EXPERT OPINION OF SIR NICHOLAS FORWOOD K.C.

ON

THE INTERPRETATION OF ARTICLES 2(40) AND 3(b)

OF

REGULATION (EU) 2023/1115 OF THE EUROPEAN PARLIAMENT

AND COUNCIL

LEGAL OPINION

1. I have been asked by ClientEarth to give my independent legal opinion on the interpretation of an important defined term in the EU Deforestation-Free Products Regulation 2023/1115 ("**EUDR**" or "**Regulation**")[1], namely the phrase '*relevant legislation of the country of production*' as it appears first in the definitions section, Article 2(40) EUDR, and then in Article 3 EUDR, which sets out the scope of the prohibition on placing and trading on the Union market, and exporting, relevant commodities and products that do not meet the deforestation-free and other requirements of the Regulation.

QUALIFICATIONS

2. I am a barrister, called to the Bar of England and Wales in 1970 by the Honourable Society of Middle Temple, London and to the Bar of Ireland in 1981. In 1987, I was appointed Queen's Counsel, now King's Counsel. Since 1979 I have specialised in European Union (EU) law, practising predominantly in litigation before the European Courts until December 1999 when I was appointed to the Court of Justice of the European Union ("**CJEU**") as a Judge of the General Court,[2] a post that I held for over 15 years, serving two three-year terms as a President of Chamber. Since October 2015 I have returned to practice both as a barrister and latterly also as an Avocat à la Cour at the Luxembourg Bar, practising exclusively in the field of Union law.

3. My judicial functions at the General Court regularly required me to interpret and apply EU legislation, and thus to be familiar with the principles applied by the CJEU when interpreting Union law. Over my time at the Court, I was involved in more than 1500 cases, in more than 460 of which I was the reporting judge. A significant number of these cases involved having to consider the interpretation of EU Regulations.

BACKGROUND TO THE OPINION

4. The EUDR embodies the most recent action by the Union legislator to combat global deforestation and forest degradation, the adverse effects of which are significant both for

[1] Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (Text with EEA relevance), OJ L 150, 9.6.2023, p. 206–247.

[2] Formerly called the Court of First Instance of the EC.

greenhouse gas emissions and climate change and for biodiversity, as well as for indigenous and local communities.[3] Recognising that much deforestation (legal and illegal) takes place for the purposes of producing commodities incorporated in products that are traded internationally, and that the Union has historically been a significant importer and consumer of such products,[4] Article 3 EUDR will impose a prohibition on placing on the Union market, or exporting from the Union, a series of products listed in Annex 1 to the Regulation that are closely associated with deforestation unless, *inter alia*, they are 'deforestation-free'. To this end, Article 3 will also require that all such products have been 'produced in accordance with the relevant legislation of the country of production', and that compliance with these requirements has been ensured through the preparation and filing of a 'due diligence statement'.

5. The EUDR requires operators (i.e. those who first place the specified commodities or products on the Union market) and all other traders in the Union who deal with those products to take certain measures designed to ensure that the supply chains for the specific products listed in Annex 1 to the Regulation and which are derived or made from commodities particularly associated with deforestation, namely cattle, cocoa, coffee, oil palm, rubber, soya and wood, have fully respected the objectives of the Regulation. While the rules for operators and traders differ, in particular for SME traders, their overall objective is to ensure that, from the date that the prohibition in Article 3 of the Regulation becomes applicable, [5] that provision is fully respected.

6. Central to this process is the obligation on operators to exercise due diligence in ensuring, when first placing relevant products on the Union market, that the relevant commodities incorporated in those products have not been produced on 'plots of land' where deforestation or forest degradation has taken place. [6] Where a relevant product contains or has been made with relevant commodities produced on different plots of land, the due diligence statement requires that the geolocation of all the different plots of land shall be

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3 See the detailed explanation of the background to the EUDR in its recitals, particularly Recitals (1) to (16).

4 According to recital 18 of the EUDR, between 1990 and 2008 the Union imported and consumed one third of the glovally traded agricultural products asociated with deforestation, and Union consumption was responsible for 10% of global deforestation associated with goods and services.

5 That date has now been extended to 30 December 2025 by Regulation (EU) 2024/3234 of the European Parliament and of the Council of 19 December 2024, OJ L 3234/1 of 23.12.2024, and will apply only to relevant products produced after its entry into force, being 29 June 2023 (Article 1(2) EUDR). However, for timber and timber products covered by Reguation (EU) 995/2010, special provisions will apply – see Articles 37 and 38 EUDR as amended by Regulation (EU) 2024/3234.

