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Unravelling the EU Deforestation-Free Products Regulation: A Transnational Governance Mechanism that Misses the Forest for the Trees

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Abstract

In alignment with the vision for the future of the European Union (EU) put forth by the European Green Deal in 2020, and EU efforts to tackle global deforestation and forest degradation, the EU Deforestation-Free Products Regulation (EUDR) was adopted in June 2023. The EUDR is designed specifically as a unilateral, yet transnational, intervention to limit access to the EU market or the exports from the EU of seven key forest-risk commodities whenever they are linked with deforestation, forest degradation, or illegality. Drawing on decolonial and critical food systems scholarship, this article critically examines the EU's position in combating global deforestation and forest degradation by positioning the EUDR in historically shaped and unequally constructed agri-food chains. Whereas the EU's plan to decrease deforestation and forest degradation linked with its substantive consumption of products from the global south is an innovative step from the point of view of transnational governance of environmental degradation, we find that the historical amnesia, the emphasis on global trade, and the push for 'green value chains' fail to address the root causes of deforestation. Moreover, we contend that the EU legislator overlooked the potential of using transnational governance to rethink agri-food systems, including by promoting re-regionalization in the name of food sovereignty and the right to food.

Keywords: EUDR; Deforestation; Global agri-food chains; Unilateral trade measures; Decolonization; Food sovereignty

1. Introduction*

Over the last years, the European Union (EU) has adopted a series of measures to reduce its climate and environmental impact in alignment with international commitments,

* This article was drafted prior to adoption of Regulation (EU) 2025/2650 (19 Dec. 2025), which substantially revised the obligations and responsibilities of traders and operators under the EUDR (as detailed in Section 2.2). Readers should note that obligations now vary across different categories of operator, and that traders no longer carry the same responsibilities as operators. These revisions, however, do not alter the central argument of the article.

including those outlined in the Paris Agreement¹ and the 2030 Agenda for Sustainable Development.² In 2020, the approval of the European Green Deal (EGD) as a comprehensive policy package was heralded as a pivotal moment for upholding commitments to reducing greenhouse (GHG) gas emissions and achieving climate neutrality.³ The EGD agenda was then followed by a series of unilateral and multilateral interventions at the European level,⁴ some of which in the area of international trade aimed at promoting a new global ‘green’ level playing field that links global value chains (GVCs) with sustainability objectives and trade with the promotion of green growth-led development.⁵

Within the EGD, curbing deforestation has been identified as one of the key environmental priorities of the EU.⁶ This prioritization stemmed both from the acknowledgement by the European Commission (Commission) that the Union is among the leading international consumers of goods that are linked with deforestation, and from the widespread recognition across civil society, environmental organizations, and climate advocacy groups that forests are key in the fight against climate change and biodiversity loss.⁷ At the international level, curbing deforestation became central to parliamentary resolutions, policy guidelines, and two non-binding international agreements: the 2014 United Nations (UN) New York Declaration on Forests,⁸ and the 2015 Amsterdam Declaration ‘Towards Eliminating Deforestation from Agricultural Commodity Chains with European Countries’.⁹

¹ Paris Agreement, Paris (France), 12 Dec. 2015, in force 4 Nov. 2016, available at: http://unfccc.int/paris_agreement/items/9485.php.

² United Nations General Assembly (UNGA) Resolution 70/1, ‘Transforming Our World: The 2030 Agenda for Sustainable Development’, 21 Oct. 2015, UN Doc. A/RES/70/1, available at: <https://sdgs.un.org/2030agenda>.

³ D. Vela Almeida et al., ‘The “Greening” of Empire: The European Green Deal as the EU First Agenda’ (2023) 105 *Political Geography*, article 102925.

⁴ See, e.g., European Commission, ‘Financing the Green Transition: The European Green Deal Investment Plan and Just Transition Mechanism’, Press Release IP/20/17, 14 Jan. 2020, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_17; Regulation (EU) No. 2020/852 on the Establishment of a Framework to Facilitate Sustainable Investment, and Amending Regulation (EU) 2019/2088 [2020] OJ L 198/13 (Taxonomy Regulation); Regulation (EU) No. 2024/1252 Establishing a Framework for Ensuring a Secure and Sustainable Supply of Critical Raw Materials and Amending Regulations (EU) No 168/2013 [2024] OJ L 2024/1252 (Critical Raw Materials Act).

⁵ R. Fuchs, C. Brown & M. Rounsevell, ‘Europe’s Green Deal Offshores Environmental Damage to Other Nations’ (2020) 586(7831) *Nature*, pp. 671–3.

⁶ Communication from the Commission, ‘The European Green Deal’, 11 Dec. 2019, COM(2019)640 final.

⁷ F. Pendrill et al., ‘Agricultural and Forestry Trade Drives Large Share of Tropical Deforestation Emissions’ (2019) 56 *Global Environmental Change*, pp. 1–10; Greenpeace European Unit, ‘87% of Europeans Support New Laws to Combat Global Deforestation, New Poll’, 21 May 2019, available at: <https://www.greenpeace.org/eu-unit/issues/nature-food/2015/87-percent-support-laws-deforestation-new-poll>; World Wildlife Fund (WWF), ‘Stepping Up? The Continuing Impact of EU Consumption on Nature Worldwide’, 14 Apr. 2021, available at: <https://www.wwf.eu/?2965416/Stepping-up-The-continuing-impact-of-EU-consumption-on-nature>.

⁸ UN Secretary General’s Climate Summit, New York, NY (United States (US)), 23 Sept. 2014, available at: <https://forestdeclaration.org>.

⁹ Amsterdam (The Netherlands), 7 Dec. 2015, available at: <https://ad-partnership.org/wp-content/uploads/2018/10/Amsterdam-Declaration-Deforestation-Palm-Oil-v2017-0612.pdf>.

In this political context, the adoption of the EU Deforestation-Free Products Regulation 2023/1115 (EUDR),¹⁰ on 29 June 2023, can be seen as a milestone in the regulation of deforestation. The EUDR aims to promote the consumption of ‘deforestation-free’ products and reduce the EU’s impact on global deforestation and forest degradation by requiring that, when seven key forest-risk commodities (FRCs) are imported into or exported from the EU, they are deforestation-free and produced in compliance with the laws of the country of origin. To achieve this objective, it mandates due diligence and traceability requirements for operators and traders seeking to import or export those commodities and entrusts competent authorities in EU Member States with monitoring and compliance.¹¹

The EUDR has been hailed as an ‘important turning point in the global fight against deforestation’¹² and was warmly received by European environmental organizations, environmental legal advocates, policymakers, and institutions as a significant step in the achievement of the Paris Agreement and the international obligations assumed by the EU.¹³ Following the vote, European Parliament Rapporteur for the Deforestation Regulation, Christophe Hansen (EPP, LU), notably stated:

Until today, our supermarket shelves have all too often been filled with products covered in the ashes of burned-down rainforests and irreversibly destroyed ecosystems, which had wiped out the livelihoods of [I]ndigenous people. All too often, this happened without consumers knowing about it. I am relieved that European consumers can now rest assured that they will no longer be unwittingly complicit in deforestation when they eat their bar of chocolate or enjoy a well-deserved coffee. The new law is not only key in our fight against climate change and biodiversity loss but should also break the deadlock preventing us from deepening trade relations with countries that share our environmental values and ambitions.¹⁴

This celebratory stance is echoed in academic discussions, in which several authors have underlined that the EU is taking a pioneering role in promoting corporate

¹⁰ Regulation (EU) 2023/1115 on the Making Available on the Union Market and the Export from the Union of Certain Commodities and Products Associated with Deforestation and Forest Degradation and Repealing Regulation (EU) No. 995/2010 [2023] OJ L 150/206 (EUDR).

¹¹ European Commission, ‘Regulation on Deforestation-Free Products’, available at: https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products_en.

¹² European Commission, ‘Green Deal: EU Agrees Law to Fight Global Deforestation and Forest Degradation Driven by EU Production and Consumption’, Press Release. IP/22/7444, 6 Dec. 2022, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_7444.

¹³ Client Earth, ‘The Proposed EU Law on Deforestation-Free Products: What Is in the European Commission’s Proposal and What Is Left Out?’, Dec. 2021, available at: https://www.clientearth.org/media/sbjhtw3c/eu-deforestation-proposal_main-elements-and-omissions_dec21.pdf; Fern, ‘EU Regulation on Deforestation-Free Products: What’s in the New Proposal and What Does It Mean’, 7 Dec. 2021, available at: <https://www.fern.org/publications-insight/ferns-response-to-the-proposed-regulation-on-deforestation-free-products-2437>; WWF, ‘EU Leaders Seal Deal for Groundbreaking Law to Stop Deforestation’, 6 Dec. 2022, available at: <https://www.wwf.eu/?8350966/EU-leaders-seal-deal-for-groundbreaking-law-to-stop-deforestation>.

