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Evaluating the impact of the new EU Deforestation Regulation on Third countries: the case of Ghana

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LIST OF ABBREVIATIONS

CCP	Critical Control Point
CFI	Cocoa Forest Initiative
CMS	Cocoa Management System
COCOBOD	Ghana Cocoa Board
DDS	Due Diligence System
EC	European Commission
EESC	European Economic and Social Committee
EP	European Parliament
EU	European Union
EUDR	European Union Deforestation Regulation
EUTR	European Union Timber Regulation
FAO	Food and Agriculture Organization
FLEGT	Forest Law Enforcement, Governance and Trade
FRC	Forest-Risk Commodities
GCTS	Ghana Cocoa Traceability System
IM	Independent Monitoring
IMM	Independent Market Monitoring
ITTO	International Tropical Timber Organization
IUNC	International Union for Conservation of Nature
JMRM	Joint Monitoring and Review Mechanism
MO	Monitor Organization

MS	Member States
SME	Small and Medium Enterprise
TLAS	Timber Legality Assurance System
TVD	Timber Validation Department
UN	United Nations
UNEP	United Nations Environment Programme
VPA	Voluntary Partnership Agreement
WFI	World Forest Institute
WTO	World Trade Organization
WTS	Wood Tracking System

INTRODUCTION

Deforestation is a pressing global environmental issue.¹ Approximately 420 million hectares have been lost worldwide since 1990, affecting every single continent of the world.² The World Forest Institute (WFI) reports a global loss of 4.1 million hectares in 2022 alone, equivalent to a deforestation rate of 11 football pitches per minute.³ Beyond doubt, this high pace of deforestation, alongside gradual forest degradation, puts the planet on a severe crisis.⁴

Consequences extend well beyond the mere reduction of tree cover, impacting the vital roles that forest ecosystems have on our Earth and our lives. Forests play a crucial role in sustaining biodiversity and in mitigating the frequency and intensity of extreme weather events.⁵ They also provide clean air and water, shelter and security for forest-dependent populations and contribute globally to generate 86 million of green jobs.⁶ Furthermore, forests play a key role in climate change mitigation: due to their natural capacity to act as carbon sinks, thereby absorbing and retaining carbon dioxide from the atmosphere, they help to reduce the emissions of gases into the atmosphere and prevent the further increase of extreme temperatures.⁷ According to the International Union for Conservation of Nature (IUCN) around 2.6 billion tonnes of carbon dioxide are absorbed by forests, equivalent to one-third of the CO₂ emissions produced from burning fossil fuels.⁸ If forests are essential in mitigating climate change, their worsening conditions can become one of the major drivers of climate crisis. According to estimates by the United Nations (UN), deforestation and forest

¹ FAO & UNEP. (2020). *The State of the World's Forests 2020. Forests, Biodiversity and people*. Retrieved from <https://www.fao.org/documents/card/en/c/ca8642en>.

² Igini, M. (2023). *10 Shocking Statistics About Deforestation*. Retrieved from Earth.Org: <https://earth.org/statistics-deforestation/>.

³ World Resources Institute. (2023). *Global Forest Review*. Retrieved from World Resources Institute: https://research.wri.org/gfr/global-forest-review?utm_medium=homepage&utm_source=wriwebsite&utm_campaign=globalforestreview.

⁴ European Parliament. (2023). *Deforestation: causes and how the EU is tackling it*. Retrieved from European Parliament : <https://www.europarl.europa.eu/news/en/headlines/society/20221019STO44561/deforestation-causes-and-how-the-eu-is-tackling-it>.

⁵ European Environment Agency. (2023). *Forests and Forestry*. Retrieved from European Environment Agency: <https://www.eea.europa.eu/en/topics/in-depth/forests-and-forestry#:~:text=Environmental%20stability%3A%20Forests%20stabilize%20soil,economies%20and%20create%20employment%20opportunities>.

⁶ European Council. (2023). *Deforestation*. Retrieved from European Council: <https://www.consilium.europa.eu/en/policies/deforestation/> and UNEP. (2023). *Why Do Forests Matter?*. Retrieved from UN Environment Programme: <https://www.unep.org/explore-topics/forests/why-do-forests-matter>.

⁷ UNEP. (2023). *Why Do Forests Matter?*. Retrieved from UN Environment Programme: <https://www.unep.org/explore-topics/forests/why-do-forests-matter>.

⁸ IUCN. (2021). *Forests and Climate Change*. Retrieved from IUCN: <https://iucn.org/resources/issues-brief/forests-and-climate-change>.

degradation contribute to approximately 12-20% of global greenhouse gas emissions, making them the second most significant driver of climate change after fossil fuels.⁹

Considering the urgency to address climate change, the state of forests demands significant attention. Advocating for their restoration has the potential to contribute over one-third of the necessary climate change mitigation that is to be achieved to meet the goals of the Paris Agreement.¹⁰ Therefore, halting deforestation and forest degradation becomes a fundamental cornerstone in the global strategy of today's agenda.

In this context, the identification of the causes of deforestation is a crucial step. While timber logging results to be the main contributing factor to global forest degradation and stands as a major precursor to deforestation, agriculture expansion is now recognized as the most important cause of deforestation, accounting for more than 90%-99% in the tropics.¹¹ Indeed, the large-scale and intensive production of crops, referred to as industrial agriculture, significantly harms forests by demanding a continuous expansion of farmland to meet the needs of both humans and animals.¹²

In this context, the European Union (EU) itself results to be a major contributor to global deforestation footprint.¹³ Given its high demand for agricultural and forest commodities, the EU places itself as a leading importer of deforestation-linked products.¹⁴ Just in 2017, the EU was considered responsible for 16 per cent of the deforestation embodied in international traded commodities.¹⁵ Nowadays indeed, the responsibility for deforestation should not rely just on the specific countries where it occurs, but rather on all those countries that, due to their substantial demands, contribute to the trade of commodities that lead to deforestation. Despite the difficulties of agreeing on a global treaty on forests management, there is an increasingly worldwide awareness of the urgency to regulate the drivers of deforestation and forest degradation and mitigate their massive effect on forests.

⁹ UN. (s.d.). *International Day of Forests*. Retrieved from UN: <https://www.un.org/en/observances/forests-and-trees-day>.

¹⁰ IUCN. (2021). *Forests and Climate Change*. Retrieved from IUCN: <https://iucn.org/resources/issues-brief/forests-and-climate-change>.

¹¹ Hosonuma, N., Herold, M., De Sy, V., De Fries, R., Brockhaus, M., Verchot, L., . . . Romijn, E. (2012). An Assessment of Deforestation and Forest Degradation Drivers in Developing Countries. *Environmental Research Letters* ; Butler, R. (2020). *Logging and Timber Harvesting in the Rainforest*. Retrieved from WorldRainForests: <https://worldrainforests.com/kids/elementary/502.html> ; Wageningen University and Research. (2022). *Agriculture Drives More than 90% Of Tropical Deforestation*. Retrieved from Wageningen University & Research: <https://www.wur.nl/en/research-results/research-institutes/environmental-research/show-wenr/agriculture-drives-more-than-90-of-tropical-deforestation.htm>.

¹² Natural Resource Defence Council. (2020). *Industrial Agriculture 101*. Retrieved from Natural Resource Defence Council: <https://www.nrdc.org/stories/industrial-agriculture-101>.

¹³ Cabernard, L., & Pfister, S. (2021). A Highly Resolved MRIO Database for Analysing Environmental Footprints and Green Economy Progress. *Science of the Total Environment*.

¹⁴ Pendrill, F., Persson, U., Godar, J., Kastner, T., Moran, D., Schimdt, S., & Wood, R. (2019). Deforestation displaced: Trade in forest-risk commodities and the prospects for a global forest transition. *Environment Research Letters*.

¹⁵ Wedeux, B., & Schulmesiter-Oldenhove, A. (2021). *Stepping Up? The Continuing Impact of EU Consumption on Nature Worldwide*. Retrieved from WWF: <https://www.wwf.eu/?2965416/Stepping-up-The-continuing-impact-of-EU-consumption-on-nature>.

In this regard, the thesis investigates the position of the EU in addressing deforestation and assesses its ability to exploit its regulatory power to provoke a meaningful positive impact on a global scale. This entails focusing on how the EU and its law can contribute to the reduction of deforestation rates, not only within its own borders but also in third-country territories that often exhibit more unsustainable practices, resulting in uncontrolled rapid deforestation.