6 Article 4(1) EUDR.

included; any deforestation or forest degradation on the given plots of land shall automatically disqualify all relevant commodities and relevant products from those plots of land from being placed or made available on the Union market or exported. [7]

7. Given the complexity of the supply chains that may be involved in the production of relevant products, and since the relevant commodities are frequently produced in countries where the rule of law, human rights and other international obligations are not fully respected, the Regulation recognises that it may not always be possible to establish with absolute certainty that relevant commodities and products have been produced in compliance with Article 3 of the Regulation. Operators are therefore required by Article 9 EUDR to collect and retain detailed information covering the whole of the supply chain for relevant products, such information to include '*adequately conclusive and verifiable information that the relevant products are deforestation-free*' and '*adequately conclusive and verifiable information that the relevant commodities have been produced in accordance with the relevant legislation of the country of production, including any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity*'. [8] On the basis of that 'adequately conclusive and verifiable' information, operators are then required by Article 10 EUDR to carry out a risk assessment to establish whether there is a risk that the products to be placed on the market or exported are non-compliant. Only if that assessment shows that there is no or only a negligible risk of non-compliance may the products be put on the Union market or exported.

8. Proper implementation of the Regulation is to be ensured through supervision by the competent authorities of the Member States, whose task is to check whether operators and traders comply with their respective obligations (see EUDR Chapter 3, Articles 14 to 25). In the event of non-compliance, the competent authorities are to require appropriate and proportionate corrective action to be taken, and may impose fines that are effective, proportionate and dissuasive. For this reason, it is important that Member States correctly understand the scope of the Regulation when adopting the necessary legislation and administrative arrangements to facilitate its implementation and enforcement by their competent authorities, and likewise that competent authorities understand the scope of the Regulation when carrying out the required checks and otherwise applying its provisions.

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7 Article 9(1)(d) EUDR.

8 EUDR Article 9(g) and 9(h).

9. The importance of ensuring correct application is given further prominence by EUDR Article 31, which will allow any person with 'substantiated concerns' that an operator or trader is not complying with its obligations under the Regulation to submit those concerns to the relevant competent authority and to receive a reasoned statement as to the action taken in response to those concerns. Article 32 EUDR then ensures that those who have submitted concerns under Article 31, and any other persons with a sufficient interest, have a right to administrative or judicial review of the legality of any decision taken by the competent authority, or of any other act or failure to act. That legality review will necessarily depend on a correct interpretation of the EUDR's provisions, including the obligation of compliance with the 'relevant legislation of the country of production'.

10. It is in this context that possible differences of opinion have emerged as to the correct interpretation of Article 3 EUDR, which contains the core legal requirement imposed by the Regulation. Article 3 EUDR reads:

"Article 3

Prohibition

Relevant commodities and relevant products shall not be placed or made available on the market or exported, unless all the following conditions are fulfilled:

(a) they are deforestation-free;
(b) they have been produced in accordance with the *relevant legislation of the country of production*; and
(c) they are covered by a due diligence statement." (italics added)

19. The italicised words are a defined term in Article 2(40) EUDR which provides:

"Article 2
Definitions
For the purposes of this Regulation, the following definitions apply:
(1) …
…
(40) 'relevant legislation of the country of production' means the laws applicable in the country of production concerning the legal status of the area of production in terms of:
(a) land use rights;
(b) environmental protection;
(c) forest-related rules, including forest management and biodiversity conservation, where directly related to wood harvesting;
(d) third parties' rights;

(e) labour rights;
(f) human rights protected under international law;
(g) the principle of free, prior and informed consent (FPIC), including as set out in the UN Declaration on the Rights of Indigenous Peoples;
(h) tax, anti-corruption, trade and customs regulations."

11. In its Guidance Notice published in November 2024[9], the Commission has indicated how it considers that the italicised phrase should be interpreted, as follows:

> "The EUDR takes a flexible approach by listing a number of areas of law without specifying particular laws, as these differ from country to country and may be subject to amendments. *However, only the applicable laws concerning the legal status of the area of production constitute relevant legislation pursuant to Article 2(40) of the EUDR. This means that generally the relevance of laws for the legality requirement in Article 3(b) of the EUDR is not determined by the fact that they may apply generally during the production process of commodities or apply to the supply chains of relevant products and relevant commodities, but by the fact that these laws specifically impact or influence the legal status of the area in which the commodities were produced*." (emphasis added)

However, the Guidance Notice goes on to state:

> "*Additionally*, Article 2(40) of the EUDR must be read in the light of the objectives of the EUDR as laid down in Article 1(1)(a) and (b), meaning that legislation is also relevant if its contents can be linked to halting deforestation and forest degradation in the context of the Union's commitment to address climate change and biodiversity loss." (emphasis added)

12. The Guidance Notice then provides certain examples of what are considered to be 'relevant legislation', though emphasising that these are illustrative and non-exhaustive.