¹⁴ European Parliament, ‘Parliament Adopts New Law to Fight Global Deforestation’, Press Release 20230414IPR80129, 19 Apr. 2024, available at: <https://www.europarl.europa.eu/news/en/press-room/20230414IPR80129/parliament-adopts-new-law-to-fight-global-deforestation>.

responsibility, human rights, and environmental due diligence in agricultural commodity supply chains.¹⁵

Some authors nonetheless have discussed shortcomings of the EUDR, which include potential additional burdens for private entities,¹⁶ and risks in excluding vulnerable smallholder farmers and producers.¹⁷ Others have highlighted the neglect of international standards on (customary) land tenure rights, including those of forest-dependent communities and Indigenous peoples,¹⁸ and the potential gaps between the EUDR and previous laws and certification schemes.¹⁹ Many of these analyses, however, focus primarily on the technical and governance aspects of the Regulation. Few studies have, in fact, questioned the trade and development model in which the EUDR comes into play,²⁰ and seldom place the new deforestation law within the context of EU colonial legacies and the normalization of the appropriation and exploitation of land and peoples in territories of production at the expense of socio-ecological diversity in those regions.²¹

In our reading, the EUDR as a unilateral intervention to improve the environmental footprint of global agri-food chains offers an opportunity to delve into broader structural limitations of unilateral forms of transnational environmental governance originating from former colonial power. These limitations stem not so much from the unilateral nature of the Regulation, but from the assumption that improving the operation of global commodity chains is ‘enough’,²² and that it is not necessary to

¹⁵ J. Coenen et al., ‘The Telecoupled Implications of the New EU Regulation on Deforestation-Free Products (EUDR)’, *Global LAND Programme*, 21 Nov. 2023, available at: <https://glp.earth/news-events/blog/telecoupled-implications-new-eu-regulation-deforestation-free-products-eudr-0>; A. Schilling-Vacaflor & M.-T. Gustafsson, ‘Towards More Sustainable Global Supply Chains? Company Compliance with New Human Rights and Environmental Due Diligence Laws’ (2024) 33(3) *Environmental Politics*, pp. 422–43; A. Schilling-Vacaflor & A. Lenschow, ‘Hardening Foreign Corporate Accountability Through Mandatory Due Diligence in the European Union? New Trends and Persisting Challenges’ (2023) 17(3) *Regulation & Governance*, pp. 677–93.

¹⁶ M. Köthke, M. Lippe & P. Elsasser, ‘Comparing the Former EUTR and Upcoming EUDR: Some Implications for Private Sector and Authorities’ (2023) 157 *Forest Policy and Economics*, article 103079.

¹⁷ E. Blot & N. Hiller, ‘Securing the Position of Smallholders in Zero-Deforestation Supply Chains’, Institute for European Environmental Policy (IEEP) Policy Briefing, 14 Oct. 2022, available at: <https://ieep.eu/publications/securing-the-position-of-smallholders-in-zero-deforestation-supply-chains>.

¹⁸ G. Marín Durán & J. Scott, ‘Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union’ (2022) 34(2) *Journal of Environmental Law*, pp. 245–67; E. Zhunusova et al., ‘Potential Impacts of the Proposed EU Regulation on Deforestation-Free Supply Chains on Smallholders, Indigenous Peoples, and Local Communities in Producer Countries Outside the EU’ (2022) 143 *Forest Policy and Economics*, article 102817.

¹⁹ L.H.E. Cosimo et al., ‘Voluntary Sustainability Standards to Cope with the New European Union Regulation on Deforestation-Free Products: A Gap Analysis’ (2024) 164 *Forest Policy and Economics*, article 103235.

²⁰ E. Verhaeghe & S. Ramcilovic-Suominen, ‘Transformation or More of the Same? The EU’s Deforestation-Free Products Regulation Through a Radical Transformation Lens’ (2024) 158 *Environmental Science & Policy*, article 103807.

²¹ I. Wallerstein, *The Modern World-System I: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century, with a New Prologue* (University of California Press, 1974); R. Patel & J.W. Moore, *A History of the World in Seven Cheap Things: A Guide to Capitalism, Nature, and the Future of the Planet* (University of California Press, 2018).

²² S. Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018).

rethink them entirely. In particular, postcolonial and global development studies have long underlined how the European economic and trade position is based on the disproportionate exploitation of land, labour, and raw materials from the global south, drawing upon unequal material and power relations.²³ Likewise, scholars interested in decoloniality and degrowth have highlighted that the draining of land and resources from the global south, close to imperial forms of appropriation, remains a significant feature of the world economy in the post-colonial era.²⁴

In the context of GVCs, it cannot be ignored that the EU position on ‘trade and sustainability’ is closely connected to the production of raw commodities that takes place in other regions of the world, in particular in tropical countries.²⁵ Indeed, fuels excluded, the EU imports more from developing countries than the United States (US), Canada, Japan, and China put together.²⁶ This positions the EU as the world’s largest single market and the top trading partner for 80 countries.²⁷ The same applies to agri-food chains, a subsector of the global economy in which the EU currently occupies the position as largest importer of food commodities – primarily raw materials for industrial and livestock processes – and the largest exporter of food, mostly transformed and high-end products.²⁸ The leakage of GHG emissions from the production and transportation of products intended for the EU market in third countries, along with deforestation and the loss of socio-biological diversity in those regions, therefore, can be considered as direct consequences of the EU demand for raw materials.²⁹ If, on one hand, in embarking on a policy attempt to recognize its global footprint and introduce regulatory changes that may address its share of global environmental destruction and resource consumption, the EU has positioned itself as a leader in this area;³⁰ on the other hand, its focus on economic growth and

²³ E.M. Kumeh & S. Ramcilovic-Suominen, ‘Is the EU Shirking Responsibility for its Deforestation Footprint in Tropical Countries? Power, Material, and Epistemic Inequalities in the EU’s Global Environmental Governance’ (2023) 18(2) *Sustainability Science*, pp. 599–616; J. Hickel et al., ‘Imperialist Appropriation in the World Economy: Drain from the Global South through Unequal Exchange, 1990–2015’ (2022) 73 *Global Environmental Change*, article 102467; P. Alonso-Fernández & R.M. Regueiro-Ferreira, ‘Extractivism, Ecologically Unequal Exchange and Environmental Impact in South America: A Study Using Material Flow Analysis (1990–2017)’ (2022) 194 *Ecological Economics*, article 107351.

²⁴ J. Hickel, D. Sullivan & H. Zoomkawala, ‘Plunder in the Post-Colonial Era: Quantifying Drain from the Global South through Unequal Exchange, 1960–2018’ (2021) 26(6) *New Political Economy*, pp. 1030–47; P. McMichael, *Development and Social Change: A Global Perspective* (SAGE, 6th edn, 2017).

²⁵ W. Rodney & A.Y. Davis, *How Europe Underdeveloped Africa* (Verso, 2018).

²⁶ European Commission, ‘EU Position in World Trade’, available at: <https://ec.europa.eu/trade/policy/eu-position-in-world-trade>.

²⁷ Ibid.

²⁸ European Commission, Directorate-General Agriculture and Rural Development, ‘Monitoring EU Agri-Food Trade’, Dec. 2025, available at: https://agriculture.ec.europa.eu/document/download/7dee14a1-23d8-47a6-a15f-e79d35b98f07_en?filename=monitoring-agri-food-trade-june2022_en.pdf.

²⁹ S.L. Bager, U.M. Persson & T.N.P. Dos Reis, ‘Eighty-Six EU Policy Options for Reducing Imported Deforestation’ (2021) 4(2) *One Earth*, pp. 289–306; Pendrill et al., n. 7 above.

³⁰ Vela Almeida et al., n. 3 above.

competitiveness effectively outsources its carbon footprint and environmental responsibility to the global south.³¹ The economic growth and wellbeing of the EU, including the shift towards a 'greener' economy and more 'sustainable' forms of production and consumption (of food, energy, etc.), are thus dependent on processes of extraction that take place at the other end of GVCs. As we discuss in this article (Section 3.3), the EUDR is the latest manifestation of this mechanism.

Deforestation, in this sense, is the result of 'deeply entrenched inequities'³² within a system of material appropriation and unequal material exchanges relations within the global economy. In this context, one may thus question whether the EU intervention in agri-food chains to tackle global deforestation and forest degradation is, in fact, not 'missing the forest for the trees'. By situating the EUDR within decoloniality and uneven exchanges theories, this article highlights some of the limitations of the EUDR in acknowledging and thus addressing the root causes of commodity consumption driving deforestation, while also offering insights into its socio-economic and ecological implications for those at the far end of the value chains. In particular, it highlights how a unilateral EU regulation seeking to address deforestation cannot be detached from the underlying socio-economic practices in which it operates and thus can produce distributive effects in terms of rights, obligations, value, and opportunities across different territories. More specifically, given that the EUDR touches upon agri-food chains and land, we embed the Regulation within the context of historically shaped and unequally constructed agri-food systems to underline how these inequalities are sustained by a mechanism that does not challenge the premises of the contemporary global food regime but rather legitimizes them.³³

Firstly, Section 2 introduces the EUDR, its key actors, concepts, and processes – paying particular attention to the possible tensions that may arise from the definitions and technical requirements of the EUDR. The article then shifts to a higher level of analysis and presents three structural issues that so far have been overlooked by academic literature: the choice of unilateral trade interventions in the context of transnational environmental governance (Section 3.1); the failure to acknowledge the historical backdrop of unequal development within which the EUDR operates, thereby reproducing these inequalities (Section 3.2); and the narrow approach to 'greening' agri-food chains, overlooking socio-economic, political and ecological structures, and transformations linked to commodity production (Section 3.3). The concluding Section 4 highlights that the EU policy discourse is essentially overlooking the EU's historical role in global deforestation, intertwined with its colonial legacies overseas, and seems to be assuming that the establishment of a 'global level playing field' is possible through increased cooperation despite uneven economies and underlying structural issues.

