

# The proposed EU law on deforestation-free products

**What are the changes compared to the EUTR framework?**

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## Introduction

In early 2020, the European Commission began a Fitness Check (or evaluation) of the EU's laws on illegal logging – the EU Timber Regulation (EUTR) and the Forest Law Enforcement, Governance and Trade (FLEGT) Regulation, followed by a public consultation thereon launched in September 2020. The exercise aimed to assess the functioning and impact of these Regulations, and to help the Commission decide if they were still fit for purpose, while taking into account views of relevant stakeholders. On 17 November 2021, a year after the consultation period, the Commission published the results of the Fitness Check together with its proposal for a new EU regulation on deforestation-free products (“**Deforestation Proposal**”) that will eventually replace and repeal the current EUTR.

The results of the Fitness Check are mixed. The EUTR is undoubtedly considered an important tool to tackle illegal logging and associated trade in the EU, having led to a reduction in imports of illegally harvested timber of between 12 and 29 percent<sup>1</sup>. In addition to this finding however, the Commission points out several shortcomings and challenges that have undermined the EUTR's impact: the growth of timber imports from known high-risk sources (e.g. Ukraine and Myanmar) clearly shows that there is still much work to do<sup>2</sup>.

ClientEarth considers it important to clarify that the shortcomings identified in the Fitness Check **do not mean that due diligence is an ineffective tool in tackling illegal timber trade**, but rather indicate that certain challenges in implementation and enforcement of the due diligence process should be addressed. The upcoming EU legislative process for the Deforestation Proposal offers a tremendous opportunity to address these implementation and enforcement challenges, as well as identified gaps in the current EUTR.

At the same time, however, given that the Commission proposes that the EU's current rules on illegal logging should be merged into the new Regulation, there is also a risk of existing standards and progress made under the EUTR and FLEGT Regulation being watered down. This is why it is important to **direct this process onto a path of learning from the identified shortcomings and strengthening the systems developed under EU's current illegal logging rules**, not abandoning them. If the outcome from the upcoming co-decision process on the Deforestation Proposal succeeds in addressing the flaws of the current EU laws on illegal logging, both the Commission and national authorities, as well as civil society, will benefit from a strong supporting tool to use to tackle deforestation and forest degradation worldwide. Compliant businesses will benefit as well, as the regulation will protect the EU market from companies that unfairly profit from illegal conduct.

This briefing reviews the provisions of the Deforestation Proposal with reference specifically to the current EUTR<sup>3</sup> and assesses their practical impact. We conclude that **the Deforestation Proposal includes a range of solutions that should be safeguarded in the course of the EU's ensuing law-making process** and point to other ideas that could increase the impact of the final regulation.

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<sup>1</sup> 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](https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en).

<sup>2</sup> Ibidem.

<sup>3</sup> A further analysis of the consequences of the Deforestation Proposal for the FLEGT Regulation, Voluntary Partnership Agreements (VPAs) and relations with third countries will be finalised and published in Spring 2022.

As a complement to this current briefing, for an overview of the key elements and gaps in the Deforestation Proposal, see our briefing on **The proposed EU law on deforestation-free products: what does it include and what is left out?**

## Scope of the Deforestation Proposal

### Scope of listed commodities

Under the EUTR, companies have to investigate whether certain timber products they wish to place on the EU market have been harvested according to applicable national legislation of the country of harvest. This naturally does not address the wider problem of the trade in deforestation-linked commodities and products other than timber for which demand continues to grow<sup>4</sup>.

The objective of the Deforestation Proposal is to minimise the consumption of products coming from supply chains associated with deforestation or forest degradation and does so by including cattle, cocoa, coffee, oil palm, soya and wood in the scope of commodities covered thereunder<sup>5</sup>.

As a consequence of the inclusion of “wood” in the scope of the new Regulation, the Proposal also takes on the task of integrating and improving upon the EUTR framework and includes a provision to repeal the EUTR with effect 12 months from the date of entry into force of this Regulation (Article 35).

### Scope of listed timber products in Annex I

The current Annex to the EUTR does not include many products that contain wood in combination with other materials which has the unfortunate consequence that such complex products made with the use of illegal timber do not fall within the scope of the EUTR and can still be placed on the EU market.