13. ClientEarth is concerned by the risk that Member States and their competent authorities may adopt different and diverging interpretations of the definition in Article 2(40), and therefore has asked for my Opinion on the meaning of the term 'relevant legislation of the country of production', specifically in the context of the requirements of Article 3(b). In particular, I am asked:

> "a) How should the phrase 'concerning the legal status of the area of production' be understood? In this context:
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> i. How should the term 'legal status' be understood?

[9] COMMISSION NOTICE – GUIDANCE DOCUMENT for Regulation (EU) 2023/1115 on deforestation-free products, (C/2024/7730), OJ C, C/2024/6789 of 13.11.2024.

ii. How should the term 'area of production' be understood, noting it is different from other definitions that specifically define areas used to produce commodities subject to the law?

b) Do the words 'relevant legislation of the country of production' partially or completely exclude from the scope of the definition laws that do not regulate formal legal interests in land, noting this may potentially exclude laws that are expressly included in the categories listed in Article 2(40) as being relevant (such as forest-related rules, labour laws, human rights laws, tax, anti-corruption, trade and customs regulations)?

c) How should the requirement in Article 3(b) that products subject to the EUDR must be produced in accordance with 'relevant legislation of the country of production' in relation to 'tax, anti-corruption, trade and customs regulations' (Article 2(40)(h)), be interpreted when such laws may not regulate the **production** of relevant products (our emphasis) but the subsequent commercialisation, trade, export and import of commercial goods in general?

d) Based on the answers to the preceding questions, would international human rights law, both customary international law and international human rights treaties signed by a producer country, fall within the scope of 'laws applicable in the country of production concerning the legal status of the area of production in terms of … (f) human rights protected under international law; [and] (g) the principle of free, prior and informed consent (FPIC), including as set out in the UN Declaration on the Rights of Indigenous Peoples'?

e) The formal guidance on the EUDR (Annex 3 linked below) states that "Article 2(40) of the EUDR must be read in the light of the objectives of the EUDR as laid down in Article 1(1)(a) and (b), meaning that legislation is also relevant if its contents can be linked to halting deforestation and forest degradation in the context of the Union's commitment to address climate change and biodiversity loss." (p.14). Is this a justified interpretation of the scope of Article 2(40)? If so, what legal principles can be used to determine whether the content of third country laws is 'linked to halting deforestation and forest degradation in the context of the Union's commitment to address climate change and biodiversity loss'?

THE RELEVANT LEGISLATIVE PROVISIONS

14. Article 3 EUDR reads:

"Article 3

Prohibition

Relevant commodities and relevant products shall not be placed or made available on the market or exported, unless all the following conditions are fulfilled:

(d) they are deforestation-free;
(e) they have been produced in accordance with the relevant legislation of the country of production; and
(f) they are covered by a due diligence statement."

20. Article 2 EUDR defines terms used in the Regulation that are particularly relevant for this Opinion as follows:

"Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:
(1) 'relevant commodities' means cattle, cocoa, coffee, oil palm, rubber, soya and wood;
(2) 'relevant products' means products listed in Annex I that contain, have been fed with or have been made using relevant commodities.
…
(13) 'deforestation-free' means:
(a) that the relevant products contain, have been fed with or have been made using, relevant commodities that were produced on land that has not been subject to deforestation after 31 December 2020; and
(b) in the case of relevant products that contain or have been made using wood, that the wood has been harvested from the forest without inducing forest degradation after 31 December 2020;
(14) 'produced' means grown, harvested, obtained from or raised on relevant plots of land or, as regards cattle, on establishments;
……
(23) 'country of origin' means a country or territory as referred to in Article 60 of Regulation (EU) No 952/2013;
(24) 'country of production' means the country or territory where the relevant commodity or the relevant commodity used in the production of, or contained in, a relevant product was produced;
(25) 'non-compliant products' means relevant products that do not comply with Article 3;
(26) 'negligible risk' means the level of risk that applies to relevant commodities and relevant products, where, on the basis of a full assessment of product-specific and general information, and, where necessary, of the application of the appropriate mitigation measures, those commodities or products show no cause for concern as being not in compliance with Article 3, point (a) or (b);
(27) 'plot of land' means land within a single real-estate property, as recognised by the law of the country of production, which enjoys sufficiently homogeneous conditions to allow an evaluation of the aggregate level of risk of deforestation and forest degradation associated with relevant commodities produced on that land;