³¹ Alonso-Fernández & Regueiro-Ferreira, n. 23 above; Kumeh & Ramcilovic-Suominen, n. 23 above.

³² Kumeh & Ramcilovic-Suominen, n. 23 above.

³³ Rodney & Davis, n. 25 above; H. Friedmann, 'Distance and Durability: Shaky Foundations of the World Food Economy' (1992) 13(2) *Third World Quarterly*, pp. 371–83; P. McMichael, 'A Food Regime Analysis of the "World Food Crisis"' (2009) 26(4) *Agriculture and Human Values*, pp. 281–95.

2. The EUDR: Defining Key Actors, Concepts, and Processes

The EUDR is aimed at increasing the sustainability of regional and international trade by prohibiting the import or export of seven key FRCs to or from the EU market. The Regulation is based on traceability and due diligence requirements applicable to seven commodities (cattle, wood, palm oil, soy, cocoa, coffee, and rubber) as well as some derived products (such as beef, furniture, pallets, and chocolate) identified via their harmonized system tariff code contained in Annex I of the EUDR (Article 1 EUDR). The combination of traceability and due diligence is aimed at ensuring that, when these products are placed on the EU market or imported into the EU, sufficient information is provided to verify product compliance with two key requirements: the legality requirement (i.e., compliance with the relevant legal system) and the requirement to be free from deforestation and forest degradation (i.e., not being linked to deforestation or forest degradation that occurred after 31 December 2020). Hence, the EUDR focuses on regulating production methods rather than the physical characteristics or quality of the products themselves, reflecting a form of retribution for avoiding the costs linked to responsible production practices.³⁴ Consequently, the requirements of the EUDR are directed at specific, and predominantly, private actors within the supply chains (traders and operators), holding them accountable for the externalities that are resulting from not adhering to the same international standards as the producers in the importing country.

In this section, we briefly introduce three main aspects of the EUDR: (i) its core objectives (Section 2.1), (ii) the actors to whom the obligations apply (Section 2.2), as well as (iii) the due diligence obligations imposed on these actors and the central role that risk plays in the EUDR's conception (Section 2.3).

2.1. Addressing Deforestation, Forest Degradation and Legality

According to the EU legislative intention, the EUDR is a measure guaranteeing that when seven specific commodities and some derivative products are placed on the EU market or exported from the EU, they contain, have been fed with, or have been made using relevant commodities that were generated on land not subject to deforestation or did not contribute to forest degradation after 31 December 2020. Compared with the former EU Timber Regulation (EUTR),³⁵ the EUDR not only expands the number of goods to be covered, but combines the obligation to be obtained legally with the obligation to respect an EU-defined notion of what deforestation and forest degradation are.³⁶

³⁴ Organisation for Economic Co-operation and Development (OECD), 'Processes and Production Methods (PPMs): Conceptual Framework and Considerations on Use of PPM-Based Trade Measures', 1997, OECD Doc. OCDE/GD(97)137.

³⁵ Regulation (EU) No. 995/2010 laying down the Obligations of Operators Who Place Timber and Timber Products on the Market [2010] OJ L 295/23 (EUTR).

³⁶ L. Berning & M. Sotirov, 'Hardening Corporate Accountability in Commodity Supply Chains under the European Union Deforestation Regulation' (2023) 17(4) *Regulation & Governance*, pp. 870–90.

The terms ‘forest’, ‘deforestation’, and ‘forest degradation’ are thus central to the EUDR, the interpretation and implementation of which require careful consideration. *Forests* are defined as ‘land spanning more than 0,5 hectares with trees higher than 5 meters and a canopy cover of more than 10%, or trees able to reach those thresholds in situ, excluding land that is predominantly under agricultural or urban land use’.³⁷

This definition, chosen to ground the measure based on processes and production methods (PPMs) in an international term of reference, aligns with the definition of ‘forest’ and ‘deforestation’ in the Forest Resources Assessment (FRA) of the Food and Agriculture Organization of the UN (FAO)³⁸ (Recital 44, Preamble to the EUDR). However, such a notion had already been criticized for over a decade by non-governmental organizations (NGOs) for not being adequately reflective of the social and biological diversity inherent in forests, given that forests cannot be equated to the mere sums of their trees.³⁹ Understanding what constitutes a forest, how it differs from other ecosystems and the consequences that a narrow focus on forests will have on other biomes will thus be fundamental in the implementation of the EUDR, its scope, and its role in shaping socio-ecological dynamics.⁴⁰

Deforestation is defined as ‘the conversion of forest to agricultural use, whether human-induced or not’ (Article 2(3) EUDR), while *forest degradation* is defined as ‘structural changes to forest cover, taking the form of the conversion of: (a) primary forests or naturally regenerating forests into plantation forests or into other wooded land; or (b) primary forests into planted forests’ (Article 2(7) EUDR). The text thus introduces a ‘scale of forests’ (Article 2(8)–(12) EUDR) that are ranked according to the level of human intervention, spanning from primary forests to naturally regenerating forests, plantation forests, planted forests and other wooded land. Rather than addressing a static circumstance, the Regulation sanctions specific transitions that may occur when producing agri-food commodities. The most straightforward transition is deforestation – that is, the shift from any form of forest into agricultural use, including for agricultural plantations and set-aside agricultural areas, and for rearing livestock. Similarly, the protection of ‘primary forests’ appears clear, given that the term refers to ‘naturally regenerated forest of native tree species, where there are no clearly visible indications of human activities and the ecological processes are not significantly disturbed’ (Article 2(8) EUDR). However, other conversions, such as activities resulting from commercial logging or replanting, appear less evident and could lead to a non-uniform application of the law, depending not only on the quality of the information provided by traders and operators but also on the way in which the history of human activities in the forest is presented by those actors via the due diligence statement.

³⁷ EUDR, n. 10 above, Art. 2(4).

³⁸ FAO, ‘Terms and Definitions – FRA 2025’, 2023, FRA Working Paper 194, available at: <https://opendataknowledge.fao.org/server/api/core/bitstreams/a6e225da-4a31-4e06-818d-ca3aeaddfd635/content>.

³⁹ World Rainforest Movement, ‘Deceit and Destruction Behind FAO’s Forest Definition’, 21 Mar. 2018, available at: <https://www.wrm.org.uy/publications/deceit-and-destruction-behind-faos-forest-definition>; <https://www.foei.org/tell-the-fao-to-develop-a-less-damaging-definition-of-forests>.

⁴⁰ A. Philippopoulos-Mihalopoulos, ‘Landscape’ (2020) 3 *International Lexicon of Aesthetics*, p. 1.

Beyond the focus on deforestation and forest degradation, the EUDR also requires that all relevant products be obtained in conformity to the applicable legislation of the country in which they are produced (Article 3(b) EUDR). This obligation is accompanied by a long list of national and international legal obligations that must be assessed – including human rights law and rights of Indigenous peoples (Article 2(40) EUDR) – and then reported by operators and traders in the due diligence statement (Article 9(h) EUDR). However, the reliance of the Regulation on private actors to assess the legality of production (Articles 9(h) and 10 EUDR) raises concerns, particularly in the context of increasingly privatized approaches to global environmental governance and legal compliance.⁴¹ Notably, the EUDR lacks clear and detailed guidance on how risk assessments should be conducted and substantiated, as well as an evaluation of whether EU Member State authorities are adequately equipped to control the legality assessment provided by private operators. This gap is particularly problematic for commodities produced in countries with complex and fragmented land tenure systems, where the capacity or willingness of private actors to ensure the accuracy and authenticity of land title records as part of their due diligence is highly uncertain. Along with the definition of ‘deforestation’ and ‘forest degradation’, the transnational request of respecting legality may thus raise legal tensions both in the jurisdiction of production and at the EU border. At the same time, the explicit reference to legality as a prerequisite to allowing the placement of the commodities on the market may open possibilities for transnational and coordinated actions between the EU and local realities that could strengthen the implementation of the applicable legal frameworks.⁴²

2.2. Who Has Obligations under the EUDR?

Due diligence systems and full product traceability are thus the means through which compliance with the deforestation-free and legality requirements for commodities imported into or exported from the EU is guaranteed. As outlined in Articles 2(15) and 2(17) EUDR, the due diligence obligations under the Regulation are placed on two key categories of actor: ‘operators’ and ‘traders’. While these categories are not new to the EU framework, having been introduced in the EUTR,⁴³ they are slightly modified in the new EUDR.