Considering that this is a widely recognised weakness of the EUTR that has been acknowledged by the Commission and that a revision of the Annex was already the subject of an Impact Assessment Study<sup>6</sup> in 2019, it is surprising and disappointing to note that **Annex I to the Deforestation Proposal does not include an expansion to the scope of timber products covered by the EUTR.**

### Timber exports included in scope

The current EUTR applies to timber and timber products circulating in the EU market, without differentiating between domestically-harvested (produced) and imported commodities and products. It applies to all individuals and companies that first place timber on the EU market: operators who make timber products available on the EU market for distribution or for use in the course of a commercial activity. Wood harvested within the EU and exported to third countries – without first placing those products on the EU market – is **not covered** by the EUTR.

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<sup>4</sup> Staff Working Document – Impact Assessment “Minimising the risk of deforestation and forest degradation associated with products placed on the EU market” Part 1, SWD(2021) 326 final (2021), p.18, available at [https://ec.europa.eu/environment/document/download/7ab29a87-09a1-45f9-b83b-cd80765de10f\\_en](https://ec.europa.eu/environment/document/download/7ab29a87-09a1-45f9-b83b-cd80765de10f_en).

<sup>5</sup> For more details on the gaps in the Commission’s proposed scope, please see Page 7 of our complementary briefing- [The proposed EU law on deforestation-free products: what does it include and what is left out?](#)

<sup>6</sup> European Commission (2019), Impact Assessment Study for the Revision of the Product Scope of the EU Timber Regulation, available at <https://op.europa.eu/en/publication-detail/-/publication/fd26ad03-9895-11e9-b2f2-01aa75ed71a1>.

This gap has been addressed in the Deforestation Proposal, which **applies to both products placed on the EU market and exported from the EU** (Article 1). It therefore covers products imported into the EU, produced and consumed in the EU, and exported from the EU. This change would make an important contribution to tackling illegal logging that is occurring in certain Member States (e.g. Romania<sup>7</sup>) for markets outside the EU.

### **Large traders considered as operators for due diligence purposes**

The EUTR differentiates between the responsibilities of operators (companies that first place timber on the EU market) and of traders (companies that subsequently make the timber available in the supply chain after it has first been placed on the market). Currently, the only obligation on traders is to keep records of purchases and sales of timber for five years and to share them with competent authorities if requested. Only the operator, first placer of the timber on the EU market, is obliged to investigate the legality of its supply chain. This exclusion of traders from the due diligence requirement under the EUTR limits the overall effectiveness of this due diligence process and may even facilitate the circulation of illegal timber on the EU market: some operators use this legal loophole to evade stricter obligations by establishing front companies to place their timber products on the market, which they can subsequently trade without needing to check the legality of their supply chain<sup>8</sup>.

This gap has been partially addressed in the Deforestation Proposal, which **makes large traders (i.e. traders that are not SMEs) subject to the same due diligence requirements as operators** (Article 6(5)). Large traders will no longer be able to facilitate the circulation of illegal timber without being held responsible. In addition, all traders including SMEs, need to collect and keep certain information relating to the operators or traders who have supplied commodities and products to them, as well as the traders to whom they supply commodities and products (Articles 6 (1) and (2)).

## **Obligations of companies under the Deforestation Proposal**

### **A new “deforestation-free” requirement**

The EUTR is based on the legality of timber harvesting operations: EU operators have to ensure that the products they want to place on the EU market have been harvested according to applicable legislation in the country of harvest. While the introduction of this requirement in EU law was considered groundbreaking when first introduced, it has proven to be insufficient after over eight years of application and enforcement. Most significantly, a legality-focused approach does not apply to logging activities that, although meeting the legality requirements in force in the producer country, nonetheless result in large-scale deforestation or forest degradation.

The Deforestation Proposal attempts to address this gap by introducing **a new “deforestation-free” criterion in addition to the existing legality-based requirements** (Article 3(a)). This new requirement obliges operators to firstly ensure that commodities or products they place on the EU market have been produced in compliance with relevant producer-country legislation, and secondly that they have not been

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<sup>7</sup> In February 2020, the Commission has launched infringement proceedings against Romania on, inter alia, illegal logging in the NATURA 2000 protected areas. Read more at [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_20\\_202](https://ec.europa.eu/commission/presscorner/detail/en/inf_20_202).

<sup>8</sup> Environmental Investigation Agency (2021), State of Corruption, available at <https://reports.eia-international.org/stateofcorruption/>.

associated with deforestation<sup>9</sup> or forest degradation that occurred after a certain cut-off date (proposed as 31 December 2020).