(28) 'geolocation' means the geographical location of a plot of land described by means of latitude and longitude coordinates corresponding to at least one latitude and one longitude point and using at least six decimal digits; for plots of land of more than four hectares used for the production of the relevant commodities other than cattle, this shall be provided using polygons with sufficient latitude and longitude points to describe the perimeter of each plot of land;
(29) 'establishment' means any premises, structure, or, in the case of open-air farming, any environment or place, where livestock are kept, on a temporary or permanent basis;
…
(40) 'relevant legislation of the country of production' means the laws applicable in the country of production concerning the legal status of the area of production in terms of:
(a) land use rights;
(b) environmental protection;
(c) forest-related rules, including forest management and biodiversity conservation, where directly related to wood harvesting;
(d) third parties' rights;
(e) labour rights;
(f) human rights protected under international law;
(g) the principle of free, prior and informed consent (FPIC), including as set out in the UN Declaration on the Rights of Indigenous Peoples;
(h) tax, anti-corruption, trade and customs regulations."

THE PRINCIPLES APPLIED IN INTERPRETING UNION LEGISLATION

21. At the outset, it is important to note bear in mind that underlying any exercise of interpretation of Union law is the principle that Union legislation should be applied uniformly in all Member States. As the CJUE observed, in the context of the leading case on the preliminary ruling procedure in Article 267 TFEU,

> "It must be borne in mind, …, that (Union) law uses terminology which is peculiar to it. It must be emphasised that legal concepts do not necessarily have the same meaning in (Union) law and the law of the various Member States." [10]

[10] Case 283/81 *CILFIT v. Ministero della Sanita* EU:C:1982:335, judgment of 6 October 1982, at paragraph 19.

This led the Court to observe in a later case:

> "It follows from the need for uniform application of European Union law and from the principle of equality that the terms of a provision of that law …. must normally be given an autonomous and uniform interpretation throughout the Union, having regard to the context of the provision and the objective pursued by the legislation in question." [11]

22. It is precisely this need for a uniform interpretation and application of the EUDR that makes it important that differences should not arise in the application of the Regulation by Member States and their competent authorities. ClientEarth is therefore fully justified in seeking to eliminate this risk by seeking the present Opinion

23. The principles to be applied in interpreting Union legislation to produce this "autonomous and uniform" meaning have been clearly established by the case law of the Court of Justice, most recently in Case C-/22 *Illumina/Grail* in the following terms*:*

> "116. …(I)n accordance with settled case-law …, the interpretation of a provision of EU law requires account to be taken not only of its wording, but also of its context, and the objectives and purpose pursued by the act of which it forms part. The legislative history of a provision of EU law may also reveal elements that are relevant to its interpretation (judgments of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 47, and of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele),* C-24/19, EU:C:2020:503, paragraph 37 and the case-law cited)."[12]

24. As that judgment demonstrates, this approach will typically require separate consideration of the **literal** meaning of the provision in question, its legislative **history**, its **context** and the **objectives and purpose** of the measure in question (referred to as the "teleological approach"), no one of these factors normally being decisive. However, as the Court of Justice went on to explain, the literal meaning of the words has a particular importance. Thus, it explained:

> "126 It is true that it follows from settled case-law that an interpretation of a provision of EU law cannot have the result of depriving the clear and precise wording of that provision of all effectiveness (judgments of 25 January 2022, *VYSOČINA WIND*, C-181/20, EU:C:2022:51, paragraph 39, and of 13 October 2022, *Gmina Wieliszew*, C-698/20, EU:C:2022:787, paragraph 83).
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> "127 The Courts of the European Union are not however deprived of the possibility of having recourse **in certain situations** to methods of interpretation which they consider appropriate in order to clarify the exact scope of a provision of EU law that appears to be clear, its being understood that every provision of EU law must be placed in its context and interpreted in the light of the provisions of EU law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the

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11 Case C-174/08 *NCC Construction Danmark* EU:C:2009:699 at paragraph 24 and case law cited.

12 Joined Cases C-611/22P and C-625/22P *Illumina/Grail v. Commission* EU:C: 2024:677, judgment of 3 September 2024, at paragraph 116.

provision in question is to be applied (judgments of 6 October 1982, *Cilfit and Others*, 283/81, EU:C:1982:335, paragraph 20, and of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 46).