According to the EUDR text, an operator is ‘any natural or legal person who, in the course of a commercial activity, places relevant products on the EU market or exports therefrom’ (Article 2(15) EUDR). The category of ‘operators’ under the EUDR would thus encompass entities commonly recognized as commodity traders engaged in the

⁴¹ M. Paterson, ‘Global Governance for Sustainable Capitalism? The Political Economy of Global Environmental Governance’, in W.N. Adger & A. Jordan (eds), *Governing Sustainability* (Cambridge University Press, 2009), pp. 99–122; J. Clapp, ‘The Privatization of Global Environmental Governance: ISO 14000 and the Developing World’, in D.L. Levy & P.J. Newell (eds), *The Business of Global Environmental Governance* (The MIT Press, 2004), pp. 223–48.

⁴² T. Ferrando, ‘Land Rights at the Time of Global Production: Leveraging Multi-Spatiality and “Legal Chokeholds”’ (2017) 2(2) *Business and Human Rights Journal*, pp. 275–95.

⁴³ N. 35 above.

buying and selling of goods throughout the supply chain. Operators placing selected products on the EU market should issue a due diligence statement to the competent authorities, to include the information set out in Annex II for the relevant products, as well as a declaration that due diligence was exercised and that no or only a negligible risk was found (Article 4 EUDR).

On the other hand, traders are defined as ‘any natural or legal person in the supply chain other than the operator who, in the course of a commercial activity, makes relevant products available on the market’ (Article 2(17) EUDR). The definition of traders thus includes wholesalers, retailers, large supermarkets, and other entities involved in handling and distributing products along the supply chain after they have been introduced to the market by the ‘operators’. The EUDR mandates ‘SME traders’ to store and share information on their supply chains, while ‘non-SME traders’ are subject to the same requirements as operators under the Regulation (Article 5 EUDR).

While examining the allocation of responsibilities under the EUDR, it is important to note the lack of clarity in the definitions of ‘traders’ and ‘operators’ as well as in the distribution of responsibilities among the various stakeholders in the value chains. A visible omission is the exclusion of companies that specialize in physical distribution, materials management, transport and logistics. Although their activities are essential for physically introducing goods into the EU market, these companies bear no responsibility under the EUDR. Furthermore, the Regulation only mandates compliance from companies handling products listed in Annex I (Article 1 EUDR). As a result, companies marketing processed products classified differently from those in the annexes are excluded from the scope of the Regulation, even if they contain relevant commodities.⁴⁴ For instance, while chocolate is covered, biscuits with chocolate chips are not. This could result in a situation where the import of certain processed foods would bypass the regulatory scope of the EUDR, potentially leading to a reterritorialization of value chains rather than a change in the production processes themselves. It is also worth highlighting that the policy choices outlined in the EUDR, both in terms of distribution of obligations and covered commodities, will undoubtedly influence how compliance costs are allocated along the value chain.⁴⁵

2.3. Which Due Diligence? Information, Risk Analysis and Transparency

A key component of the due diligence process in the EUDR is the obligation of both traders and operators to perform a risk assessment and risk mitigation, in accordance with Articles 10 and 11 of the Regulation. Indeed, whenever a risk is identified regarding the compliance of relevant products, operators and traders must establish mitigation procedures and measures to minimize deforestation risks to a level

⁴⁴ European Commission, Directorate General for Environment (DG ENVI), ‘Frequently Asked Questions (FAQ): EU Deforestation Regulation’, 2023, available at: https://environment.ec.europa.eu/publications/frequently-asked-questions-deforestation-regulation_en.

⁴⁵ T. Ferrando & Y. Reid, ‘Greening and Accountability in an Uneven Playing Field: The Case of the European Union Deforestation Free-Products Regulation (EUDR)’, in P. Lujala, C. Brunnenschweiler & D. Vela Almeida (eds), *Handbook of Transparency and Accountability in Natural Resource Governance* (Edward Elgar, forthcoming).

characterized as ‘negligible’. Operators should consider the observance of human rights in a country when assessing risk and conducting mitigation measures (Article 9(h)), meaning that while human rights are a factor, the emphasis is not on the violation itself but on the presence of measures aimed at reducing the likelihood of such violations occurring.

The obligations of traders and operators are also seen as being contingent upon the degree of risk of the country or region of production, as determined by the ‘central database of risk assessments’ scheduled to be set up by the Commission within 18 months of the Regulation entering into force (Article 29 EUDR). The publication of the benchmarking system, initially scheduled for 30 December 2024, has been delayed along with the postponement of the EUDR’s applicability, with the new deadline set for 30 June 2025.⁴⁶ According to the text, the risk classification will be based on the rate of deforestation, forest degradation, and expansion of agricultural land for relevant commodities, on the production trends of relevant commodities and products, and possibly on the existence and effectiveness of laws protecting human rights, the rights of Indigenous peoples, local communities and other customary tenure rights holders (Article 29(3) EUDR). Via the combination of quantitative environmental data and qualitative legal data, the Commission should then categorize producing countries (or most likely producing regions) into ‘low’, ‘standard’, or ‘high-risk’ categories to create a benchmarking system (Article 29 EUDR). In turn, the level of risk will be associated with the need for a more thorough due diligence analysis undertaken by operators and traders, and with a higher likelihood of being controlled by the national competent authorities. However, the benchmarking has faced numerous challenges from producing countries because of its potential impact on competitiveness, access to the EU market, and trade costs.⁴⁷

In this context, it is important to emphasize that the scope of the accountability mechanism is tied to the moment when products enter or leave the EU market (Article 1 EUDR). Consequently, EU Member States have a central role in the implementation of the EUDR where they are required to designate competent authorities and establish national-specific rules on penalties, controls, and reporting, in line with minimum requirements established by the Commission (Article 25 EUDR). The national competent authorities of the Member States should notably be equipped with sufficient resources to conduct reliable checks and verify whether operators and traders are adhering to the Regulation (Articles 14 and 16 EUDR). This verification relies on the benchmarking and risk-based approach set out in Article 16 EUDR. Nonetheless, and although the Regulation indicates some specific requirements in

⁴⁶ European Commission, ‘The Commission Welcomes Provisional Agreement on Additional Phase-in Time for EU Deforestation Regulation’, Press Release IP/24/6204, 3 Dec. 2024, available at: https://ec.europa.eu/commission/presscorner/detail/ell/ip_24_6204.

⁴⁷ L. Berning & M. Sotirov, ‘The Coalitional Politics of the European Union Regulation on Deforestation-Free Products’ (2024) 158 *Forest Policy and Economics*, article 103102; World Trade Organization (WTO), Committee on Agriculture, ‘Joint Letter: European Union Proposal for a Regulation on Deforestation-free Products: Submission by Indonesia and Brazil’, 28 Nov. 2022, G/AG/GEN/213.

terms of procedures, transparency and cooperation,⁴⁸ it is evident that the funding, structure, governance mechanisms, and seriousness of the commitment of each Member State will make the difference regarding the effectiveness of the implementation. For that, this aspect needs to be further investigated and brought to the attention of current academic and policy analysis. Monitoring the implementation and enforcement of the EUDR across Member States would be essential to provide empirical insights into the development of country-specific rules, enforcement of minimum inspection standards, the criteria and data employed by customs and market authorities to assess production legality, as well as the establishment (or lack) of regulated accessible spaces for civil society engagement and ensuing changes, and adaptations of legal frameworks and practices that are likely to unfold in the coming years.

3. Deforestation as a Symptom of Deep-Rooted Unevenness in the Global Economy

In 2021, the Commission recognized that ‘as a major economy and consumer of commodities linked to deforestation and forest degradation, the EU is partly responsible for this problem and it wants to lead the way to solving it’.⁴⁹ With this recognition, it seems to acknowledge that neither time nor geographical or legal distance from environmental degradation should deflect responsibility, and that public authorities have a role to play in addressing operations that have occurred in the past and continue to take place at the origin of agri-food chains that end in EU markets. Nonetheless, a closer examination of the EUDR reveals inconsistencies in the EU policy discourse, both because it fails to take a multilateral and participatory approach to environmental governance and because it focuses solely on the future of deforestation. By doing so, it essentially deflects Europe’s historical role in ecological breakdown resulting from the pursuit of intensive and cost-effective production systems in other territories. Furthermore, the approach taken by the EU legislator reveals inconsistencies in the way in which it still takes for granted global trade in food commodities.

3.1. Participation in the Context of Transnational Environmental Regulations

Participation in public environmental governance has become a fundamental element of green ideology and governance for sustainability, as well as a means to democratize transnational and global environmental governance.⁵⁰ The involvement of citizens and

⁴⁸ This includes specific requirements for checking due diligence information through a centralized electronic system, cooperating with the competent authorities of other Member States, and ensuring that only compliant products are released for free circulation or export. Checks should notably be carried out on a specific percentage of the quantity of each of the relevant products, with 9% of operators and traders dealing in high-risk countries, 3% for those coming from standard-risk countries, and 1% for low risk (Arts 16, 26, 27 EUDR).

⁴⁹ European Commission, n. 11 above.