Acting as a noteworthy trading actor and as a primary exporter of high trading standards, the EU has sought the optimal combination of regulatory instruments – referred as to ‘approach’ throughout the thesis – to more effectively regulate trade associated with deforestation and expand its demanding environmental standards beyond its borders. In particular, the research focuses on the EU’s influence on developing countries characterised by inadequate regulatory frameworks on forests management and agricultural practices. These regions may pose significant challenges to the implementation of EU law given their poor governmental structures and substantive corruption levels.¹⁶ Hence, demonstrating positive progress in such areas would serve as a crucial evidence of the worldwide potential impact of EU regulatory activities, given that success in less complex and more EU-similar areas would be just easier and more achievable.

In the pursuit of establishing an effective regulatory framework to mitigate global deforestation, the EU launched in 2003 the Forest Law Enforcement Governance and Trade Action Plan, better known as FLEGT Action Plan,¹⁷ a package of measures aimed at addressing timber logging and the related unsustainable practices.¹⁸ The plan consists of two key elements: Voluntary Partnership Agreements,¹⁹ (VPAs), established with producer countries to bilaterally endorse sustainable forest management and guarantee the legality of exported timber,²⁰ and the regulation (EU) 995/2010,²¹ better known as the EU Timber Regulation (EUTR), outlining the responsibilities of EU operators to ensure the placing of legal timber and timber products into the market.²² However, with the recent

¹⁶ Kulik, R. M. (2023). *Developing country*. Retrieved from Britannica Money: <https://www.britannica.com/money/developing-country>.

¹⁷ European Commission. (2003). COM/2003/0251 final. *Communication from the Commission to the Council and the European Parliament - Forest Law Enforcement, Governance and Trade (FLEGT) - Proposal for an EU Action Plan..* Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52003DC0251>.

¹⁸ European Commission. (s.d.). *EU Rules against Illegal Logging*. Retrieved from Environment: https://environment.ec.europa.eu/topics/forests/deforestation/illegal-logging_en

¹⁹ European Union. *Voluntary Partnership Agreements on Forest Law Enforcement, Governance and Trade*. Retrieved 24 January 2024, from <https://eur-lex.europa.eu/EN/legal-content/summary/voluntary-partnership-agreements-on-forest-law-enforcement-governance-and-trade.html>.

²⁰ Overdevest, C., & Zeitlen, J. (2017). *Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana. Regulation & Governance*.

²¹ European Union. (2010). *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (Text with EEA relevance)* [2010] OJ L 295. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995>.

²² European Commission. (s.d.). *EU Timber Regulation*. Retrieved from Environment : https://environment.ec.europa.eu/topics/forests/deforestation/illegal-logging/eu-timber-regulation_en.

spreading recognition of industrial agriculture as the primary driver of deforestation, the EU has been forced to adopt a more comprehensive approach to address this new emerging factor. In June 2023, the new regulation (EU) 2023/1115,²³ better known as the EU Deforestation Regulation (EUDR), entered into force and substituted the already existing EUTR.²⁴ Through the introduction of the EUDR, the EU takes a significant stride forward by implementing a regulatory tool designed to broaden its scope and ensure that all products entering or leaving the market are not associated with deforestation or forest degradation.²⁵ With this, the existing set of measures foreseen in the FLEGT Action Plan – hereafter referred to as pre-EUDR approach – underwent a significant change, paving the way for a new and distinct combination of regulatory tools – hereafter referred to as EUDR approach – whose effectiveness is yet to be proved.

In this regard, the thesis aims to evaluate how the EU approach has changed and specifically respond to whether the new EUDR approach represents a potential advancement in reducing deforestation by encouraging and promoting sustainable practices in third countries. Given the recent implementation of the EUDR and the unavailability of clear evidence on its actual impact, the results will be drawn by undertaking a comparison with the implemented pre-EUDR approach and its studied effects, revealing the extent to which the EU has learned from past experiences and made progress. In particular, in line with the purpose of thesis to study the EU's influence on developing countries, Ghana is chosen as the case study facilitating the thorough exploration of the two components of the comparative analysis. The choice of the country is driven by multiple factors: aside from being the first nation to sign a VPA,²⁶ Ghana has faced significant illegal timber activities witnessing inadequate forest management and non-transparent governmental structures.²⁷ In addition, the country positions itself among the prominent Western African countries leading in cocoa

²³ European Union. (2023). *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)* [2023] OJ L 150. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R1115>.

²⁴ European Commission. (s.d.). *Regulation on Deforestation-Free Products*. Retrieved from Environment: https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products_en.

²⁵ Ibidem.

²⁶ European Council. (2010). *Council Decision of 16 November 2009 on the signing and conclusion of a voluntary partnership agreement between the European Community and the Republic of Ghana on forest law enforcement, governance and trade in timber products into the Community* [2010] OJ L 70. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010D0151> and Directorate-General for International Partnerships. (2023). *Global Gateway: Ghana and the EU mark a new chapter in the battle against illegal timber trade*. Retrieved from European Commission: https://international-partnerships.ec.europa.eu/news-and-events/news/global-gateway-ghana-and-eu-mark-new-chapter-battle-against-illegal-timber-trade-2023-09-28_en#:~:text=In%20November%202009%2C%20Ghana%20became.they%20made%20in%20the%20Agreement.

²⁷ Boakye, J. (2015). Estimation of Illegal Logging by the Formal Timber Sector in Ghana: Implications for Forest Law Compliance, Enforcement and EU-Ghana Voluntary Partnership Agreement. *The International Forestry Review*. and Hanses, C., Damnyag, L., & Obiri, B. D. (2012). Revisiting Illegal Logging and The Size of the Domestic Timber Market: The Case of Ghana. *International Forestry Review*.

production.²⁸ This underscores its significant role in the cocoa export market, a key forest-risk commodity (FRC), that serves however as a crucial source of income for the country's economy.

To undertake this analysis, the thesis draws on the theory of territorial extension – i.e. a legislative technique employed by the EU to govern transactions with foreign trading partners by exploiting the existence of a territorial link²⁹ – to evaluate the potential impact of the new EU changing approach on foreign territories when addressing deforestation. By specifically focusing on territorial extension indeed, the research aims at offering an original perspective on the effectiveness of EU regulatory activities in promoting sustainable progress and reducing deforestation unilaterally, while stressing on its impact in foreign countries. While existing studies have explored the dynamics behind the global reach of EU law through the theory of territorial extension, scholarship has not yet examined the recently implemented EU deforestation regulatory framework.³⁰ By filling a gap in the literature, the thesis thus aims to contribute substantially to the discourse on the impact of the new EUDR.

The work includes three chapters, each contributing significantly to the development of the research. Chapter 1 introduces the regulatory context and the theoretical framework underpinning the study. It sheds light on the EU's regulatory authority on a global scale and the territorial extension theory that the studied regulations exemplify. This will provide the grounds to explore the EU's action addressing deforestation and the rationale to embark on the assessment of the EU changing approach effectiveness. The methodology employed for the research is then outlined: a comparative analysis among the pre-EUDR and the EUDR approaches will be at the core of the overall study.

Chapter 2 analyses the pre-EUDR approach and, aligned with the overarching purpose of assessing the impact of EU law on foreign territories, it delves into the details of the chosen case study – Ghana. Explaining the peculiarities of this country will allow for a clearer application of the two studied approaches on a practical context.

Chapter 3 moves to the examination of the second component of the comparative analysis – the EUDR approach. By analysing the legislative process behind the EUDR's adoption, it provides insights into how institutions adopted the new requirements. The new approach is then analysed through the three identified criteria of the comparative analysis and it is applied to the case of Ghana.

²⁸ Norman, M., & Saunders, J. (2020). *Tackling (Illegal) Deforestation in Cocoa Supply Chains: What Impact can Demand-Side Regulations have?* Forest Policy Trade and Finance Initiative.

²⁹ Scott, J. (2014). Extraterritoriality and Territorial Extension in EU Law. *The American Journal of Comparative Law*.

³⁰ Scott, J. (2014). Extraterritoriality and Territorial Extension in EU Law. *The American Journal of Comparative Law*; Scott, J. (2020). Reducing the European Union's Environmental Footprint Through 'Territorial Extension'. *European University Institute*; Scott, J. (2013). Territorial Sovereignty and Territorial Extension in an Inter-Connected World. *Oxford University Press* and Duràn, G. M., & Scott, J. (2021). Reducing the European Union's Global Deforestation Footprint Through Trade Regulation. *European University Institute*.

Conclusions sum up the findings and stresses on the important observations reached throughout the analysis: shifting towards a unilateral regulatory approach, without the incorporation of cooperative and bilateral regulatory instruments, results crucial in compromising, and ultimately, reducing the positive impact the EU aspires to achieve in addressing global deforestation.