"128 **In the circumstances of the present case**, where it appears that numerous factors were brought to the attention of the General Court with a view to clarifying the scope of the allegedly clear wording of the first subparagraph of Article 22(1) of Regulation No 139/2004, **the General Court was fully entitled to hold that it could not confine itself to an isolated reading of the – both concise and general – wording of that provision and refrain from a contextual and teleological interpretation, as informed by the legislative history of that provision**." (Emphasis added)

25. These passages show that where wording of legislation appears to be so clear and precise as to be "absolutely plain", [13] then that meaning should prevail, and there is no need to resort to other interpretative aids. By contrast, where the wording is merely "both concise and general", then it may be appropriate to consider the other aids to interpretation. That latter consideration is likely to be particularly relevant where the words or phrases to be interpreted are not themselves the subject of a definition clause in the legislation in question.
26. As I explain below, this consideration is particularly appropriate in interpreting Articles 2(40) and 3 EUDR.

ANALYSIS OF THE QUESTIONS POSED

27. The questions asked and the answers to them necessarily overlap, since they all relate to overall interpretation to be given to the phrase in Article 3(b) EUDR 'produced in accordance with the relevant legislation of the country of production'.

Questions a) and b)

28. The first two questions asked, which I shall take together, are:

"a) How should the phrase 'concerning the legal status of the area of production' be understood? In this context:

i. How should the term 'legal status' be understood?

ii. How should the term 'area of production' be understood, noting it is different from other definitions that specifically define areas used to produce commodities subject to the law?" and

"b) Do the words 'relevant legislation of the country of production' partially or completely exclude from the scope of the definition laws that do not regulate formal legal interests in land, noting this may potentially exclude laws that are expressly

[13] See the passages cited from *Vysočina Wind*, C-181/20, EU:C:2022:51, paragraph 39, and *Gmina Wieliszew*, C-698/20, EU:C:2022:787, paragraph 83

included in the categories listed in Article 2(40) as being relevant (such as forest-related rules, labour laws, human rights laws, tax, anti-corruption, trade and customs regulations)?"

29. It is convenient to begin with the meaning of 'area of production'. This is not a defined term in the EUDR, nor does it in my view satisfy the test of being so "clear and precise" as to be "absolutely plain". It is therefore appropriate to turn to the other aids to interpretation relied on by the CJEU, provided always that the result is not incompatible with the literal sense of the words.
30. It is relevant to note, as to **context**, that the legislative scheme for ensuring compliance with the requirements of the Regulation involves the requirement that operators trace back, through the entire supply chain, the origins of all relevant commodities that have been used in the production of relevant products as defined in the Regulation. Furthermore, this tracing back goes all the way to the specific locations, predominantly but not exclusively in third countries outside the Union, where those commodities are produced. The granularity of detail required for this purpose is made clear from Article 9(1)(d) EUDR, which requires the gathering of information so as to be able to identify every individual 'plot of land' where the relevant commodities that a relevant product contains, or has been made with, were produced, together with the specific geolocation of the plot.
31. That granularity is further evident from the definition of 'plot of land' (Article 2(27) EUDR), which makes clear that it involves a dual concept: first that it be 'land within a single real-estate property, as recognised by the law of the country of production', and second that, even within such a single property, the parts of it used for to produce relevant commodities must be subject to sufficiently homogeneous conditions so as to allow for an evaluation of the aggregate level of risk of deforestation and forest degradation associated with the production of relevant commodities on that plot. Thus, a single real-estate property may require the identification of a number of separate 'plots of land', each of which may require a separate risk assessment, unless the production of all the relevant commodities grown on it is subject to sufficiently uniform conditions across the whole of the property. A similar analysis should apply in relation to the application of these principles to 'establishments' used to produce cattle.
32. By contrast, by its very nature, most if not all legislation in a particular country will be applicable across the whole of the country of production, or at least to defined parts of that country that are considerably larger that just one single 'plot of land', i.e., as mentioned above, a piece of land in single ownership, or even a lesser part or parts of such a property

on which relevant commodities are 'produced'. That is, moreover, obviously the case for many of the specific items of 'relevant legislation' identified in Article 2(40). Indeed, most legislation of the types identified in paragraphs (e) to (h), is likely to be applicable over at least large regions, if not the whole country.

33. It therefore appears clear to me that the phrase 'area of production' as used in Article 2(40) is intended, at the least, to recognise the fact that the laws applicable to the production of commodities on any given 'plot of land' will not be specific to that plot, but will be those applicable over a much wider area, and possibly the whole country.