⁵⁰ J. Newig et al., ‘Does Stakeholder Participation Improve Environmental Governance? Evidence from a Meta-analysis of 305 Case Studies’ (2023) 82 *Global Environmental Change*, article 102705; J.D. Sachs et al., ‘Six Transformations to Achieve the Sustainable Development Goals’ (2019) 2(9) *Nature*

stakeholders in environmental decision-making is seen in environmental policy studies as a catalyst for achieving environmental objectives.⁵¹ Similarly, the increasing engagement of global south countries in the global environmental enterprise has been argued to be a marker of legitimacy and effectiveness of global environmental governance towards sustainable development objectives.⁵² At the same time, ongoing work by environmental democracy scholars has highlighted the persistent gap between the ideals of participation in environmental lawmaking and the reality of actual participation.⁵³

Drawing on environmental democracy and decolonial ecologies scholarship, this subsection highlights a key contradiction in the EU's governance approach to the EUDR: while the EU asserts to have engaged extensively with civil society and producing countries, it has, in practice, constrained participatory processes and sidelined multilateral engagement in environmental (trade) governance. We contend, however, that this outcome is not entirely unexpected: the pursuit of transnational legitimacy and inclusive participation may be fundamentally at odds with the unilateral nature and scope of a regulatory measure designed to address deforestation across multiple agri-food chains linking the EU market with the world.⁵⁴ In this context, claims of inclusiveness and broad participation risk being mere smokescreen.

As part of its goals to address global deforestation and forest degradation, the Commission carried out a series of stakeholder consultation activities between 2020 and 2022.⁵⁵ The consultation strategy – aimed at defining the most suitable demand-side measure to be adopted by the EU to tackle deforestation – included stakeholder meetings, interviews, feedback on the inception impact assessment and an online public consultation (OPC).⁵⁶ Third country representatives, mostly public authorities, were also consulted as part of the EU consultation strategy for the EUDR. Interestingly, as elaborated below, a diversity of opinion among state and non-state

Sustainability, pp. 805–14; A. Mert, 'Participation(s) in Transnational Environmental Governance: Green Values versus Instrumental Use' (2019) 28(1) *Environmental Values*, pp. 101–21; F. Fischer, 'Citizen Participation and the Democratization of Policy Expertise: From Theoretical Inquiry to Practical Cases' (1993) 26(3) *Policy Sciences*, pp. 165–87.

⁵¹ J. Newig et al., 'The Environmental Performance of Participatory and Collaborative Governance: A Framework of Causal Mechanisms' (2018) 46(2) *Policy Studies Journal*, pp. 269–97; T. Scott, 'Does Collaboration Make Any Difference? Linking Collaborative Governance to Environmental Outcomes' (2015) 34(3) *Journal of Policy Analysis and Management*, pp. 537–66.

⁵² A. Najam, 'Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement' (2005) 5(3) *International Environmental Agreements: Politics, Law and Economics*, pp. 303–21.

⁵³ R. Eckersley, 'Ecological Democracy and the Rise and Decline of Liberal Democracy: Looking Back, Looking Forward' (2020) 29(2) *Environmental Politics*, pp. 214–34; M. Lee, 'Environmental Democracy and Law on Public Participation' (2023) *SSRN Electronic Journal*.

⁵⁴ L. Ankersmit, *Green Trade and Fair Trade in and with the EU: Process-based Measures within the EU Legal Order* (Cambridge University Press, 2017).

⁵⁵ European Commission, Commission Staff Working Document, 'Impact Assessment: Minimising the Risk of Deforestation and Forest Degradation Associated with Products Placed on the EU Market', 17 Nov. 2021, SWD (2021) 326 Pt 1/2.

⁵⁶ K. Bougas et al., 'Study on EU Forest Policy. Task 3: Impact Assessment on Demand-Side Measures to Address Deforestation. Final Report', Wood E&IS GmbH et al., Oct. 2021.

actors exists on whether the consultation activities can truly be considered participatory, particularly given the transnational scope of the EUDR and its potential impact on food producers and economies worldwide. At the European level, the OPC was widely viewed as a major success story, with some environmental organizations and representatives from the Commission describing it as a landmark event.⁵⁷ With 1,193,652 submissions, it was hailed as one of the most participatory consultations in the history of EU legislation.⁵⁸ According to the Commission, the consultation ensured the identification of all relevant stakeholders and provided them with an opportunity to participate in the associated process,⁵⁹ positioning it as evidence that any accusations of unilateralism or failure to heed third-party concerns were unfounded.⁶⁰ Likewise, the official stance of the EU is that consultations with producing countries – although not required by EU law – ensured the legitimacy of the Regulation.⁶¹ Moreover, while the EU and some EU NGOs praised the high level of engagement, producing countries raised significant concerns about the lack of EU engagement and dialogue with third countries as well as the lack of clarity and information regarding the EUDR during the legislative process.⁶² Notably, while the process was still under way, Indonesia and Brazil submitted a letter to the EU institutions, supported by 12 other producing countries, to express regret over the EU's unilateral approach. They urged the EU to 'engage in further consultations with third countries, particularly developing nations, before the final approval of the proposed legislation', given that 'some of the concerns raised by developing countries in formal public consultations regarding the proposed legislation have, regrettably, been given limited consideration'.⁶³

⁵⁷ Renew Europe, 'New EU Legislation Will Help Stop Global Deforestation Related to Products Including Coffee, Palm Oil and Wood', *Renew Europe Newsroom*, 6 Dec. 2021, available at: <https://www.reneweuropegroup.eu/news/2022-12-06/new-eu-legislation-will-help-stop-global-deforestation-related-to-products-including-coffee-palm-oil-and-wood>; The Greens/EFA, 'European Parliament Approves Regulation Protecting Forests', Press Release, 19 Apr. 2023, available at: <https://www.greens-efa.eu/en/article/press-european-parliament-approves-regulation-protecting-forests>.

⁵⁸ WWF (R.E.A. Almond, M. Grooten & T. Petersen (eds)), *Living Planet Report 2020: Bending the Curve of Biodiversity Loss* (WWF, 2020).

⁵⁹ European Commission, FAQ, n. 44 above.

⁶⁰ European Commission, 'Factual Summary Report on the Public Consultation on Demand-Driven Deforestation and Forest Degradation', Ref. Ares(2021)432314 - 19/01/2021, available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12137-Minimising-the-risk-of-deforestation-and-forest-degradation-associated-with-products-placed-on-the-EU-market/public-consultation_en; WWF, 'Record Submissions to Public Consultation Urge EU to Act on Deforestation', 14 Dec. 2020, available at: https://www.wwf.eu/wwf_news/media_centre/?uNewsID=1430691&utm_source=Press+List+WWF+EPO&utm_campaign=70fc6a847d-EMAIL_CAMPAIGN_2020_09_08_11_27_COPY_01&utm_medium=email&utm_term=0_12dfb21e9b-70fc6a847d-.

⁶¹ European Commission, n. 55 above.

⁶² Y. Reid, J.F. Fernandes & T. Ferrando, 'Stakeholder Roundtable on the EUDR Implementation: Key Insights, Challenges and the Way Forward', *University of Antwerp Blog*, 14 Jan. 2025, available at: <https://blog.uantwerpen.be/iob/stakeholder-roundtable-on-the-eudr-implementation-key-insights-challenges-and-the-way-forward>; N. Verbeek, 'Indonesia Concerned EU's New Deforestation Rules Will Hurt Millions of Smallholders', *Euractiv*, 1 Oct. 2024, available at: <https://www.euractiv.com/section/ee/interview/indonesia-concerned-eus-new-deforestation-rules-will-hurt-millions-of-smallholders>.

⁶³ WTO, n. 47 above.

Nonetheless, broader considerations about the consultation process arise. Below we list three main reasons that explain why the decision-making process of the EUDR not only faced challenges in its engagement with producing countries, but also why it lacked ‘true’ democratic transnational participation, thus exposing the persistent gap between the ideals of participation in environmental lawmaking and the reality of who actually takes part.

Firstly, while the OPC may have been public and numerically successful, it appears inherently partial and biased, confined to specific participants and a vision outlined by the EU in the consultation form. The questionnaire was structured into five sections: (i) respondent information, (ii) issues related to deforestation and forest degradation, (iii) responsibility for decision-making, (iv) potential demand-side measures and their impacts, and (v) concluding remarks. The framing of the issue for consultation (‘Which EU demand-side measures should be adopted to reduce the global agri-food chain’s impact on forests?’),⁶⁴ however, was predetermined by the EU, rather than being shaped by the participants. Respondents were asked essentially to provide input on specific ‘greening mechanisms’, as if they were asked to talk about the size and shape of the trees making up a forest without ever being allowed to question the system itself. In doing so, the consultation bypassed broader structural questions about the global food system, land use, and power relations linked to deforestation, offering participation only within narrowly defined boundaries. Similarly, a short examination of the synopsis report of the OPC reveals that more than 90% of the responses were submitted through pre-completed questionnaires distributed by EU-based NGOs, predominantly targeting EU consumers.⁶⁵ This calls into question the characterization of the consultation as a citizen petition, given the framing of the questionnaire, the limited scope for input, and the use of externally provided answers. A more meaningful approach to public participation in the EU decision-making process would have required reflection not only on who had access and capacity to participate but also on which concerns were considered relevant within the consultation and how they were presented. Lastly, the consultation mirrors existing patterns of exclusion in environmental governance, as participation is shaped by unequal access to resources such as knowledge, time, and opportunities.⁶⁶ As environmental democracy scholars have highlighted, the use of participatory techniques does not inherently create space for environmental democracy and can, in fact, inadvertently limit both the inclusiveness and the impact of participation.⁶⁷ Although space was created to allow all those potentially affected to participate, the pre-set online consultation form offers nothing more than a very ‘thin’ account of environmental democracy.⁶⁸ The exclusion from consultation activities of those most affected by the measure also reinforces epistemic and ontological injustices frequently perpetuated in the pursuit of ‘greener’

⁶⁴ European Commission, n. 60 above.