CHAPTER 1:

REGULATORY CONTEXT AND THEORETICAL FRAMEWORK

1.1 EU REGULATORY POWERS AND TRADING INSTRUMENTS

Over the years, the EU has progressively come to represent a global regulatory force in today's scenario and has increasingly exerted influence all over the world. 'An influential superpower that shapes the world in its image'³¹ gives an idea of the EU's role in current times and the likely importance that it will continue to have for a very long time.³² As a matter of fact, global business environment and international commerce's dynamics have been significantly formed and determined by EU's ability of imposing and diffusing its regulations among EU countries and foreign territories. The rising global reach of its law indeed continues to position the Union as a 'global regulatory hegemon' capable of steering worldwide trading dynamics.³³ Although the primary goal of EU regulatory activity is to regulate the single market internally, an external dimension of EU's market is indeed increasingly assuming relevance and catching greater attention.³⁴ As claimed by the European Commission (EC) 'the EU is emerging as a global rule maker, with the single market framework and the wider EU economic and social model increasingly serving as a reference point in third countries as well as in global and regional fora'.³⁵ This confirms the responsibility and reliance posed on the EU's capacity of regulating and using its market dominance to drive fundamental changes in the global environment. Hence, by enforcing external regulations, the EU defends the preservation of global public goods and boosts a greater worldwide sustainable development while consequently increasing the legitimacy of its governance model all over the world.³⁶

The EU has in fact started to be thought not only as a 'power in trade' but as a 'power through trade',³⁷ recognizing that its trading capacity and the related requirements it places on its partners are essential tools for the application of its laws beyond its borders. As a response to its commitment to

³¹ Bradford, A. (2020). *The Brussels Effect: How the European Union Rules the World*. New York: Oxford University Press.

³² Ibidem.

³³ Ibidem.

³⁴ Ibidem.

³⁵ European Commission. (2007). COM/2007/724 final. *Commission staff working document - The external dimension of the single market review - Accompanying document to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A single market for 21st century Europe*. Retrieved from <https://op.europa.eu/en/publication-detail/-/publication/c69a4c0d-65fb-46a9-9c1d-a2dbea0faa8f>.

³⁶ Bradford, A. (2020). *The Brussels Effect: How the European Union Rules the World*. New York: Oxford University Press.

³⁷ Nicolaidis, K., & Meunier, S. (2005). The European Union as a Conflicted Trade Power. *Journal of European Public Policy*.

spread an ideology of sustainable development and social market economy worldwide, the EU has indeed made use of several trading instruments to confirm its ‘norms-setting’ power across the globe.³⁸ In other words, the EU tries to condition and determine its trade relations to pursue global challenges to achieve the development of an overall better environment also in those less wealthy countries that lack the proper standards to undertake this process by themselves. In fact, as higher standards are more likely to be adopted in wealthier countries, the EU often feels responsible to spread those standards and improve foreign circumstances through regulating trading dynamics in poorer and less-advanced areas.

The EU’s well-known and prominent role in regulations has raised interest in proving whether and to what extent its regulatory influence has contributed to shaping positive advancements and progress when trade takes place with partners that might fall notably under its desired standards. Essentially, this chapter aims to outline the basis and theoretical framework that underpin the EU’s position as a regulatory force, with additional emphasis on its established role in addressing such sensitive matters. Therefore, after having initially presented the widely perception of the EU’s regulatory role in the contemporary agenda, highlighting the use of trade as a means to assert its role, the following lines will delve into an exploration of the primary tools employed by the EU to establish and sustain this esteemed global reputation. This examination will shed light on the distinctive features of each regulatory approach used by the Union and will serve to enhance the clarity of the legislative technique that the studied regulations exemplify.

The selection among the available trading instruments used might result decisive in leaving a favourable impact on these third countries where peculiar contexts may pose some challenges to the recognized EU’s regulatory power. Regarding this, treaty-driven and market-driven harmonization measures represent the two main categories into which the trading instruments the EU has used can be classified.³⁹ The former relates to multilateral and bilateral agreements, intended as cooperative instruments based on the dialogue and direct accord with the other partner, while the latter refers to the wide range of unilateral measures that the EU disposes to spread its own norms without necessarily requiring a straight agreement with the parties involved. More specifically, unilateralism refers to the Union’s practice of imposing and setting minimum requirements on its trading partners to allow them to access the single market as a means to pursue its objectives.

These two categories often need to coexist and be complementary in order to fulfil EU’s purposes. On one side, the ‘decay of consent’ characterising our days strongly undermines the signing

³⁸ Bradford, A. (2020). *The Brussels Effect: How the European Union Rules the World*. New York: Oxford University Press.

³⁹ Ibidem.

of crucially important agreements since gathering common consensus on the advantages of enforcing minimum social and environmental standards may result in a time-consuming and challenging process that ultimately impedes the desired outcomes of cooperative solutions.⁴⁰ In addition, treaties entail high implementation's costs and significant enforcement's efforts, both of which require effective follow-through and constant oversight.⁴¹ Hence, in those cases, unilateral measures result to be easier and more direct for the EU to exert its regulatory power.

On the other side, conditioning EU's market access through unilateral measures may not be sufficient in some policy areas that are not purely market-related, such as those addressing highly salient topics like the migration crises, the freedom of political prisoners or the control of global energy supplies.⁴² In fact, in such cases, treaty-driven measures offer a necessary alternative to get deeper participation and greater collaboration among countries beyond the mere conditioning of market access.

Nevertheless, notwithstanding these instances, the EU has been increasingly using unilateral actions to achieve its own goals. As a matter of fact, since the market's size is strictly related and proportionate to one's country power,⁴³ it can be easily understood that the EU takes advantage of its internal market' size to attract numerous countries and several traders. In other words, if a country highly depends on the exports to the EU, the Union will use its power to impose its rules given the trading partner's quasi-necessity of keeping access to the single market while avoiding the difficult compromises that may arise from signing bilateral agreements. In this way, while establishing a level playing field through its regulatory agenda, the EU is not only capable of guaranteeing a high level of competitiveness for its domestic market players but rather of also spreading its own social or economic preferences throughout the world.⁴⁴

In details, the phenomenon of the EU deriving power from its market size is often referred as Brussels effect, that despite not being the only way the EU exerts unilateral influence, is a noteworthy and discussed phenomenon of the Union's strength.⁴⁵ More specifically, the term 'Brussels effect' captures the phenomenon of EU's regulations transmission to market participants by doing nothing

⁴⁰ Krish, N. (2014). The Decay of Consent: International Law in an Age of Global Public Goods. *American Journal of International Law*.

⁴¹ Bradford, A. (2020). *The Brussels Effect: How the European Union Rules the World*. New York: Oxford University Press.

⁴² Lavanex, S. (2014). The Power of Functionalist Extension: How EU Rules Travel. *Journal of European Public Policy*.

⁴³ Drezner, D. W. (2007). Globalization, Harmonization, And Competition: The Different Pathways To Policy Convergence. *Journal of European Public Policy*.

⁴⁴ Bradford, A. (2020). *The Brussels Effect: How the European Union Rules the World*. New York: Oxford University Press and Henn, E. V. (2021). Protecting forests or saving trees? The EU's regulatory approach to global deforestation. *Wiley Periodical LLC*.

⁴⁵ Bradford, A. (2020). *The Brussels Effect: How the European Union Rules the World*. New York: Oxford University Press.

more than regulating its own internal market while leveraging on its dominance and attractiveness to influence its traders' behaviour.⁴⁶ Other unilateral legislative techniques are also recognized as alternative ways for the EU to more directly apply its regulations abroad, namely extraterritoriality and territorial extension. In this regard, given the objectives of this thesis, territorial extension will be specifically analysed.

1.1.1 Territorial Extension Theory

As already mentioned, in today's highly globalized and interdependent world, the laws and regulations of state and non-state actors naturally came to extend their reach beyond their own territories. As a matter of fact, the traditional demarcation between sovereignty, state and territory has become increasingly blurred due to the growing interconnectedness and globalization among nations and states.⁴⁷ As a consequence, the concept of 'territorial supremacy', or territorial sovereignty, described by Oppenheim as a state's ability to exercise authority over individuals and objects within its borders,⁴⁸ has been challenged by recent dynamics that continuously witness the expansion of regulations stretching beyond national borders and into foreign regions. In this complex landscape, legislative practices like extraterritoriality and territorial extension have played a significant role in shaping how entities such as the EU has exerted their regulatory influence worldwide. We need to distinguish territorial extension from the other unilateral practice of extraterritoriality.