34. A further, possibly important, aid to interpretation, in my view, can be derived from the objectives of the EUDR. These are not limited to reducing or eliminating consumption of non-compliant relevant products that incorporate relevant commodities, but extend to preventing or discouraging the future deforestation or forest degradation of existing areas of primary or naturally regenerated forest. See Articla 1(1)(a) EUDR and the recitals to the Regulation, in particular recitals (1) to (15), and their reference to the need to 'combat' further deforestation and forest degradation and to avoid the associated greenhouse gas emissions and biodiversity loss, as well as ensuring the continued provision of important environmental services that forests provide to both local communities and global society. Consistently with that objective, it would be understandable that the Union legislator intended to seek to ensure not merely that, on the specific 'plots of land' actually used for 'production' of a relevant commodity, all relevant legislation in categories 2(40) (a)-(h) has been properly complied with, but that no further deforestation or degradation of other primary or naturally regenerating forest has been, or is being, caused in other parts of the same 'area' where that existing production is taking place. To provide an example, if in a given 'area' there are both plots of land on which relevant commodities are being produced and also, immediately adjacent, other land, possibly in the same ownership, that is still primary or naturally regenerating forest, the objective of protecting the latter would extend to ensuring that there the relevant laws applicable to that area are also respected, even though the commodities that might thereafter be produced on that latter land might not necessarily be incorporated in products that are exported to the Union.

35. On this approach, any assessment of the impact of the commodity production activities may properly extend to the effects, whether direct or indirect, of those activities beyond the relevant 'plot of land' to other parts of the surrounding area. Thus, in many countries, I understand, assessment of the legality of production activities takes account of the impact of commodity production in the area surrounding the relevant plot of land, and not just the

legal status of the activities undertaken on the plot of land itself This approach appears particularly important where those impacts may affect the rights and interests protected by the kinds of laws described in Article 2(40) paragraphs (a) to (h) (such as land use rights, environmental interests, third parties' rights, and human rights including FPIC). **Accordingly, in my view, the 'area of production' should be interpreted so as to include, at least, the area surrounding or in the vicinity of the particular plot of land (or 'establishment') used for production of a relevant commodity, where that area has been or is being impacted, either directly or indirectly, by the process of 'production' undertaken on the particular plot of land.**

36. Next, as to the words 'legal status', these too are not a defined term in the EUDR, nor do they in my view satisfy the test of being so 'clear and precise' as to be 'absolutely plain'. It is therefore appropriate again to turn to the other aids to interpretation relied on by the CJEU, and in particular, in this case, the context in which they appear.

37. As the second question rightly points out, the categories of laws listed in sub-paragraphs (a) – (h) of Article 2(40) are particularly broad. For this reason I can with confidence **reject** the suggestion, implicit in question b), that the phrase 'laws applicable …concerning the legal status of the area of production' might be intended to limit such laws to those 'that regulate formal legal interests in land'. On the contrary, it is evident that laws relating for example to labour rights, and to tax and trade and customs regulations could have no connection or relevance to the acquisition or regulation of legal interests in land.

38. On the other hand, I take the view that, by the phrase 'laws applicable … concerning the legal status of the area of production', the Union legislator intended to impose some limitation on the categories of laws intended to be covered by the concept of 'relevant legislation'. That limitation seems, in my view, to be the existence of some link, direct or indirect, to the land on which the activity of production of relevant commodities is being carried out, or to that process of 'production'. As the definition of 'produced' in Article 2(14) makes clear, 'production' is the process by which these commodities are all 'grown, harvested, obtained from or raised on relevant plots of land or, as regards cattle, on establishments', and in principle covers all aspects from acquisition of the necessary business licences and government approvals, to acquisition, occupation and preparation of the relevant land, to the culmination of the production process in the extraction of the commercial product for which the production activities were carried out. A similar analysis should apply in relation to the application of these principles to 'establishments' used

39. This approach is, moreover, entirely consistent with the overall objectives in Article 1(1)(a) and (b) EUDR. The Guidance Document is therefore correct, in my view, when it states "legislation is also relevant if its contents can be linked to halting deforestation and forest degradation in the context of the Union's commitment to address climate change and biodiversity loss" (Guidance Document, Section 6, 'LEGALITY'). Those objectives are to prevent, or at least limit, the further loss of primary or naturally regenerated forest, with the adverse consequences not only for climate change and biodiversity loss, but also the protection of indigenous peoples and local communities and other objectives mentioned in the Recitals. It is precisely because the principal cause to date of deforestation and forest degradation has been to clear land, usually unlawfully, for the production of the relevant commodities specified in the EUDR that the Regulation has as its objective the prevention of any further unlawful deforestation or forest degradation.