While this approach is a welcome step forward, the Deforestation Proposal is hindered by a lack of clarity in a number of important definitions (including “forest”, “deforestation-free”, “forest degradation” and “deforestation”), which are framed in a confusing manner and may result in major difficulties when it comes to implementation. For example, the rules for wood products seem to differ from those that apply to agricultural products in the Commission’s Proposal and the conversion of natural forest to a timber plantation does not appear to fall under the current definition of “deforestation”, despite clearly being deforestation in reality. This could be resolved by clearly distinguishing between forests and timber plantations and clarifying that the conversion of forest to timber plantation constitutes deforestation. In order for the Proposal to fulfil its potential, it is crucial that the definitions provided are as clear as possible and further scrutinised for any possible loopholes<sup>10</sup>.

### “Negligible risk” defined

Under the EUTR, if the conclusion of the risk assessment conducted by an operator is that the risk of non-compliant timber entering the EU market is non-negligible, the operator needs to take risk mitigation measures that are adequate to lower the risk to a negligible level. However, despite the importance of the term to the operation of the due diligence process, “negligible risk” is not defined in the EUTR.

The absence of the definition makes it difficult for both operators and competent authorities to assess if the risks identified in the course of the due diligence process do not exceed or have been mitigated to the required level of negligibility and, consequently, if the timber products in question can be placed on the EU market. This has severe consequences at the enforcement level – it is hard to establish a case of non-compliance without clear indicators of what exactly constitutes a failure of due diligence, causing competent authorities to hesitate to initiate proceedings addressing the inadequate due diligence systems of certain operators<sup>11</sup>.

The Deforestation Proposal attempts to address this gap by **defining “negligible risk”** as “a full assessment of both the product-specific and the general information on compliance (...) showing no cause for concern” (Article 2(16)). This expressly clarifies that negligible risk cannot be declared without a prior thorough investigation. This brings some clarity to an operator’s obligations and will give competent authorities stronger grounds for pursuing claims against non-compliant companies.

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<sup>9</sup> Based on the proposed definitions in Article 2 of the Deforestation Proposal, it does not appear that timber harvesting operations will be directly covered by the definition of “deforestation”. However, they will be subject to the requirements regarding “forest degradation”, which in practice would include deforestation for the purpose of establishing a timber plantation. The proposed definition of “deforestation-free” has two limbs: it requires agricultural products to be free from deforestation and wood products to be free from forest degradation.

<sup>10</sup> For more details on these definitional issues, please see Page 9 of our complementary briefing- [The proposed EU law on deforestation-free products: what does it include and what is left out?](#)

<sup>11</sup> Commission Staff Working Document – Fitness Check on the EUTR and the FLEGT Regulation (2021), p. 22, available at [https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products\\_en](https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en).

## Clarity in due diligence obligations

While the EUTR provides some detail on the applicable due diligence system in Article 6, it does not specify the next steps that an operator should take when non-negligible risks have been identified (i.e. what effective risk mitigation should look like<sup>12</sup>).

The Deforestation Proposal integrates and improves the due diligence framework of the EUTR by establishing, among other things:

- **a positive obligation on operators to ensure compliance with the law** (Article 3) and **a clear prohibition of placing commodities or products on (or exporting them from) the EU market if they do not meet the regulation’s requirements or the operator cannot make that assessment** (Article 4(5) and Article 10(1));
- **an obligation on operators to submit a due diligence statement** (a declaration of an operator that due diligence found no or only negligible risks) to competent authorities before placing commodities or products on the EU market (Article 4(2)), through which the operator assumes responsibility for the compliance of the commodities or products with the regulation (Article 4(3));
- **an expanded set of risk assessment criteria, according to which operators have to analyse the information collected about their supply chains** concerning, inter alia, the risk level identified in accordance with the newly proposed country benchmarking system<sup>13</sup>, information about deforestation rates and certain aspects of rule of law in the country of origin including level of corruption and quality of law enforcement (Article 10(2));
- **an obligation on operators to be able to demonstrate how the information gathered was checked against the risk assessment criteria, how a decision on risk mitigation measures was taken** and how the operator **determined the degree of risk** (Article 10(5)); and
- **a set of obligatory elements that must be included by operators in their processes to mitigate and manage effectively the risks of non-compliance** (Article 10(6)).

## Stronger traceability requirements

Collecting accurate information is an essential part of the due diligence process, which determines further steps to be taken and the overall effectiveness of the entire process. The current EUTR limits this requirement to some basic data, including details of the product (name, quantity, origin), data on the supplier and further trader, and additional unspecified information proving compliance with applicable legislation.