Despite being exceptionally uncommon, extraterritoriality represents the approach of imposing obligations on individuals who do not have a relevant territorial connection with the regulating state.⁴⁹ In other words, by sticking to the definition given by Scott, extraterritoriality is 'the application of a measure triggered by something other than a territorial connection with the regulating state'.⁵⁰ As an example, the EU has utilized extraterritorial application notably during the years of the financial crisis, resorting to non-territorial connection to trigger the enforcement of its law.⁵¹ In this regard, the EU has employed this approach to encompass the foreign branches of companies established within the EU and reach the employees of such subsidiaries.⁵² Since EU provisions foresee the

⁴⁶ Ibidem.

⁴⁷ Scott, J. (2013). *Territorial Sovereignty and Territorial Extension in an Inter-Connected World*. Oxford University Press.

⁴⁸ Jennings, R., & Watts, A. (2008). *Oppenheim's International Law*. Oxford University Press.

⁴⁹ Scott, J. (2014). Extraterritoriality and Territorial Extension in EU Law. *The American Journal of Comparative Law*.

⁵⁰ Ibidem.

⁵¹ Scott, J. (2014). The New EU 'Extraterritoriality'. *Common Market Law Review*.

⁵² Scott, J. (2019). The Global Reach of EU Law: The Extraterritorial Reach of EU Law. In M. Cremona, & J. Scott, *EU Law Beyond Borders*. Oxford University Press.

remuneration of bankers at a ‘group, parent, company or subsidiary levels’ and include institutions located in offshore financial hubs, it results that the EU manages to apply its law to the staff employed in subsidiaries of EU-headquartered banks and investment firms, despite not being related by a direct territorial connection.⁵³ Hence, this type of unilateral measure demonstrates the EU’s willingness and determination in exerting its influence far beyond its traditional boundaries, making it a notable and far-reaching approach in the realm of international regulation.

While extraterritoriality aims to regulate actions occurring outside a state’s territory, the concept of ‘territorial extension’ comes into play when a state’s law is applied based on a territorial trigger that originates within the regulating state’s borders.⁵⁴ In simple terms, the application of the law hinges on a territorial connection – the importation of goods into the EU’s territory – but EU’s regulatory actions and application are influenced by the conduct – production processes – and the circumstances – legal framework – taking place abroad.⁵⁵ This territorial extension theory allows the EU to regulate ‘activities that occur abroad but that also have negative impacts upon the EU or upon globally shared resources’.⁵⁶ In other terms, conducts or practices abroad, which do not align with the EU’s objectives and ideologies, become the grounds for territorial jurisdiction with the aim of encouraging or inducing behavioural and legal changes in third countries.⁵⁷

Moreover, through territorial extension, diverse spheres of regulatory intervention are established. This extension of regulatory influence from the EU can encompass various levels, ranging from individual transaction and firms levels to entire countries or even have global implications.⁵⁸ In essence, the EU’s regulatory reach can span across different scales and dimensions, allowing it to address a wide array of issues and entities with its ambit.

Finally, a debate has arisen regarding the compatibility of the territorial extension approach with the rules of the World Trade Organization (WTO) and its acceptance within international trade law. Several complaints have been lodged, arguing that this protectionist approach is considered counterproductive for less developed countries.⁵⁹ Chimini expresses himself on territorial extension’s measures related to environmental issues as being, ‘unilateral trade sanctions that tend to weaken the

⁵³ Cremona, M. (2019). Extending the Reach of EU Law: the EU as an International Legal Actor. In M. Cremona, & J. Scott, *EU Law Beyond EU Borders: The Extraterritorial Reach of EU Law*. Oxford University Press.

⁵⁴ Scott, J. (2013). Territorial Sovereignty and Territorial Extension in an Inter-Connected World. *Oxford University Press*.

⁵⁵ Scott, J. (2014). Extraterritoriality and Territorial Extension in EU Law. *The American Journal of Comparative Law*.

⁵⁶ European Commission. (2000). COM/2000/1 final. *Communication from the Commission on the Precautionary Principle*. Retrieved from <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0001:FIN:en:PDF> and Harremoes et al. (2002). *The Precautionary Principle in the 20th Century: Late Lessons from Early Warnings*. Routledge.

⁵⁷ Scott, J. (2014). Extraterritoriality and Territorial Extension in EU Law. *The American Journal of Comparative Law*.

⁵⁸ Ibidem.

⁵⁹ Scott, J. (2013). Territorial Sovereignty and Territorial Extension in an Inter-Connected World. *Oxford University Press*.

support for environmental protection within the poor worlds as the objective of environmental protection comes to be associated with the hegemonic objectives of the developed world'.⁶⁰ Although many scholars criticize the 'hegemonic' character of EU practices, some others confirm that there are several other reasons behind attempting to influence behaviour abroad, including assuming responsibility for the well-known negative impacts of EU consumption.⁶¹

1.2 DEFORESTATION AND THE EU'S ACTION

In the current scenario, tackling climate change and striving for improved sustainable development have become paramount priorities for global actors. As part of the complex and wide effort to stop, or at least, slow down environment's destruction, the substantial threats faced by the world's forests are increasingly acknowledged as one of the most significant sustainability challenges.⁶² Despite the growing awareness of the crucial role forests play in our environments, the lack of international treaties on forests and the incapacity of current international environment law of addressing deforestation's main causes have further fed the phenomenon.⁶³ Industrial agriculture and timber logging have indeed been recognized as the main direct causes of deforestation and forest degradation, which do lack of appropriate regulations to properly reduce their impact on forests.⁶⁴ As a matter of fact, existing policies and solutions have proven elusive in halting or adequately reducing the phenomenon, leading it to continue at 'alarming rates'.⁶⁵ According to Food and Agriculture Organization (FAO) and United Nations Environment Programme (UNEP) estimates indeed, the worldwide forest area experienced a decline of 178 million hectares between 1990 and 2020, with some regions being more impacted than others.⁶⁶ In response to this pressing concern, international stakeholders have been urged to propose diverse solutions to address deforestation and forest degradation. While multilateral environmental agreements are deemed the most effective approach

⁶⁰ Chimini, B. (2000). WTO and Environment: The Shrimp-Turtle and EC-Hormones Cases'. *Economic and Political Weekly*.

⁶¹ Scott, J. (2013). Territorial Sovereignty and Territorial Extension in an Inter-Connected World. *Oxford University Press*.

⁶² Durán, G. M., & Scott, J. (2022). Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union. *Journal of Environmental Law*.

⁶³ Diaz, S. et al. (2019). *Global Assessment Report on Biodiversity and Ecosystem Services*. Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services.

⁶⁴ Weeden, M. (2020). *5 Causes of Deforestation*. Retrieved from ONETREEPLANTED: <https://onetreepanted.org/blogs/stories/deforestation-causes>.

⁶⁵ FAO & UNEP. (2020). *The State of the World's Forests 2020. Forests, Biodiversity and people*. Retrieved from <https://www.fao.org/documents/card/en/c/ca8642en>.

⁶⁶ Ibidem.

to tackle this issue,⁶⁷ other policies and instruments have emerged as essential and necessary elements in the battle against forest losses.

Within this context, addressing environmental challenges undoubtedly holds a pivotal position in EU's agenda and, consequently, the fight against deforestation and forest degradation. As examined in the preceding section, the magnitude of the EU's regulatory power together with the array of tools at its disposal, can indeed serve as a vital determinant in guiding global efforts towards improved forests' treatment. When skilfully directed and efficiently harnessed, the EU has potential to utilize its influence to foster a worldwide environment that currently lacks comprehensive agreements aimed at curbing such phenomenon. Therefore, the objective of this section is to relate the regulatory framework previously outlined to a specific facet of sustainability concerns, analysing how the EU has employed its resources to drive progresses in addressing the critical matter of forests.

Beside tackling climate change through various directives and measures on sustainability for the achievement of circular economy and corporate social and environmental responsibility,⁶⁸ the EC has in fact emphasized its commitment to intensify its efforts to combat deforestation as a crucial aspect of its European Green Deal.⁶⁹ Notably, the EU has been actively acting in forests restoration to offset the well-known negative impacts its consumption patterns are continuously causing on forest degradation. As revealed by certain studies carried out by the Commission indeed, the EU acts as a 'net importer of environmental impacts' and that the average consumption of an EU citizen is 'outside the safe operating space for humanity'.⁷⁰ According to estimates on regions' ecological footprint from the Global Environmental Footprint Network, it is calculated that sustaining current global consumption patterns would necessitate nearly 1.7 planets, while it would require approximately 3 planets if to sustain Western Europe's consumptions.⁷¹ In fact, the EU results to be one of the main importer and consumer of timber as well as of forest-risk commodities, contributing with its trade and its needs' satisfaction to externalize enormous environmental pressures.⁷² As a matter of fact, forests' enhancements within the EU's domestic territory should not mislead us thinking that global

⁶⁷ Mathushita, M. et al. (2015). *The World Trade Organization: Law, Practice and Policy*. Oxford University Press.

