Greece and Latvia are mentioned in this context¹, as well as Bulgaria² and Slovakia³. The examples of the massive logging of Poland's and Romania's EU protected forests⁴, and the criticism towards the Swedish forestry model⁵ demonstrate that balancing between the conservation of natural resources and the economic use of them is an uneasy task for many Member States. Forest mismanagement undermines the key role that trees – especially mature, old trees – play in the fight against climate change. Numbers serve the best example: just between 2013 and 2018, the capacity of EU forests to sequester carbon dioxide from the atmosphere decreased by 28% – despite the overall increase in forest cover over the last years⁶. As timber imports constitute less than 20% of the EU market share⁷, volumes harvested inside the EU – which do not necessarily come from either legal or sustainable sources – need properly structured and effective public and institutional scrutiny.

In this light, ClientEarth welcomes the European Commission's initiative of developing an EU-wide forest observation framework to provide timely, validated, interoperable and freely accessible data and information on the EU forests and the products and services they provide. Such a framework is essential not only to achieve the EU environmental objectives implicit in the forest-related EU laws and policies, but also to ensure public confidence in the EU's environmental governance and increase public engagement in the forest monitoring and protection. It will back up the current EU reporting mechanisms on forests⁸, scattered throughout different regulatory frameworks, thus – limited and inconsistent, and impeding public access to information. Similarly, an EU-wide observatory will help to monitor EU forests in an integrated

¹ 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).

² 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.

³ 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>.

⁴ 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/>.

⁵ 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>.

⁶ 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.

⁷ In 2020, according to FAO data, roundwood and industrial roundwood production in the EU accounted for 602 361 000 m² (approx. 83%), while roundwood and industrial roundwood imports to the EU accounted for 118 151 m² (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>.

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

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 under 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 regulation on deforestation-free products (“Deforestation Proposal”)¹⁵ and the regulation on Nature Restoration¹⁶.

Increasing accessibility of remote sensing data on forests

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 [...]”¹⁷. The Białowieża Forest case has proven that remote sensing can be a powerful 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 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 technology to support the protection of our forests.

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://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en.

¹⁶ The proposal of the Commission is expected to be published in June 2022.

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

Therefore, a strong focus on utilizing these technologies for forest monitoring in the Forest Strategy is a welcome step forward. The new EU Framework for Forest Monitoring and Strategic Plans should uphold 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.

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 data¹⁸. Based 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 and the future EU regulations, *i.a.* the regulation on deforestation-free products and the regulation on Nature Restoration. ClientEarth therefore 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.

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, reduce illegal logging [...]".

In the context of these objectives, it is crucial that the 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 or reduce illegal logging.

¹⁸ The results of ClientEarth's survey are not published, but can be shared on request.

Based on our experience in countries such as Poland or Romania, where most of forest areas are in the public domain¹⁹, the lack of effective, institutional control over state-owned forests combined with the inaccessibility of institutions managing the majority of wooded land constitutes the main reason 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) that are updated every 10 years. Although access to the content of FMPs is usually granted by the authorities, State Forests notoriously denies citizens access to information about its current activities²⁰. This prevents awareness and supervision by the community over their common good - Polish forests. Moreover, concerned members of the public, including NGOs, are not able to challenge FMPs²¹. The lack of access to justice in regard to FMPs is another issue that undermines public trust in forest management in Poland.

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 initiated²².

In addition, many EU member states manage their forests in a superficial manner. It often means that FMPs are not correctly implemented. However, the lack of information and access to justice does not allow the public to monitor the process of implementation and react, when a risk of non-compliance is detected.

The arbitrary nature of forest management and systemic barriers limiting access to information regarding forestry practices 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. Therefore, we call on the Commission to draw particular attention to these problems in its future legislative work on the new EU Framework for Forest Monitoring and Strategic Plans.

¹⁹ 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

²⁰ 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).

²¹ 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

²² Read more at <https://www.clientearth.org/latest/latest-updates/news/romania-facing-legal-action-over-destruction-of-europe-s-last-natural-forests/>

Enhancing the enforcement of laws against deforestation and illegal logging

Better planning of compliance checks

Although the EUTR has proved to be a partially effective tool in decreasing illegal logging imports to the EU²³, its overall effectiveness is far from perfect²⁴. The structural flaws of the core mechanism of this regulation – compliance checks performed on operators and traders by competent authorities – prevent it from effectively detecting illegal timber flows in most of the Member States. The number of domestic operators active in the EU is estimated at 3-4 million²⁵, but only a fraction of them – 42,896 entities exactly – was checked against the requirements set out in the EUTR between 2015 and 2020²⁶. This means that 99% of EU domestically-harvesting companies were excluded from compliance checks. Shockingly low, the number seems to be a direct effect of personnel and financial capacity of national competent authorities, most of them having less than 20 full-time equivalent staff working on the enforcement of the EUTR and at least 10 of the Member States having no specific budget for it²⁷.

Complete and harmonised data on EU forests, such as 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 at operators who source timber from the most fragile sites. As such, this data could potentially assist competent authorities in setting up risk-based plans for checks as envisaged in both the current EUTR and the upcoming Deforestation Proposal²⁸. Although this cannot solve the problem of capacity shortages, it would surely help to better allocate and use the resources available at the disposal of the authorities.

Substantiated concerns with a better substance

Members of the public can be of great support for competent authorities struggling with shortcomings in personnel and financial resources. Substantiated concerns – a quasi-complaint mechanism set out in Articles 8(4) and 10(2) of the EUTR – are the main means to do this. 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

²³ 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.

²⁴ 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/>.

²⁵ 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.

²⁶ *Ibidem*, p. 13.

²⁷ 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>.

²⁸ Respectively, Article 10(2) of the EUTR and Article 14(3) of the Deforestation Proposal.

notices of remedial actions and penalties). This clearly proves that substantiated concerns are a very relevant enforcement tool, which can – and should – be further strengthened.

Aside from other areas where improvement of the current law is needed on this matter (such as obliging the authorities to properly handle the concerns and ensuring access to justice²⁹), the public must be given factual means to effectively put this mechanism into practice. This includes access to actual and relevant information on forests that would help the public to effectively monitor their condition and react at the shortest notice possible. Public access to data on EU forests would be a pivotal tool to ensure a more effective data gathering exercise, allowing competent authorities to act upon even better substantiated concerns.

Operators to verify the origin of products

The EUTR obliges operators to conduct due diligence on the timber and timber products they are to place on the EU market for the first time. The aim of this procedure is to verify whether the timber has been harvested in compliance with applicable legislation, meaning – that it is not illegal. Operators are required to collect official documents and other supporting information that in a reliable and verifiable way ensure the legal origin of the products.

Public access to data on the EU forest management would help operators to assess the genuineness of the resources they have gathered and more efficiently demonstrate that they are in compliance with the law.

Similarly, the Deforestation Proposal requires operators to conduct due diligence in order to ascertain that timber placed on the EU market fulfils the requirements of the regulation. To this end, operators need to collect adequate and verifiable information demonstrating that timber is deforestation-free and harvested in compliance with applicable legislation³⁰. As this information must be supported by evidence, an EU-wide database on forests can be a useful tool for operators to fulfil the requirements on gathering information on their timber supply chains originating in the EU.

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ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.

²⁹ 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/>.

³⁰ Article 9(1)(g) and (h) of the Deforestation Proposal.