⁶⁵ *Ibid.*

⁶⁶ Lee, n. 53 above.

⁶⁷ *Ibid.*

⁶⁸ Eckersley, n. 53 above.

agendas.⁶⁹ These issues, central to decolonial and Indigenous environmental justice studies,⁷⁰ highlight how a particular vision of ecology is imposed, often at the expense of diverse knowledge systems, perspectives, and ways of life.

Secondly, it would be a mistake to flatten the position of the governments of producing countries with that of their citizens and agri-food producers, and even more to assume uniformity across agri-food producers in countries and sectors that are extremely diversified. In fact, the history of the agrarian question and recent academic studies on the condition of peasants highlight the tensions and violence that have long characterized global food systems. These studies emphasize specifically the role of national governments and international organizations in facilitating a transition away from small-scale, locally oriented production to export-driven models focused on large-scale, industrialized, or cash crop agriculture.⁷¹ Given the focus of the EUDR on internationally traded commodities, it should thus come as no surprise that the position taken by the governments of the 14 producing countries may not fully represent the voices of all peasants and farmers in these countries. Moreover, the perspective articulated by public authorities from third countries, advocating market-driven measures and trade agreements in pursuit of the sustainability goals linked to commodity production,⁷² stands in contrast to the position of scholars and advocates on the right to food. These include the UN Special Rapporteur on the Right to Food, Michael Fakhri, who has called for a rethinking of global food trade, emphasizing the need to prioritize the principles of the right to food and food sovereignty.⁷³ As such, the EU may have engaged in some consultations with tropical countries,⁷⁴ but the engagement remained limited to state actors and formal structures, neglecting space and engagement with non-state and non-corporate actors in territories of production and their evolving understanding of food systems, beyond the public consultation.

Lastly, it should be questioned whether the notion of ‘true’ or ‘thick’ democratic and transnational participation may be applied to the idea of the EUDR as a unilateral regulatory intervention, driven by a ‘sense of moral responsibility and ethical concern’

⁶⁹ Vela Almeida et al., n. 3 above; E. Turnhout, ‘A Better Knowledge is Possible: Transforming Environmental Science for Justice and Pluralism’ (2024) 155 *Environmental Science & Policy*, article 103729.

⁷⁰ M. Abazeri, ‘Decolonial Feminisms and Degrowth’ (2022) 136 *Futures*, article 102902; K. Whyte, ‘Indigenous Experience, Environmental Justice and Settler Colonialism’ (2016) *SSRN Electronic Journal*; C.H. Trisos, J. Auerbach & M. Katti, ‘Decoloniality and Anti-Oppressive Practices for a More Ethical Ecology’ (2021) 5(9) *Nature Ecology & Evolution*, pp. 1205–12.

⁷¹ M. Fakhri, ‘A History of Food Security and Agriculture in International Trade Law, 1945–2017’, in J.D. Haskell & A. Rasulov (eds), *New Voices and New Perspectives in International Economic Law* (Springer, 2020), pp. 55–90; A.B. Kelly & N.L. Peluso, ‘Frontiers of Commodification: State Lands and Their Formalization’ (2015) 28(5) *Society & Natural Resources*, pp. 473–95; P. McMichael, ‘Land Grabbing as Security Mercantilism in International Relations’ (2013) 10(1) *Globalizations*, pp. 47–64.

⁷² Berning & Sotirov, n. 36 above.

⁷³ UNGA, ‘The Right to Food in the Context of International Trade Law and Policy’, Interim Report of the Special Rapporteur on the Right to Food, Michael Fakhri, pursuant to General Assembly Resolution 73/171M, 22 July 2020, UN Doc. A/75/219.

⁷⁴ Bougas et al., n. 56 above.

and aimed at urgently addressing environmental and biodiversity challenges.⁷⁵ In particular, given the economic and political significance of the EU, proponents of reducing the EU's global biodiversity loss and climate footprint may not consider multilateralism or meaningful engagement with producing countries and communities as necessary for achieving these objectives. This positioning – where the EU takes on the role of ‘moral intervener’, actively engaging in peripheral countries in response to what is perceived as deficient and climatically unambitious policies in need of capacity-building towards EU self-defined environmental ambitions – has become a dominant narrative in EU green policies, including as one of the pillars of the EGD.⁷⁶ The EUDR appears to be no exception to this dominant narrative.

An example of this phenomenon is the emphasis on partnerships with third countries (Article 30 EUDR), which seems to be considered not so much to provide financial support towards self-sufficient local systems and ecologies – as would be required under a degrowth and decolonial agenda⁷⁷ – but rather through a typical Eurocentric hegemonic lens. In this framework, partnerships are seen as tools towards ‘national legal and governance reform processes to enhance forest governance and address domestic factors contributing to deforestation’ (Article 30(2)). Deforestation is hence framed here primarily as a governance challenge within producing countries, with the EU positioning itself as a ‘force for good’ while other countries are depicted as needing to ‘catch up’ with international standards.⁷⁸ This raises the question of whether the EUDR – and the EGD as a whole – have been envisioned as truly cosmopolitan processes open to discussion and redefinition, or rather as EU-driven projects to be unrolled with the support of partner countries as implementers. This tension becomes even more visible when the issue of historical responsibility is considered.

3.2. *The Temporal Benchmark as the Normalization of a Long History of Extraction*

The concept of time plays a central role in the requirements outlined by the EUDR. The Regulation introduces a cut-off date of 31 December 2020 – a temporal benchmark – as a key condition for accessing the EU market under the deforestation-free criterion (Recital 46, Preamble to the EUDR). Specifically, only products sourced from land that has not experienced deforestation or forest degradation after this cut-off date will be permitted in the EU market or for export from the EU (Article 2 EUDR). As outlined in the text of the EUDR, this temporal benchmark serves as a basis for assessing whether the land in question has been subjected to deforestation or forest degradation (Recital 45, Preamble to the EUDR). It also aims to prevent ‘sudden disruptions to supply chains’ and align with ‘the legitimate expectations of operators and traders involved in placing relevant commodities and products on the market or exporting them’ (Recital 45, Preamble to the EUDR).

⁷⁵ O.U. Rutazibwa, ‘The Problematics of the EU’s Ethical (Self)Image in Africa: The EU as an “Ethical Intervener” and the 2007 Joint Africa–EU Strategy’ (2010) 18(2) *Journal of Contemporary European Studies*, pp. 209–28.

⁷⁶ Vela Almeida et al., n. 3 above.

⁷⁷ J. Hickel, ‘The Anti-Colonial Politics of Degrowth’ (2021) 88 *Political Geography*, article 102404.

⁷⁸ Vela Almeida et al., n. 3 above; Rutazibwa, n. 75 above.

Cut-off dates are not a novel concept for sustainability initiatives aimed at achieving no-deforestation and no-conversion goals within supply chains, and have been widely used in sector agreements and certification schemes.⁷⁹ However, the introduction of a cut-off date in a unilateral regulatory mechanism like the EUDR raised several critiques, in both academic and policy circles. Oliveira and co-authors underlined that the cut-off date lacks alignment with stricter national environmental laws and measures, including the Amazon Soy Moratorium (2006) in Brazil, under which traders agreed not to purchase soy grown on land deforested after July 2006 in the Amazon.⁸⁰ This discrepancy could therefore provide political space for some national actors to advocate weaker requirements. Other authors highlighted that the unilateral imposition of a temporal benchmark could create a significant market access burden for many producing countries where land use and land occupation processes may still be ongoing as a result of historical factors.⁸¹ Expanding on this reasoning, we argue that the reflection on the temporal benchmark should go beyond its technical aspects and the implications for national legal frameworks. As such, the adoption of the temporal benchmark without consideration for past environmental damage, including the EU's historical responsibility, has two main repercussions: one concerns the narrative presented to the public, which positions the EUDR as a key step in avoiding the consumption of goods linked to deforestation; the other, perhaps more important, pertains to the deflection of responsibility for the historical role of EU consumption in driving global deforestation.