⁶⁸ Henn, E. V. (2021). *Protecting forests or saving trees? The EU's regulatory approach to global deforestation*. Wiley Periodical LLC.

⁶⁹ European Commission. (2019). COM/2019/640 final. *Communication From The Commission To The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions - The European Green Deal*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2019%3A640%3AFIN>.

⁷⁰ Global Footprint Network. (2019). *EU Overshoot Day. Living Beyond Nature's Limits*. WWF.

⁷¹ Global Footprint Network. (s.d.). *Global Footprint Network: Advancing the Science of Sustainability*. Retrieved from Global Footprint Network: <https://data.footprintnetwork.org/#/>.

⁷² Durán, G. M., & Scott, J. (2022). *Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union*. *Journal of Environmental Law and European Environment Agency*. (2019). *State and Outlook 2020: Knowledge for Transition to a Sustainable Europe*. Retrieved from European Environment Agency: <https://www.eea.europa.eu/soer/2020>.

sustainability levels are rising, as these improvements are often counterbalanced by further degradation elsewhere.⁷³

Having recognized its complicity in contributing to forest degradation through its import-driven consumption patterns, the EU have recurred to the use of its trading instruments as means of exerting regulatory influence to respond to this moral duty of adjusting its wrongdoing and promoting sustainability also in those territories affected by its consumption.⁷⁴

1.2.1 EU's Regulatory Framework on Forests

Having established the necessity to modify its demand-driven contribution to global deforestation, the EU has proceeded with the adoption of several and varied instruments to exert its regulatory influence on such issue.

In May 2003, in response to the growing awareness of the effects of illegal logging caused by timber demand on deforestation, the European Commission published the Forest Law Enforcement, Governance and Trade Action Plan.⁷⁵ This represents a comprehensive package of measures that aim at targeting both supply and demand sides, with the goal of guiding both importers and exporters towards reducing the trade of one of the two main underlying causes of deforestation, namely timber logging.⁷⁶ More specifically, this initiative was designed to prevent illegal harvested timber from entering the EU market by aiming at steering as well illegal activities abroad given their significant consequences on third countries.⁷⁷

On one side, one of the two cornerstones of the Plan is the establishment of Voluntary Partnership Agreements with timber producing and exporting countries through bilateral agreements. Falling under the category of cooperative instruments, this regulatory technique seeks to directly engage with the trading partner, leveraging the partner's voluntary agreement due to the recognized advantages of the arrangement. Consequently, in contrast to unilateral techniques, this approach requires a more proactive choice and willingness for change from both parties involved. In this specific case, developing country timber exporters are the main target of such instrument, with the aim of ensuring the 'legality' of the timber and timber products exported to the EU, and, at the same

⁷³ Pendrill, F., Persson, U., Godar, J., Kastner, T., Moran, D., Schimdt, S., & Wood, R. (2019). Deforestation displaced: Trade in forest-risk commodities and the prospects for a global forest transition. *Environment Research Letters*.

⁷⁴ Lepora, C., & Goodin, R. (2013). *On Complicity and Compromise*. Oxford University Press and Duràn, G. M., & Scott, J. (2021). Reducing the European Union's Global Deforestation Footprint Through Trade Regulation. *European University Institute*.

⁷⁵ Duràn, G. M., & Scott, J. (2021). Reducing the European Union's Global Deforestation Footprint Through Trade Regulation. *European University Institute*.

⁷⁶ Jonsson, R., Giurca, A., Masiero, M., Pepke, E., Pettenella, D., Prestemon, J., & Winkel, G. (2015). *Assessment of the EU Timber Regulation and FLEGT Action Plan*. European Forest Institute.

⁷⁷ Ibidem.

time, of advancing sustainable and inclusive forest governance in the exporting state.⁷⁸ Whenever a country voluntarily decides to participate in this agreement, it must establish a verification system to confirm the legality of its timber exports.⁷⁹ This process involves multi stakeholders, including perspectives from civil society and participation from private businesses.⁸⁰ The ultimate goal is to create a clear definition of what constitutes ‘legal’ timber, that once considered sufficiently robust, allows a country to become eligible to obtain a FLEGT license.⁸¹ This enables exporters and producers of the exporting country to be granted with improved access to the EU market once the agreed ‘legality’ standards are met.⁸² VPAs also create joint committees responsible for overseeing the implementation of these timber legality assurance and licensing schemes, as several challenges and potential corruptions may arise during the process.⁸³ Moreover, these VPAs sought to ensure a steady commitment to assist the partner country in their endeavours to implement necessary changes that also seek to develop better local regulatory framework and more efficient forests governance.⁸⁴

However, despite increasing awareness on forests problems and related-timber production, VPAs also entail numerous difficulties as some countries’ local structures might result unsuitable to undertake these changes even though the agreements result to be tailor-made on a national and local idea of legality.⁸⁵ In fact, despite VPAs have been concluded with several countries, only Indonesia had reached the step of issuing export licensing schemes and started exporting FLEGT licenced timber in 2016.⁸⁶

⁷⁸ Overdevest, C., & Zeitlen, J. (2017). Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana. *Regulation & Governance*.

⁷⁹ Jonsson, R., Giurca, A., Masiero, M., Pepke, E., Pettenella, D., Prestemon, J., & Winkel, G. (2015). *Assessment of the EU Timber Regulation and FLEGT Action Plan*. European Forest Institute.

⁸⁰ Satyal, P. (2018). Civil Society Participation in REDD+ and FLEGT Processes: Case Study Analysis from Cameroon, Ghana, Liberia and the Republic of Congo. *Forest Policy and Economics*.

⁸¹ Jonsson, R., Giurca, A., Masiero, M., Pepke, E., Pettenella, D., Prestemon, J., & Winkel, G. (2015). *Assessment of the EU Timber Regulation and FLEGT Action Plan*. European Forest Institute.

⁸² Brack, D. (2019). *Towards Sustainable Cocoa Supply Chains: Regulatory options for the EU*. FERN, Tropenbos International and Fair Trade Advocacy Office and European Court of Auditors. (2015). *EU support to timber-producing countries under the FLEGT action plan*. European Court of Auditors.

⁸³ Overdevest, C., & Zeitlen, J. (2017). Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana. *Regulation & Governance*.

⁸⁴ Jonsson, R., Giurca, A., Masiero, M., Pepke, E., Pettenella, D., Prestemon, J., & Winkel, G. (2015). *Assessment of the EU Timber Regulation and FLEGT Action Plan*. European Forest Institute.

⁸⁵ Bollen, A., & Ozinga, S. (2013). Improving Forest Governance - A Comparison of GLEFT VPAs and their Impact. FERN and Jonsson, R., Giurca, A., Masiero, M., Pepke, E., Pettenella, D., Prestemon, J., & Winkel, G. (2015). *Assessment of the EU Timber Regulation and FLEGT Action Plan*. European Forest Institute.

⁸⁶ Stewart, R. B. (2008). Instrument Choice. In D. B., J. B., & E. H., *General Issues*. The Oxford Handbook of International Environmental Law.

The other component of the FLEGT framework is the EU Timber Regulation that, entered into force in 2013, aimed at addressing the demand side of the timber product trade.⁸⁷ Specifically, under this regulation, all operators who place timber products to the European market for the first time are required to demonstrate ‘due diligence’ that these were not illegally harvested in their country of origin.⁸⁸ EU importers are thus in charge of minimizing the risk of illegality in timber importation and of applying sanctions if needed.⁸⁹ The due diligence process carried out by importers involves gathering information about the timber's origin, verifying the legal status of the logging operations, and ensuring that all necessary documents and permits are in place. As a matter of fact, EUTR enters in those category of unilateral measures which aim at conditioning the market’s access based on a territorial link – imports of timber and timber products – based on conducts taking place abroad – legal or illegal harvesting of timber eventually contributing to a shared public good, named deforestation.

These instruments are therefore two different regulatory tools that result complementary in serving to EU’s purpose of reducing deforestation and are meant to reinforce each other. In fact, it is important to stress that every timber product originating from countries that have successfully established a FLEGT license are automatically considered compliant with the requirements of the EUTR such that companies won’t be required to conduct further due diligence checks.⁹⁰ On one hand, this incentivizes third countries to sign VPAs: as EUTR poses obstacles to the unrestricted circulation of illegal timber within the EU market, countries are pushed to sign VPAs and obtain FLEGT licences to secure themselves access to the EU market demonstrating that their exports meet the necessary legal and sustainability standards.⁹¹ On the other hand, EU importers can reduce the risk of illegal sourcing by opting for certified forest and chain of custody certified products.⁹² Nevertheless, the connection among these two trading instruments does not guarantee the complete legality throughout the entire timber supply chain, as instances of illegality can still be found at any stage of the supply chain, even after the initial forest certification is obtained.⁹³

⁸⁷ Jonsson, R., Giurca, A., Masiero, M., Pepke, E., Pettenella, D., Prestemon, J., & Winkel, G. (2015). *Assessment of the EU Timber Regulation and FLEGT Action Plan*. European Forest Institute.