40. I therefore consider that the specific examples that the Commission has set out in its Guidance all constitute, as a minimum, correct examples of 'relevant legislation' within the meaning of the Regulation. However, as the Guidance Document itself stresses, this enumeration is not intended to be exhaustive. Nor, indeed, should it be the subject of a limited interpretation. For example, under the first category of 'land use rights' the two examples given are 'legislation on land transfer in particular for agricultural land or forests' and 'legislation on land lease transaction'. While both these examples relate specifically to laws relating to the creation or acquisition of legal interests in land, the phrase itself is clearly much broader, and in my opinion extends to <u>any</u> law that affects the ways in which the owners or occupiers of land may 'use' that land for the production of relevant commodities, even if those laws are unconnected with a transaction by which ownership or an interest in the land has been transferred, or where the land has been the subject of a lease, as well as any law concerning how the process of commodity production may or may not affect the land rights of others, such as the land rights of Indigenous peoples or local communities.

41. In summary therefore, and in answer to the first two questions posed, I consider that, consistently with the teleological and contextual principles of interpretation applied by the CJEU as described above, the concept of 'relevant legislation' in Article 3(b) EUDR should be interpreted as extending to <u>any</u> law, of the types listed in paragraphs (a) – (h) of Article 2(40) EUDR where its content can be seen to have a significant 'link' to the achievement of the objectives set out in Article 1(1)(a) and (b) EUDR. I should add, for the avoidance of doubt, that for a law to fall within the scope of 'relevant legislation', it is

not necessary even that its primary purpose should be specific regulation of the types in paragraphs (a) - (h), so long as that it is one of the purposes of the law or even that it contributes significantly to that purpose. As explained above, such laws should be regarding as 'concerning the legal status of the area of production' if they apply in some way to the process of commodity production or its direct or indirect impacts both on the relevant plot of land and also in the surrounding 'area of production', being the area where those impacts are felt or manifest.

42. For completeness, I repeat that I can with confidence **reject** the suggestion, implicit in question b), that the phrase 'laws applicable …concerning the legal status of the area of production' might be intended to limit such laws to those that regulate formal legal interests in land.

43. I therefore turn to the remaining questions, which I can deal with more briefly.

Question c)

44. As to question c)

> "How should the requirement in Article 3(b) that products subject to the EUDR must be produced in accordance with 'relevant legislation of the country of production' in relation to 'tax, anti-corruption, trade and customs regulations' (Article 2(40)(h)), be interpreted when such laws may not regulate the **production** of relevant products (our emphasis) but the subsequent commercialisation, trade, export and import of commercial goods in general?"

I consider that, again, the context of this phrase is material to its interpretation. As mentioned above, the Regulation is intended to achieve its objectives through the obligation on operators to trace back, along the whole of the supply chain, the products and commodities covered by the Regulation to ensure that they are compliant, so as to enable the operator to assess, on the basis of the best available data, the risks of non-compliance before submitting their due diligence statements.

45. Consistently with that approach, I consider that an interpretation of Article 2(40) that limited the relevant legislation to laws specific to the process of '**production'**, whether of relevant commodities or of relevant products produced or derived from such commodities, would be inconsistent with the objectives of the Regulation. That conclusion is based, in the first place, on the fact that laws of the stated types in Article 2(40) paragraphs (a) to (h) will rarely be specific merely to the process of production, but will normally be generally applicable to the pre-production stages that are necessary to start commodity production and the post-production stages of dealing with the products as commercial goods, including their commercialisation, trade, import and export.

46. Moreover, that conclusion is reinforced by the broader consideration, recognised in the Guidance Document, that legislation should be regarded as 'relevant' if its contents can be linked to halting deforestation and its contribution to the Union's commitments on climate change and biodiversity loss. As to this, I am told that "identifying non-compliance with trade and customs regulations (which typically require a paper-trail) has been an important method for civil society organisations to identify illegal timber flowing into the EU in breach of the EUTR and to substantiated allegations of non-compliance". Assuming that this is correct, and I have no reason to think otherwise, this consideration is not only relevant for its relevance to the ability of civil society organisations to monitor compliance with the EUDR, but is also material for the operators when fulfilling their obligations in regard to the supply chain and identification of negligible or non-negligible risks of non-compliance when preparing their due diligence statements.