This gap has been partially addressed in the Deforestation Proposal, which sets out **an obligation on operators to detail geo-localisation coordinates**, latitude and longitude of all plots of land from where the commodities or products (including wood) were sourced, as well as the date or time range of

<sup>12</sup> In 2016, the Commission released a Guidance document on Risk mitigation measures that aimed to help in estimating the level of risk and mitigating it to a negligible level, but it is not legally binding, and – as it expressly states – “may not be, in any circumstances, regarded as stating an official position of the European Commission” (p. 1).

<sup>13</sup> The benchmarking system, established by Article 27 of the Deforestation Proposal, is a tool through which the Commission will assess the risk that countries or parts thereof produce relevant commodities and products that are not deforestation-free. Each country (or parts thereof) will be assigned one of three possible levels of risk: low, standard and high risk. Read more about the benchmarking system in our complementary briefing- [The proposed EU law on deforestation-free products: what does it include and what is left out?](#)

production (Article 9(1)(d)), which may have strong practical use in investigations by authorities. This will facilitate an increase in the use of available satellite imagery tools to check the land-use history of the relevant area for evidence of deforestation.

Additionally, the information proving compliance of a commodity or product with relevant legislation and the deforestation-free criterion should be “adequate and verifiable” (Article 9(1)(g) and (h)), and – in the case of compliance with relevant legislation – include “any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity” (Article 9(1)(h)).

Operators have to keep the abovementioned data for at least 5 years (Article 9(1)) and make it available to the competent authorities upon request (Article (9)(2)). The Deforestation Proposal provides a possibility for further strengthening obligations in this regard by granting the Commission the right to supplement the scope of required information through delegated acts (Article 9(3)).

## Enforcement and implementation of the Deforestation Proposal

### Compliance checks – more often & more effective

Effective and harmonised checks of timber companies are key to enforcement success. Without a properly financed and well organised system of inspections, illegal timber circulating in the EU market will not be detected. Under the current EUTR, national procedural rules on checks differ between Member States and low numbers of inspections and subsequent enforcement actions are common across the EU<sup>14</sup>.

This gap has been addressed in the Deforestation Proposal, which specifies **minimum requirements for compliance checks performed by competent authorities on operators and traders** (Article 14). These include:

- **the minimum level of checks that competent authorities must perform annually**, linked to both the overall number of operators and large traders operating in each Member State and also the quantity of the relevant commodities and products placed on each Member State’s market (Article 14(9)) with provision for higher levels of scrutiny for commodities and products coming from countries identified as high-risk under the benchmarking system (Article 20);
- **criteria to be taken into account when planning checks**, such as risk of illegal harvesting and the history of compliance of an operator or trader with the Regulation (Article 14(3));
- **strengthened obligations on competent authorities to initiate investigations based on evidence such as substantiated concerns of potential non-compliance submitted by third parties** (Article 14(11));
- **providing competent authorities with the right to perform unscheduled checks without notifying the operator** (Article 14(12)), which will increase the ability of competent authorities to reliably check company performance as well as identify and gather evidence of non-compliance; and

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<sup>14</sup> In 2019, Member States conducted a total of 9300 checks on operators compared to the declared estimated numbers of operators exceeding 3 million in all Member States.

- where non-compliance has been determined, **an obligation on competent authorities to require the relevant operator or trader to take appropriate and proportionate corrective action to bring the non-compliance to an end** and to ensure that the commodity or product at risk does not reach (or is not exported from) the EU market (Article 22).

## Resources for competent authorities

The EUTR does not set out any requirements on Member States in terms of commitment of staff and other resources to detect illegal timber. Most Member States reported in 2019 having less than 20 people working on EUTR implementation and enforcement, and this in many cases included only part-time staff. Additional data on national EUTR budgets indicates insufficient financial support for the implementation and enforcement of the Regulation, with at least 10 Member States having no specific budget for these purposes<sup>15</sup>.

The Deforestation Proposal requires Member States to ensure that competent authorities have adequate powers and resources to perform their obligations set out in the Regulation (Article 13(4)). While this provides additional direction for Member States and strengthens their responsibility to devote the necessary financial and staff support to enforcing the new Regulation, this provision will not automatically solve the ongoing problems of underfinancing and understaffing of EUTR competent authorities which will remain until the EUTR is repealed by the new Regulation.