⁸⁸ Overdevest, C., & Zeitlen, J. (2017). *Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana. Regulation & Governance*.

⁸⁹ Jonsson, R., Giurca, A., Masiero, M., Pepke, E., Pettenella, D., Prestemon, J., & Winkel, G. (2015). *Assessment of the EU Timber Regulation and FLEGT Action Plan*. European Forest Institute.

⁹⁰ Ashraf, N., & Seters, J. V. (2019). *Sewing the Pieces Together: Towards an EU strategy for Fair and Sustainable Textiles. ECDPM Discussion Paper No. 264*.

⁹¹ Overdevest, C., & Zeitlen, J. (2017). *Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana. Regulation & Governance*.

⁹² Jonsson, R., Giurca, A., Masiero, M., Pepke, E., Pettenella, D., Prestemon, J., & Winkel, G. (2015). *Assessment of the EU Timber Regulation and FLEGT Action Plan*. European Forest Institute.

⁹³ *Ibidem*.

Therefore, both instruments are meant to serve as the primary means through which the EU has exercised its regulatory authority to address deforestation in regions where it poses a significant threat to the environment. However, as it will be contended in the next section, such effort might not be enough to tackle all the contributing factors and drivers of deforestation and that additional regulatory activity is needed on halting the phenomenon.

1.3 IS THE EU NEW APPROACH MOVING TOWARDS GREATER SUSTAINABILITY IN THIRD COUNTRIES?

Over the last two decades, the EU regulatory framework has demonstrated certain shortcomings in its scope. While the FLEGT Action Plan initially focused on combating illegal logging and related trade, it has been soon realized that the issue of deforestation extended far beyond these activities.⁹⁴ It became increasingly evident that the EU's role as a major importer of agricultural products linked to unsustainable forest conversion contributed significantly to the global deforestation problem.⁹⁵ From 2005 to 2013, around 62% of the world's forests decline occurred because of the expansion of agricultural and pasture areas, which has a more significant effect compared to illegal logging.⁹⁶ This indicates that the emphasis on merely addressing timber illegality and its harvesting should be shifted towards the research of a proper approach that ensures the long-term sustainability forests.⁹⁷ Hence, the purpose of this section is to acknowledge the constraints and limitations embedded in the previously employed approach and to start discussing the essential shift that the EU needs to undertake to face the newly identified issues. In fact, amidst this increasing awareness, this final part of the chapter will introduce the methodology I intend to use for assessing the degree to which the EU's endeavours are truly progressing towards the promotion of sustainability within such contexts.

Recognizing the causal connection between agricultural expansion and global deforestation, driven by international trade in agricultural commodities, the EU has sought to adopt a more holistic and comprehensive approach to address the impact of its consumption on third countries.⁹⁸ In this regard, the European Parliament (EP) and the Council of the European Union adopted a new

⁹⁴ Hedemann-Robinson, M. (2022). Legislative Pioneer on Global Forest Protection? A Commentary on the European Union's Proposed Deforestation-Free Product Regulation. *European Energy and Environmental Law Review*.

⁹⁵ Ibidem.

⁹⁶ Pendrill, F., Persson, U., Godar, J., Kastner, T., Moran, D., Schimdt, S., & Wood, R. (2019). Deforestation displaced: Trade in forest-risk commodities and the prospects for a global forest transition. *Environment Research Letters*.

⁹⁷ Jonsson, R., Giurca, A., Masiero, M., Pepke, E., Pettenella, D., Prestemon, J., & Winkel, G. (2015). *Assessment of the EU Timber Regulation and FLEGT Action Plan*. European Forest Institute.

⁹⁸ European Commission. (2019). *The European Green Deal*. Retrieved from European Commission: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en#:~:text=The%20European%20Green%20Deal%20%E2%80%93%20A%20commitment%20to%20future%20generations&text=To%20overcome%20these%20challenges%2C%20the,growth%20decoupled.

regulation on deforestation free-products on 19 April and 16 May 2023 respectively.⁹⁹ This regulation, known as the EU Deforestation Regulation, replaces the existing EUTR within the EU regulatory framework on forests, introducing binding legislation on importers in order to regulate the demand for those agricultural commodities associated with deforestation.¹⁰⁰ Like EUTR, EUDR serves as a unilateral measure employed by the EU to extend its jurisdiction to territories with which it has a territorial link, where the application of the law is affected by practices originating in other countries.

Besides widening the scope of covered products, the new regulation represents a significant step in EU's leap towards sustainability. In fact, although addressing illegal logging is crucial for forest management and human rights, it should be acknowledged that focusing solely on legality does not necessarily ensure sustainability. The former regulatory activities, focused on illegal logging, may fall short of guaranteeing long-term environmental sustainability by addressing neither the sustainability of supply chains of timber products nor of agricultural products.¹⁰¹ In this regard, unlike the previous EUTR, the new EUDR outlined certain requirements aiming at prioritizing sustainability matters, rather than just checking whether or not the production was lawful according to the country of origin's system.¹⁰²

Additionally, it is important to highlight that this significant advancement in the EU regulatory framework has challenged the existing balance of the FLEGT Action Plan. The recent introduction of EUDR has brought several uncertainties for those countries that have entered into VPAs. Previously, having a FLEGT license guaranteed trading partners easier access to the EU market by bypassing the checks required by EUTR. In contrast, the new regulation does not include any provision for FLEGT licenses to meet the criteria of being 'deforestation-free' or 'degradation-free'.¹⁰³ Thus, the future of those cooperative instruments is now being challenged, as well as their focus on supply side's activities as a means to support partner countries in achieving greater sustainability. In other words, if on one side this new unilateral legislation represents a cornerstone in the EU's regulatory framework to enhance sustainability by encompassing a wider range of

⁹⁹ ClientEarth. (2023). *The new EU Deforestation-free Products Regulation - Key obligations for EU Member States*. Retrieved from ClientEarth: <https://www.clientearth.org/latest/documents/the-new-eu-deforestation-free-products-regulation-key-obligations-for-eu-member-states/>.

¹⁰⁰ Hedemann-Robinson, M. (2022). Legislative Pioneer on Global Forest Protection? A Commentary on the European Union's Proposed Deforestation-Free Product Regulation. *European Energy and Environmental Law Review*.

¹⁰¹ Berning, L., & Sotirov, M. (2023). Hardening Corporate Accountability in Commodity Supply Chains under the European Union Deforestation Regulation. *Regulation & Governance*.

¹⁰² Hedemann-Robinson, M. (2022). Legislative Pioneer on Global Forest Protection? A Commentary on the European Union's Proposed Deforestation-Free Product Regulation. *European Energy and Environmental Law Review*.

¹⁰³ FLEGT Independent Market Monitor. (2022). *EU's deforestation-free regulatory proposal raises concerns about impacts on FLEGT VPAs*. Retrieved from FLEGT Independent Market Monitor: <https://flegtimm.eu/news/eus-deforestation-free-regulatory-proposal-raises-concerns-about-impacts-on-flegt-vpas/>.

products, it also risks undermining the positive outcomes and equilibrium achieved with the previous system.

In light of these developments, this thesis seeks to explore the potential impact of the new EUDR approach on promoting sustainability in third countries. By conducting a comparative analysis with the previous implemented approach, the thesis aims to shed light on the potential impact of the changing and evolving EU regulations on enhancing sustainability efforts in those regions most affected by deforestation.

1.3.1 Methodology: Comparative Analysis

The recent developments in the EU regulatory framework signify substantial progress in the EU's endeavours to regulate and reduce its role in curbing deforestation, while, at the same time, to use its trading regulatory powers to combat forests issue beyond its borders. Nevertheless, given the recent coming into force of the new EUDR and the time needed for its complete implementation, it becomes difficult to determine the effectiveness of this approach and to study whether the EU is truly moving towards promoting global sustainability. In other words, it will take time for this regulatory measure to be fully integrated and enforced among Member States (MS), and even more years to observe its actual effects in the trading partners' territories.