47. In answer to question c) I therefore consider that 'relevant legislation of the country of production', at least in relation to 'tax, anti-corruption, trade and customs regulations' (Article 2(40)(h)), is not limited to laws that regulate the **production** of relevant products or commodities, but also extends to laws 'applicable in the country of production' to the subsequent commercialisation, trade, export and import of commercial goods in general. As regards the other categories of laws listed in Article 2(40) paragraphs (a) to (g), given my conclusions above, I also consider that such laws should also be regarded as 'relevant legislation' if they apply in some way to the production process, whether of relevant commodities or relevant products, including the pre- and post-production stages, undertaken in 'the country of production' of the relevant commodities.

Question d)

48. As to question d):

> "Based on the answers to the preceding questions, would international human rights law, both customary international law and international human rights treaties signed by a producer country, fall within the scope of 'laws applicable in the country of production concerning the legal status of the area of production in terms of … (f) human rights protected under international law; [and] (g) the principle of free, prior and informed consent (FPIC), including as set out in the UN Declaration on the Rights of Indigenous Peoples'?"

This question asks, in effect, if international human rights law, whether derived from customary international law or from international human rights treaties to which a producer country is party, falls within the scope of 'relevant legislation of the country of production' within the meaning of that phrase in Article 3 EUDR.

49. In my Opinion, the answer to this question will depend on the status given to international law obligations in the legal system of the country of production. With regard to international law, the domestic legal systems of States vary according to the status and effect accorded to the State's international law obligations within the domestic legal system. In some States, commonly referred to as "monist", international law obligations which the State has undertaken, or obligations derived from customary international law, are capable of producing legal effects even in the absence of specific national legislation incorporating or giving effect to those obligations. That "monist" character may be derived from an explicit provision in the State's Constitution, or a general law or even as a result of judicial interpretation. By contrast, in so-called "dualist" States, the international law obligations of the State, whether derived from treaties or customary international law, do not generally give rise to obligations within that State's domestic legal order. In such States, those effects are only produced when a specific law is adopted to implement those provisions.

50. In my opinion, the phrases 'relevant legislation <u>of</u> the country of production' (emphasis added) as well as the phrase 'laws applicable <u>in</u> the country of production' (emphasis added) both indicate that, if the State in question has a "monist" legal system, of whatever type, so that the State's international obligations can produce legal effects within its internal legal order, then they would certainly be capable of constituting laws applicable 'in' the country of production, and thus constitute relevant legislation 'of' the country of production in the sense of Article 2(40) and Article 3 EUDR. Only if the country is truly dualist, so that its international obligations produce no effects within the domestic legal system, will its relevant international obligations fall outside Article 2(40).

<u>Question e)</u>

51. Question e) asks:

> "The formal guidance on the EUDR …. states that "Article 2(40) of the EUDR must be read in the light of the objectives of the EUDR as laid down in Article 1(1)(a) and (b), meaning that legislation is also relevant if its contents can be linked to halting deforestation and forest degradation in the context of the Union's commitment to address climate change and biodiversity loss." (p.14). Is this a justified interpretation of the scope of Article 2(40)? If so, what legal principles can be used to determine whether the content of third country laws is 'linked to halting deforestation and forest degradation in the context of the Union's commitment to address climate change and biodiversity loss'?

52. As indicated in answer to questions a) and b) above, I consider that the above statement in the Guidance Document is a permissible, and indeed to be preferred, principle to be applied

in interpreting the Regulation. Given the exensive justification set out in the Recitals to the Regulation, including the desire that measures adopted by the Union should contribute to the extent possible to the objectives of halting deforestation and forest degradation, an interpretative approach that regards legislation as 'relevant', for the purposes of Article 2(40) and Article 3, if it has a link to the achievement of those objectives is, in my opinion, fully justified.

53. However, as the second part of the question recognises, the issue then is as to the requisite nature of the 'link' between a law and those objectives for the principle to apply in a given case. How strong must that 'link' be? I do not think that there is a simple answer to this, and the determination of whether the 'link' is sufficient will vary, in practice, according to the particular facts of any given case. However, I do consider that, where it is reasonably foreseeable that a given law may, at least in certain situations, make a material contribution to achievement of those objectives, then a sufficient 'link' will exist. Moreover, that test will be relevant if that contribution produces its effects in relation to any part of the speficic mechanism established by the Regulation for achieving those objectives, namely the verification of the whole supply chain back to the producer of the relevant commodities or products and investigation of the circumstances in which the commodities or products were produced.

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Given at Luxembourg, 28th February 2025