In this context, it is also worth considering the potential of Article 17 which provides a possibility for competent authorities to reclaim their enforcement costs from relevant operators or traders in cases of non-compliance. Additionally, Article 24(10) allows customs authorities to reclaim the costs of destroying non-compliant commodities or products from the implicated operator or trader.

## Use of technical and scientific methods to verify origins of timber

Developments in scientific tools, such as timber tracking, forensic methods, satellite imagery, genetic testing or camera traps, could be harnessed to provide a stronger evidence base to support monitoring and enforcement activities of Member States. However, despite this potential, in 2020 only 8 Member States used such scientific methods in checking imports, with only 5 Member States using it more than once<sup>16</sup>. Additionally, no data was provided by any Member States on the use of scientific methods to support monitoring and enforcement relating to domestic timber.

The Deforestation Proposal **provides some welcome direction on how scientific tools can support checks conducted by competent authorities** to determine the exact location where a relevant commodity or product was produced and whether it was deforestation free (Article 15(e)-(h)). The Proposal directly refers to isotope testing and satellite monitoring tools (such as Copernicus) in this regard. The obligation on operators to detail geo-localisation coordinates (Article 9(1)(d)), which is described in the section on stronger traceability requirements above, may also encourage further developments in technical and scientific methods.

<sup>15</sup> Report from the Commission to the European Parliament and the Council (2020), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601880684249&uri=COM:2020:629:FIN>.

<sup>16</sup> European Commission, EUTR: Union-wide Overview for the Year 2020 (2021), available at [https://ec.europa.eu/environment/forests/pdf/EUTR%20Overview%202020\\_alternative.pdf](https://ec.europa.eu/environment/forests/pdf/EUTR%20Overview%202020_alternative.pdf). No data is available in this report on Member States' use of scientific methods to support monitoring and enforcement relating to domestic timber.

## Penalty schemes improved

Complying with law needs to be more economically attractive than breaching it. Under the current EUTR, differences exist in penalty schemes adopted across the EU with regard to both the types (administrative, criminal or mixed) and amounts of penalties. Moreover, penalties are rarely imposed and when utilised are relatively low compared to the maximum levels that are available<sup>17</sup>. As a result, **penalties do not currently represent a sufficient threat to companies to discourage non-compliance – in terms of both their severity and likelihood of imposition.** In addition, penalties do not always envisage confiscation of illegal timber which can continue circulating freely on the EU market.

This gap has been **partially** addressed in the Deforestation Proposal, which **provides strengthened requirements for national penalty schemes** (Article 23). It establishes a set of objective criteria that ensure a penalty is adequate and fulfils its deterrent purpose (by being proportionate to the environmental damage and the value of the illegal commodities or products), as well as providing important protective measures that would actually ban illegal commodities and products from being placed on the EU market and deprive the responsible company of the (future) profits of their non-compliant activities (e.g. obligatory confiscation of relevant commodities or products and revenues and temporary exclusion from public procurement processes).

Unfortunately, the Deforestation Proposal **does not require Member States to criminalise serious violations** according to the Environmental Crime Directive (Directive 2008/99/EC), as had been proposed in a previous draft of the Commission's Proposal<sup>18</sup>. This is a missed opportunity as the potential for criminal liability for serious violations would escalate non-compliance within Member State law enforcement frameworks by engaging criminal prosecution and law enforcement agencies and its inclusion should be strongly considered in the course of the legislative process.

## Enhanced role of customs and cooperation amongst authorities

The current EUTR is not fully integrated with other EU policies, such as tax and customs. It does not provide any organisational rules on the cooperation between different enforcing authorities. This limits the potential for synergies that could be achieved with the combined effort of various public bodies in analysing national and inter-EU fact patterns.

To address this gap, the Deforestation Proposal establishes a structural role for customs authorities in regards to commodities and products entering and leaving the EU (Articles 24-26). The Proposal requires customs authorities to verify the receipt of a due diligence statement for imports and exports and, if necessary, to suspend the release for free circulation or export of high-risk products (Article 24(5) and 24(6)). The Commission, competent authorities and customs authorities are required to “cooperate closely and exchange information” (Article 25(1)), which will be done, inter alia, through electronic means, including via a new information system described below.

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<sup>17</sup> Many Member States have not established the minimum levels, or have made them very low, sometimes even symbolic (starting at only tens or hundreds of euro).