In this regard, the thesis aims to investigate the potential effectiveness of this new approach to the promotion of sustainability in third countries by comparing it with the outcomes and performance of the previous approach. In particular, the research will focus around three main criteria to compare the pre-EUDR approach, intended as the package of measures including VPAs and EUTR, with the new EUDR approach and its implications. To conduct such comparison, the selection of the three specific criteria will serve to establish common parameters for shaping the study around essential concepts useful to address the research question. In particular, the comparative analysis will primarily focus on the relationship between the repealed law, the EUTR, and the new one, the EUDR, by still considering how this transition relates to the complementary cooperative instruments that address the supply side of the issue.

1.3.1.1 Enforcement and Implementation

The first criterion pertains to the *enforcement and implementation* of the laws. To begin with, implementation refers to the practical application of the pieces of legislation enacted by the EU, with Member States playing as major actors in ensuring the proper functioning of these implementation processes. A fundamental starting point of successful implementation is the clear articulation and

statement of rules that need to clearly direct regulated actors towards adopting the right behaviours to achieve compliance. As a response to EU regulations or multilateral agreements, MS must indeed take measures to fully integrate new legislative components into their national legal frameworks, often recurring to supplementary activities and technical expertise to enhance outcomes.¹⁰⁴ Furthermore, it is crucial to emphasize that maintaining uniformity of regulations across EU territories is of paramount importance in MS' implementation endeavours. In fact, this consistency holds significant potential in bolstering the credibility and robustness of EU regulations, even in those foreign countries that are indirectly affected by these laws through trading dynamics.

To enhance the efficacy of implementation, the concept of enforcement becomes relevant. Indeed, as claimed by Abraham Lincoln, 'law without enforcement is just good advice'.¹⁰⁵ In details, enforcement pertains to a set of measures taken by competent bodies to make sure that individuals that do not comply with the law are returned to compliance through punitive measures.¹⁰⁶ In fact, effective enforcement necessitates the presence of appropriate penalties for non-compliance, compelling addresses to take substantial steps to adhere to specific regulations.¹⁰⁷ According to the instrumental perspective on compliance theories, it is argued that individuals are more likely to abide by a given regulation when, acting rationally to maximize their utility, the benefits of compliance outweigh the costs of sanctions.¹⁰⁸ Instead, the normative perspective suggests that individuals comply with laws when they perceive them as just and legitimate due to their personal values, leading to an internal moral obligation to obey.¹⁰⁹ Regarding this, it is indeed crucially important that enforcing authorities are viewed as legitimate in executing their tasks, as this perception encourages compliance with the content of the rules.¹¹⁰ Moreover, participative decision-making processes can

¹⁰⁴ Global Water Partnership. (n.d.). *Implementation and Enforcement*. Retrieved from Global Water Partnership: <https://www.gwp.org/en/learn/iwrm-toolbox/The-Enabling-Environment/Legal-Framework/Implementation-and-Enforcement/>.

¹⁰⁵ Milieu Law & Policy Consulting. (n.d.). *Implementation & Enforcement*. Retrieved from Milieu Law & Policy Consulting: <https://www.milieu.be/implementation-enforcement/>.

¹⁰⁶ Global Water Partnership. (n.d.). *Implementation and Enforcement*. Retrieved from Global Water Partnership: <https://www.gwp.org/en/learn/iwrm-toolbox/The-Enabling-Environment/Legal-Framework/Implementation-and-Enforcement/>.

¹⁰⁷ Sutinen, J. G., & Kuperan, K. (1999). A Socio-Economic Theory Of Regulatory Compliance. *International Journal of Social Economics* and Honneland, G. (1999). A model of compliance in fisheries: theoretical foundations and practical application. In *Ocean & Coastal Management*.

¹⁰⁸ Becker, G. (1968). Crime and Punishment: an Economic Approach. *Journal Political Economy* and Stigler, G. (1970). The optimum enforcement of laws. *Journal Political Economy*.

¹⁰⁹ Ramcilovic-Suominen, S., Matero, J., & Shannon, M. (2013). Do forest values influence compliance with forestry legislation? The case of farmers in the fringes of forest reserves in Ghana. *Small-Scale Forestry* and Tyler, T., & Jost, J. (2007). Psychology and the Law: Reconciling Normative and Descriptive Accounts of Social Justice and System Legitimacy. In T. Tyler, & J. Jost, *Social psychology: Handbook of basic principles*. Guilford Press.

¹¹⁰ Honneland, G. (1999). A model of compliance in fisheries: theoretical foundations and practical application. In *Ocean & Coastal Management* and Tyler, T. (2006). *Why People Obey the Law*. Princeton University Press.

further enhance the legitimacy of enforcing authorities' actions, garnering more acceptance and seriousness from those subject to enforcement.

Hence, delving into enforcement and implementation details sheds light on the robustness of expanding law beyond borders' effectiveness. Without proper and uniform implementation, along with respected and legitimate enforcement mechanisms, there is little hope for the EU to exert significant influence on third countries and, consequently, improve sustainability in third countries. Specifically, it is of particular interest to investigate how MS have managed to establish clear guidelines for operators and traders, and whether they have achieved uniformity in implementation through competent bodies with enhanced expertise. Moreover, whether effective enforcement measures have instilled a sense of credibility and seriousness among those subject to enforcement, including those trading partners who must adhere and adopt to EU regulations, also becomes relevant. Thus, analysing the details of the two regulations' implementation and enforcement mechanisms allow to assess how the new approach has addressed any deficiencies or shortcomings, and whether it has retained effective mechanisms inherited from the previous approach.

1.3.1.2 Traceability Requirements and Transparency Issues

The second criterion relates to examine the *traceability requirements and transparency issues* found in the two approaches. To start off, traceability has been defined as the 'ability to track a product batch and its history through the whole, or part, of a production chain from harvest through transport, storage, processing, distribution and sales (...) or internally in one of the steps in the chain for example the production step (...).¹¹¹ This entails the EU's ability to trace the entire process of a particular product of interest from its initial production stage to its entry into the EU market. As a consequence, it can be understood that the precision of traceability requirements outlined in regulations and agreements directly increase the potential to enhance understanding of a thorough product's lifecycle, while linking them more easily to their respective manufacturers or importers.¹¹² Reasonably, traceability is related to transparency, meaning that a more detailed and functional tracking system guarantees a more transparent and clear flow of information among involved parties. Demanding more comprehensive information helps reduce the risks of corruption and dishonesty, as it necessitates the transparent demonstration of resource management and production processes.¹¹³

¹¹¹ Moe, T. (1998). Perspectives on traceability in food manufacture. *Trends in Food Science & Technology*.

¹¹² Mo, C. (2020). *Product Traceability Requirements in the European Union: An Overview*. Retrieved from ComplianceGate: <https://www.compliancegate.com/product-traceability-requirements-european-union/>.

¹¹³ CEOPedia . (s.d.). *Lack of transparency* . Retrieved from CEOPedia Management Online: https://ceopedia.org/index.php/Lack_of_transparency#:~:text=Lack%20of%20transparency%20is%20a,of%20accountability%20and%20poor%20governance.

Within the framework of deforestation and importation of products from developing countries, an effective tracing system can become pivotal in encouraging foreign traders to adjust their methods to align with EU regulations, should they wish to continue accessing the EU market. Consequently, traceability requirements can compel exporters to steer their practices to maintain trade with the EU and provide requested information to importers.

Furthermore, this criterion becomes crucial in evaluating the extent to which the EU has increased its awareness of the specific context and circumstances of its trading partner together with the consequent implications. As a matter of fact, demanding more precise information about the conduct of trading partners in foreign countries could serve as a tool to guide EU's actions abroad. Acknowledging the peculiarities of external contexts might steer EU's efforts to better shape the implementation of its rules and guidelines and account for the conditions under which traders operate.

Therefore, after analysing the foundational components of implementation and enforcement systems, this second criterion seeks to delve into the intricacies of the two examined methods. In fact, while investigating the strategies designed to reduce deforestation in foreign countries, the analysis of the level of traceability requirements for traded goods offers insights into the responsive behaviours of foreign traders in relation to the tracing requirements imposed by EU operators. In addition, the EU's ability to gain a deeper understanding of the contexts in which it trades provides valuable perspectives for better exerting its influence in more transparent environments, thus, increasing its potential in promoting sustainability abroad.

1.3.1.3 Territorial Extension Level

The third criterion focuses finally on the *level of territorial extension*. As mentioned, EU regulations like the EUDR and EUTR can have an impact beyond EU's borders by encompassing varied spheres of regulation. In other terms, depending on the level of the law's territorial expansion, the regulatory scope defined by these measures will involve a more or less broad realm.¹¹⁴ In fact, the EU employs the strategy of territorial extension to induce various forms of legal or behavioural change.¹¹⁵

According to Scott, four main spheres of regulatory intervention can be identified.¹¹⁶ Firstly, the minimum level corresponds to 'transaction' level whereby 'the EU regulator is required to take into account conduct or circumstances taking place or prevailing outside the EU in so far as these

¹¹⁴ Scott, J. (2013). *Territorial Sovereignty and Territorial Extension in an Inter-Connected World*. Oxford University Press.