Firstly, it is worth recalling the statement by former Member of the European Parliament, Christophe Hansen, who expressed relief that 'European consumers can now rest assured that they will no longer be unwittingly complicit in deforestation when they eat their bar of chocolate or enjoy a well-deserved coffee'.⁸² While it can be assumed that the EUDR will indeed reduce the import of FRCs into the EU, the claim that no EU consumer will ever be complicit in deforestation or forest degradation appears not to be fully convincing, or is at least incomplete. In fact, the EUDR does not contain any measure to ensure that EU consumers will no longer unknowingly eat a bar of chocolate obtained from deforested Ghanaian forests, eggs produced by chicken fed with soybeans obtained in violation of Indigenous rights, or drink a coffee that has caused the rapid substitution of the Vietnamese tropical forest with plantations. The EUDR just makes sure that these events did not happen after 31 December 2020, rather than ensuring that they have never happened.

⁷⁹ Examples available at: Rainforest Alliance (<https://www.rainforest-alliance.org/for-business/2020-certification-program>); RoundTable on Responsible Soy (<https://responsiblesoy.org/certificacion?lang=en>); Amazon Soy Moratorium (<https://moratoriadasoja.com.br/home>).

⁸⁰ G.M. Oliveira et al., 'Blind Spots in the EU's Regulation on Deforestation-Free Products' (2024) 8(8) *Nature Ecology & Evolution*, pp. 1382–3.

⁸¹ B. Capuzzi, 'Is the European Union Deforestation Regulation WTO-Proof?', 2024, European University Institute, ECIPE Policy Brief, No. 18/2024.

⁸² European Parliament, 'Parliament Adopts New Law to Fight Global Deforestation', Press Release 20230414IPR80129, 19 Apr. 2024, available at: <https://www.europarl.europa.eu/news/en/press-room/20230414IPR80129/parliament-adopts-new-law-to-fight-global-deforestation>.

Secondly, while the EU, on numerous occasions, has underscored its current and future responsibility to mitigate global deforestation and forest degradation linked to its consumption of specific commodities,⁸³ it dismisses its responsibility for past deforestation linked to colonial and capitalist exploitation. Indeed, although the Preamble refers to the role of the EU in driving global deforestation and forest degradation on a global scale, it does so only partially. The text notes that ‘the Union imported and consumed one third of the globally traded agricultural products associated with deforestation between 1990 and 2008’ and that ‘over that period, Union consumption was responsible for 10% of worldwide deforestation associated with the production of goods or the provision of services’ (Recital 5, Preamble to the EUDR). However, the introduction of the 2020 cut-off date effectively excludes from being addressed or remedied the 18 years of deforestation and forest degradation prior to 2008 and the subsequent 12 years after.

From this perspective, the cut-off date must thus be seen not so much as a prohibition of deforestation and forest degradation that occurs afterwards, but rather as a form of amnesty that casts a veil of silence and legal eligibility over centuries of environmental and social violations.⁸⁴ The decision to set a cut-off date, while justified by the feasibility of the measure and its alignment with international standards, effectively disregards the historical context of colonial exploitation of forests and people(s) from the global south, pivotal to the financial and political growth of the European continent.⁸⁵ This decision not only institutionalizes the normalization and acceptance of such practices that occurred prior to this date, overlooking the long history of environmental and social harm tied to them, but also highlights the failure of the EU to engage with the responsibility it bears for its past imports of commodities.

The introduction of the cut-off date, without the indication of any measure to compensate and repair for historical deforestation associated with EU consumption, thus misses the opportunity to engage seriously with the responsibility associated with the EU’s role in global deforestation patterns. On the one hand, it crystallizes the idea that no meaningful reparation is due even if the damage is acknowledged,⁸⁶ while on the other hand it dismisses the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) enshrined in the United Nations Framework Convention on Climate Change⁸⁷ and the Paris Agreement.⁸⁸ As the principle of CBDR-RC underlines, it is not enough for states to recognize a shared responsibility in addressing the environmental crisis, but they must also recognize the historical and differentiated responsibility for the primary role of industrial countries in environmental degradation, along with the different capacities of states to act in

⁸³ European Commission, President von der Leyen, ‘Europe is Ready to Lead the Way’, Speech at the One Planet Summit, 11 Jan. 2021, available at: https://ec.europa.eu/commission/presscorner/detail/EL/speech_21_61; European Commission, n. 11 above.

⁸⁴ Scott, n. 51 above; Kumeh & Ramcilovic-Suominen, n. 23 above; Vela Almeida et al., n. 3 above.

⁸⁵ Rodney & Davis, n. 25 above; E. Galeano, *Las Venas Abiertas de America Latina: Five Centuries of the Pillage of a Continent* (Monthly Review Press, 25th edn, 1997).

⁸⁶ O.O. Táiwò, *Reconsidering Reparations* (Oxford University press, 2022).

⁸⁷ New York, NY (US), 9 May 1992, in force 21 Mar. 1994, available at: <https://unfccc.int>.

⁸⁸ Paris Agreement, n. 1 above.

response. An adequate consideration of this principle thus would have required the EU not to regulate global dynamics without adequately addressing its historical role in the ecological breakdown that it is willing to amend. At the same time, it would have been expected to see industrialized countries compensate less-industrialized countries for their efforts in reducing carbon emissions from forest-based sources, notably supporting laws, institutions, and policies in this regard. However, the pledges made in the EUDR focus solely on cooperation efforts and new partnerships with producer and consumer countries (Article 30), limiting engagement to ‘structured dialogues, administrative arrangements, and existing agreement’, measures oriented mostly towards supporting market-based practices rather than alternative production practices and food systems. This approach therefore fails to provide the resources necessary to significantly redefine the incentives towards allowing or accepting deforestation; it disregards past responsibilities, silencing claims for reparations and restoration, and implying that the only way for these countries to reduce deforestation is by increasing trade with the EU.

3.3. *Greener but Uneven Global Agri-food Chains as Part of the Problem, not the Solution*

Europe’s high demand for cheap food can be traced back to the configuration of a hierarchy of food production, processing and consumption created by those in the colonial metropole at the expense of those at the end of the global food system.⁸⁹ Even today, the EU agri-food trade predominantly involves exporting high-end food products – such as pork, cheese, roasted coffee, and chocolate – many of which depend on the import of raw commodities from third countries.⁹⁰ The development model of global agricultural commodity production and distribution established by the EU has disrupted, and continues to disrupt, the regenerative capacities of both people and the planet, while enabling the EU and countries in the global north to appropriate resources and economic surplus, particularly from the global south. These dynamics have been theorized under the scholarship of ‘unequal ecological exchanges’⁹¹ and characterize the daily lives of small-scale farmers, Indigenous peoples and food insecure citizens in the global south.

As widely acknowledged, the construction of a global food regime driven by the objectives of productivity, competitiveness, and cheapness has not only played a significant role in intensifying ecological disorder and the state of the climate emergency experienced by many territories around the world; it has also erased

⁸⁹ S. Amin, *Delinking: Towards a Polycentric World* (Zed Books Press, 1989); Wallerstein, n. 21 above; S. Grey & R. Patel, ‘Food Sovereignty as Decolonization: Some Contributions from Indigenous Movements to Food System and Development Politics’ (2015) 32(3) *Agriculture and Human Values*, pp. 431–44.

⁹⁰ European Commission, n. 26 above.

⁹¹ S.G. Bunker, *Underdeveloping the Amazon: Extraction, Unequal Exchange, and the Failure of the Modern State* (University of Chicago Press, 1988); A.K. Jorgenson, ‘Unequal Ecological Exchange and Environmental Degradation: A Theoretical Proposition and Cross-National Study of Deforestation, 1990–2000’ (2006) 71(4) *Rural Sociology*, pp. 685–712.

alternative knowledge systems and ways of life, ultimately framing nature as something for the taking.⁹² In an ideal scenario, one would expect the EU acknowledgement of historical responsibility, as well as the close link between trade and deforestation, to lead to a reconsideration of the future of global trade in agri-food commodities. This notably would have involved actively engaging with non-European societies and economies in the pursuit of alternative models of production and consumption that would not contribute to, or at least minimize, ecological degradation. However, little is proposed in the EUDR to confront EU consumption of cheap agri-food commodities – such as reducing its reliance on imported commodities and its constant aspiration to global competitiveness. Therefore, little is done with regard to ideologies and processes that deepen inequality and socio-environmental destruction in peripheral territories. Rather, global trade in agri-food products is seen as the solution to these inequalities.

The EUDR as a mechanism of GVC governance is intrinsically tied to the idea that the intensification of ‘green’ and ‘sustainable’ trade represents an instrument for good.⁹³ As an example, initiatives such as the ‘SAFE Programme’⁹⁴ are proposed in the EUDR Strategic Framework for International Cooperation Engagement as measures supporting an inclusive transition to sustainable and deforestation-free production.⁹⁵ This programme proposes financial assistance to ‘support smallholders in their transition to sustainable and deforestation-free value chains and assisting producing countries in creating an enabling environment to ensure access to the EU market’.⁹⁶ The approach taken by the EU thus reinforces the assumption that current transnational production and consumption arrangements are both inevitable and desirable, without critically addressing their role in perpetuating environmental breakdown. Such an approach implies a normalization of global commodity production, potentially increasing pressure on land in third countries, reproducing the dependency of small-scale farmers on value chains, and reinforcing unequal distributive patterns at the local level.