<sup>18</sup> Article 18(3) of the leaked draft regulation concerning certain commodities and products associated with deforestation and forest degradation, available at [https://www.contexte.com/article/environnement/info-contexte-comment-la-commission-europeenne-envisage-de-freiner-la-deforestation-importee\\_139115.html](https://www.contexte.com/article/environnement/info-contexte-comment-la-commission-europeenne-envisage-de-freiner-la-deforestation-importee_139115.html).

## More transparency

The EUTR lacks provisions to enhance information flows between competent authorities and the Commission. **The requirements on Member States to submit annual enforcement reports to the Commission have mostly failed to deliver meaningful information.** Reports submitted by Member States lack complete data on estimated average time spent on the different types of checks, which makes it difficult to assess their quality and accuracy<sup>19</sup>, especially in regards to the checks based on desk review. As a result of these information gaps, there is relatively little publicly available information on enforcement of the EUTR.

This gap has been **partially** addressed in the Deforestation Proposal, which proposes the establishment of a **central information system to receive and record operators' due diligence statements** (Article 31). This system – which will be accessible to the public in an anonymised format – will also provide for basic information about operators and traders active in the EU and the results of the monitoring and review of due diligence statements. In addition, large operators will be obliged to, on an annual basis, publicly report as widely as possible, including online, on their due diligence systems and the steps they have taken to ensure compliance with their obligations (Article 11(2)).

Unfortunately, the Deforestation Proposal **does not include any mechanism to provide individuals with access to records of compliance checks** in accordance with Directive 2003/4/EC on public access to environmental information. The possibility to acquire such information had been available under Article 11(2) of the EUTR. Additionally, the Deforestation Proposal **has dropped the idea of establishing a list of operators and traders found to be in violation of legal requirements** that had been included in an earlier draft.<sup>20</sup> Such a list would have been a powerful motivator for operators to comply with the law and would have supported consumers in making better-informed choices.

## The effectiveness of substantiated concerns

'Substantiated concerns' are a quasi-complaint mechanism introduced under Article 10(2) of the EUTR. It allows third parties to submit to a national competent authority evidence of illegal conduct in regards to placing timber on the EU market. While available data clearly demonstrates that substantiated concerns are an effective tool for identifying stakeholders breaching the EUTR<sup>21</sup>, this mechanism has not yet reached its full potential. This is mainly due to the lack of detailed provisions and guidance on the procedure of submitting and handling substantiated concerns.

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<sup>19</sup> Some of the Member States, despite a relatively high number of checks carried out, reported no infringements or a very small number (for example, Greece – 620 checks and 0 infringements; Austria – 932 checks and 34 infringements; Romania – 1984 checks and 49 infringements), while others reported infringements in more than 75% of checks carried out (for example, Finland – 60 checks and 49 infringements; Malta – 28 checks and 26 infringements; UK – 90 checks and 68 infringements). See national reports for the period 2017-2019 (sections 'Checks on domestic operators (ref. EUTR Article 10)' and 'Checks on importing operators (ref. EUTR Article 10)').

<sup>20</sup> Article 29 of the leaked draft regulation concerning certain commodities and products associated with deforestation and forest degradation, available at [https://www.contexte.com/article/environnement/info-contexte-comment-la-commission-europeenne-envisage-de-freiner-la-deforestation-importee\\_139115.html](https://www.contexte.com/article/environnement/info-contexte-comment-la-commission-europeenne-envisage-de-freiner-la-deforestation-importee_139115.html).

<sup>21</sup> Out of the total of 480 substantiated concerns received between 2017-2019, most triggered compliance checks, resulting in more than 600 enforcement actions (including notices of remedial actions and penalties). Report from the Commission to the European Parliament and the Council (2020), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601880684249&uri=COM:2020:629:FIN>.

This gap has been addressed in the Deforestation Proposal, which sets out **an explicit requirement for Member States to adopt a legal framework that facilitates the use of substantiated concerns by both natural and legal persons without restriction** (Article 29). It also ensures that every applicant is informed about the results of a substantiated concern and the reasons behind the authority's decision to pursue or refuse further proceedings. Moreover, Article 30 provides **third parties with a right to apply to a court or another impartial body established by law to review the acts or omissions of a competent authority**, including – but not limited to – its handling of a substantiated concern. Those who submit substantiated concerns will be able to use this provision to question both the procedural aspects of a competent authority's handling of their substantiated concern as well as the substantive legality of the decisions, acts or omissions of the competent authority.

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