Additionally, the EUDR also assumes that the role of farmers and peasants in the south is inevitably that of providers of raw materials for GVCs, despite the way in which export-led production and trading create dependency on global markets, distribute value unequally, and are associated with high rates of local food insecurity.⁹⁷ While further empirical research is needed in the coming years, it can be expected that some of

⁹² Kumeh & Ramcilovic-Suominen, n. 23 above; P. McMichael, *Food Regimes and Agrarian Questions* (Practical Action Publishing, 2014); Patel & Moore, n. 21 above.

⁹³ European Commission, n. 11 above.

⁹⁴ Sustainable Agriculture for Forest Ecosystems (SAFE), available at: <https://zerodeforestationhub.eu/fr/projets/safe>.

⁹⁵ European Commission, Annex to the Communication to the Commission, ‘Approval of the Content of a Draft Communication from the Commission on the Strategic Framework for International Cooperation Engagement in the Context of Regulation (EU) 2023/1115 on the Making Available on the Union Market and the Export from the Union of Certain Commodities and Products Associated with Deforestation and Forest Degradation’, 7 Nov. 2024, C(2024) 7028 final.

⁹⁶ Ibid.

⁹⁷ High Level Panel of Experts (HLPE) on Food Security and Nutrition of the Committee on World Food Security, ‘Food Security and Nutrition: Building a Global Narrative towards 2030. A Report by the High-Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security’,

the key requirements in the EUDR – particularly the deforestation-free and legality requirements – will have effects at the local level in territories of production, particularly if the unevenness of GVCs is not taken into account. For example, the EUDR may not only intensify market access inequalities (for example, through the introduction of the mandatory use of technology to report the geographical locations of the plots) but also further consolidate land ownership among a few dominant actors capable of meeting the Regulation's demands and investing in agricultural land. This would be the case if the EUDR drives up the price of 'clean land' (that is, land not affected by deforestation after 31 December 2020), limiting access to new land to large capital holders, and incentivizing small-scale farmers to sell their land to larger corporations.⁹⁸ At the same time, the financial and regulatory incentives for shifting to cash crops created by the EUDR may increase pressure on land, sales and further concentration, in turn encouraging farmers and peasants to adopt export-oriented practices, pushing rural workers into urban areas, and exacerbating socio-economic challenges for marginalized communities, small-scale farmers, and agricultural workers.⁹⁹

Furthermore, despite the evidence that local communities, smallholders, peasants, and farmers are increasingly affected by the establishment and intensification of industrial and transnational food chains – even when they do not grow global food commodities¹⁰⁰ – the EU has not investigated questions related to the impact of the EUDR on local food and nutrition security, livelihood security or broader socio-ecological transformations. Examples of such shifts include the transition from land used for local food production to land for EU commodity crops, which may have implications for the availability and accessibility of locally produced food, particularly for the most vulnerable populations, exacerbating food insecurity in the affected areas. Likewise, the higher costs associated with the use of forested areas may lead local actors to replace existing food production with cash crops, reducing the availability of nutritious and accessible food, with repercussions for both food prices and supply. Even though the EUDR claims to contribute to achieving the goals set under SDG 2 ('Zero Hunger') (Preamble, para. 20), it remains unclear about how such mechanism will support this transition and how the normalization of global but 'greener' agri-food chains can go in directions other than the one creating the economic incentives that often drive deforestation.

A decolonial and socio-ecologically aware approach to the EUDR would have used the political impetus offered to rethink the role of global agri-food chains and support territorial markets and local forms of production and consumption, thereby contributing to the reduction of dependency and long-distance trading, while favouring the re-regionalization of food systems as a key step towards the fulfilment

HLPE Report 15, 2020, available at: <https://openknowledge.fao.org/server/api/core/bitstreams/8357b6eb-8010-4254-814a-1493faaf4a93/content>.

⁹⁸ M.A. Barrantes et al., 'Deforestation and Forest Degradation in Coffee Supply Chains (2019) *Wageningen Economic Research Policy Brief*.

⁹⁹ The socio-ecological transformations that take place when territories are connected with GVCs have been widely acknowledged and discussed in academic and non-academic literature. This includes the 2020 report by the UN Special Rapporteur on the Right to Food, Professor Michael Fakhri, n. 73 above.

¹⁰⁰ Fischer, n. 50 above; T. Ferrando & E. Mpofu, 'Peasants as "Cosmopolitan Insurgents"' (2022) 116 *AJIL Unbound*, pp. 96–100.

of the right to food.¹⁰¹ This call for more systemic changes in EU policymaking has been a central theme in decolonial thought, where the emphasis is on fostering partnerships rooted in anti-colonial and decolonial values towards local autonomy, food sovereignty, and people's control over their production and economic systems.¹⁰² If the objective of the EUDR were indeed to promote SDG 15 ('Life on Land') alongside SDG 2, the EU could have leveraged the introduction of the new regulation to rethink its consumption and dependency on global food chains, aiming to achieve both a reduced environmental impact and enhanced food security in both the EU and countries of origin. Nonetheless, such an endeavour would have necessitated a comprehensive reassessment of the EU's overall role as a global trade hub, and the integration of the EUDR within a more coherent re-evaluation of both the EU in the global agri-food system and in the broader global economy.

4. Conclusions

Adopted in May 2023, the EUDR is part of a recent regulatory trend that promotes higher social and environmental standards in GVCs, addressing the slowness of international initiatives to enforce accountability on transnational corporations. The new EU Regulation is designed as a unilateral intervention to limit access to the EU market or the exports from the EU of seven key forest-risk products and derivatives, whenever they are linked with deforestation, forest degradation or illegality, aligning with the EGD vision for the future of the EU and its global relationships. Welcomed with enthusiasm by EU policymakers and environmental groups, the EUDR introduces some legal innovations that may improve the contours and content of GVCs. At the same time, this article argues that it ignores the structural issues that lead to deforestation and may, to a certain extent, crystallize them.

Drawing from decolonial and uneven exchanges theories, this article underlines how the EU fails to recognize the underlying causes of deforestation, the conflicts over land use that often accompany it, and the historical role of European countries in expanding the agricultural frontier to the detriment of socio-ecological diversity in the territories of production. It is argued that the EUDR must be historicized and discussed in the context of Europe's multi-centuries trade relationships with the global south, which have been built on colonialism, enslavement, and the extraction of resources from peripheral countries for the enrichment of Europe. From a decolonial perspective, the EU's aspiration to become a key player in the transnational fight against deforestation should not just be a matter of trade in deforested goods. Rather, it should start with the meaningful acknowledgement of past damage and its reparation.¹⁰³ This not only means foreseeing economic compensation but also creating the conditions for a future world that no longer looks like the one that policies

¹⁰¹ M. Fakhri, 'A Trade Agenda for the Right to Food' (2021) 64(3–4) *Development*, pp. 212–9.

¹⁰² W.D. Mignolo & C.E. Walsh, *On Decoloniality: Concepts, Analytics, Praxis* (Duke University Press, 2018); D. Eversberg, 'Who Can Challenge the Imperial Mode of Living? The Terrain of Struggles for Social-Ecological Transformation in the German Population' (2020) 33(2) *Innovation: The European Journal of Social Science Research*, pp. 233–56; Kumeh & Ramcilovic-Suominen, n. 23 above.

¹⁰³ Táíwò, n. 86 above.

try to mitigate, and where global trade in ‘greener’ agri-food commodities is not taken for granted. This, to use the words of Walter Rodney, requires recognition of the pivotal role that the ‘Third World’, its people and resources played in the construction of Europe, while remaining ‘underdeveloped’, and therefore end the politics of domination and exploitation that is also visible in the universalist attitude of the EUDR.¹⁰⁴ Achieving global sustainability cannot be separated from social justice and human rights, both of which are intrinsically tied to a meaningful process of reparation – one that is incompatible with the adoption of cut-off dates that render the past irrelevant. A structural and decolonial approach requires that the EU, one of the main beneficiaries of global deforestation, addresses it as an intersectional issue that encompasses racial, gender, and economic justice, and that cannot be resolved by simple means of sanctioning and creating ‘green’ global trade agri-food routes.

If the EU’s goal is to build a ‘green level playing field’, this cannot be achieved without adequately recognizing the contemporary unevenness caused by colonization, economic dependency, racial capitalism, and centuries of uneven development. Regulatory intervention tackling climate change, biodiversity loss, and global deforestation should not be driven solely by EU internal considerations or political dynamics that perpetuate the exploitative human–nature interactions inherent in a capitalist, growth-focused economy, but rather towards rectification of unequal ecological and economic exchanges. This is not only a matter of public participation and recognition, but also of normalizing processes that may continue to impoverish territories and people while claiming that this is for the good of ecosystems and the planet. Recognizing the interrelationship between territories, deforestation and their integration into GVCs driven by international trade is crucial for any intervention that seeks to lead global sustainability efforts. The EU’s fight against deforestation and forest degradation should not be an opportunity to crystallize past and present inequalities, but to question them, acknowledge responsibilities, and open new spaces of transnational reflection and collaboration. So far, the structural limits of the EUDR do not allow for this. Future academic and non-academic work should not miss the forest for the trees.

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¹⁰⁴ Rodney & Davis, n. 25 above.

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