¹¹⁵ Scott, J. (2014). *Extraterritoriality and Territorial Extension in EU Law*. *The American Journal of Comparative Law*.

¹¹⁶ *Ibidem*.

pertain to a specific transaction'.¹¹⁷ For instance, in assessing whether a product might enter or not in the EU market, the EU regulator is obliged to take into account the production processes of just that transaction, therefore by looking at how the product has been harvested. From this minimal level of regulatory sphere governing individual transactions, the EU uses territorial extension's practice to achieve 'higher level territorial extension', by reaching firm, country or even globe level.¹¹⁸ In fact, this legislative measure is used from influencing the operation and management of firms to enhance their performance, to allowing market access for a country or to disseminating its values and norms on a global scale.¹¹⁹ It can be also argued that the EU frequently creates incentives for compliance to be attained at a more elevated level.¹²⁰ As a matter of fact, firm or countrywide compliance will be regarded by the EU through reducing the strictness of its regulatory requirements and guaranteeing more flexibility into the criteria that a third country needs to fulfil,¹²¹ therefore triggering bigger spheres of regulations.

Asserting its role as a 'norm catalyst' is also an objective pursued through territorial extension practice, with the objective of using EU rules to alter the legal framework of third countries.¹²² Moreover, it can also prompt the effective enforcement and implementation of existing foreign country's norms and encourage the signing of international agreements and treaties on urgent issues.¹²³ All these actions collectively offer insights into how EU laws' influence in foreign contexts can shape the dynamics of the international arena.

Hence, in the context under examination, it is intriguing to observe how the EU has effectively wielded its regulatory influence over varying degrees of territorial expansion in developing countries, providing valuable insights into the actual effects of this legislative measure. Certainly, when a regulation is capable of expanding its scope at a 'country' level rather than at 'transaction' level, different conclusions can be drawn. Indeed, finding that EU laws and signed agreements influences an overall country rather than just a single transaction, can say a lot about the significance of EU's regulatory powers. Moreover, exploring the realm of regulation brought about by territorial extension can also reveal the degree to which the EU can influence actions that may have only a weak or indirect territorial connection with the EU,¹²⁴ witnessing its substantial regulatory authority over traders.

¹¹⁷ Ibidem.

¹¹⁸ Ibidem.

¹¹⁹ Ibidem.

¹²⁰ Ibidem.

¹²¹ Ibidem.

¹²² Ibidem.

¹²³ Ibidem.

¹²⁴ Ibidem.

Thus, this last criterion completes the analysis and adds further insights on the two approaches' impact on the countries concerned.

CHAPTER 2:

AN ASSESSMENT OF THE EU PRE-EUDR APPROACH

With the purpose of assessing the potential impact that the recent EUDR approach has on the promotion of sustainability in EU's trading partners, this chapter intends to conduct a comprehensive analysis of the pre-EUDR approach. After having examined the EU's strategy to address deforestation, wherein a combination of trade instruments contributed to the objective of managing one of the two key causes – the timber market and its trading dynamics –, the chapter 2 will proceed to delve into the legal aspects of the enacted regulatory measures. In addition, to understand the EU's impact on third countries, the regulatory and legislative obligations of the pre-EUDR approach will be pragmatically applied to a specific context in order to gain more tangible conclusions regarding the potential and the eventual difficulties of such approach.

Specifically, the selection of the country will be taken in line with the research's purpose of focusing on the so called 'developing countries' since they present unique circumstances that deserve particular attention. As defined by Britannica, a developing country is characterised by lower average standards of living and smaller economies.¹²⁵ Furthermore, it is widely recognized that those countries tend to have higher levels of corruption and less functional governments, which adversely affect their overall economic and territorial well-being.¹²⁶ In light of this, the analysis aims to study how the EU is capable of exerting its influence through regulatory activities when dealing with such diverse and peculiar contexts. Trading with these countries poses various challenges and difficulties, making it essential to delve into the details of trade dynamics. Therefore, despite the complexities involved in studying these unique countries in depth and acquiring detailed information, focusing on how the EU extends its influence even in such remote contexts can offer valuable insights into extensive global regulatory influence wielded by the EU. In essence, the inclusion of these countries in the analysis serves as evidence of the EU's ability to reach such diverse environments. This, in turn, may suggest that if positive outcomes can be achieved in these countries, attaining success in 'simpler' and more similar contexts can only be easier.

To do so, after section 1 will outline the rationale behind the choice of the case study used, the subsequent section 2 will continue with the investigation of the pre-EUDR approach, constituting the first component of the overall comparative analysis of the thesis. The valuable insights gained throughout the overall discussion of chapter 2 will lay the groundwork for the following chapter,

¹²⁵ Kulik, R. M. (2023). *Developing country*. Retrieved from Britannica Money: <https://www.britannica.com/money/developing-country>.

¹²⁶ Ibidem.

where the focus will shift towards assessing the second element under study: the newly discussed EUDR approach.

2.1 AFRICA'S FORESTS AND TRADE WITH THE EU: THE CASE OF GHANA

Undoubtedly, the continent of Africa represents an extremely interesting case to be studied for the purpose of the thesis. Firstly, the overall continent is facing a troubling trend of escalating deforestation and forest degradation, experiencing the highest annual rate of deforestation with a loss of 3.9 million hectares per year.¹²⁷ As a matter of fact, while deforestation has decreased worldwide in recent years, Africa has witnessed a continuous rise in the loss of forest area since 1990, risking to weakening the continent's ecosystem to face climate change.¹²⁸ Should this trend persist, it will not only result in significant harm to the continent's health and economy but also exacerbate the global issue of climate change. In fact, the decline of forests, often referred as the 'lungs of the world', will significantly reduce nature's ability to mitigate global warming.¹²⁹ Consequently, deforestation in Africa should serve as a decisive warning, demanding international attention and calling for urgent action from global actors to address this pressing issue.

In light of this, it is interesting to look at how the EU has attempted to play its role as influential regulatory power in slowing down the process of deforestation, also given the numerous relationships and trade agreements it has with Africa. Recognizing the challenges posed by inadequate forest management and protection policies of the foreign continent, the EU has taken a crucial role in shaping its trade interactions as a means of extending its influence. Nevertheless, the real impacts of such actions on local territories must be thoroughly studied and not assumed without proper investigation. In this regard, discussing the entire content of Africa as a whole can be quite vague and extremely reductive, as each single country possesses specific and unique characteristics. Hence, rather than attempting to generalize about Africa, the focus will be on one specific case study, namely Ghana. The selection of Ghana as the case study is motivated by several reasons, as it encompasses various aspects that the thesis aims to explore.

¹²⁷ UN. (2022). *Countering forest loss in Africa through anti-corruption mechanisms*. Retrieved from United Nations: <https://www.unodc.org/unodc/frontpage/2022/November/countering-forest-loss-in-africa-through-anti-corruption-mechanisms.html>.

¹²⁸ Igamba, J. (2021). *How Widespread Deforestation in Africa Risks Our Climate Future*. Retrieved from GreenPeace: <https://www.greenpeace.org/africa/en/blogs/49073/how-widespread-deforestation-in-africa-risks-our-climate-future/>.

¹²⁹ Fleshman, M. (2008). *Saving Africa's forests, the 'lungs of the world'*. Retrieved from United Nations: <https://www.un.org/africarenewal/magazine/january-2008/saving-africa%E2%80%99s-forests-%E2%80%98lungs-of-the-world%E2%80%99>.

First of all, in line with the studied new piece of legislation, it is essential to highlight how the EUDR's efforts to eliminate deforestation from forest-risk commodities might significantly impact Ghana's economy and environment. Being cocoa included as one of the six FRC targeted by the EUDR and placing Ghana among those Western African countries that largely dominate the production of cocoa, significant adjustments were required to meet the newly introduced regulatory framework.¹³⁰ In particular, the country, which stands as the world's second-largest cocoa producer, accounting for an average of over 800,000 tons of cocoa beans per year,¹³¹ has always been particularly attentive towards its cocoa crops. Cocoa productions have indeed represented one of the major sources of income for smallholders guaranteeing a consistent revenue through domestic markets and exportations abroad.¹³²

However, the pursuit of primacy in the cocoa industry through extensive growth has come at a cost. Data reveals that Ghana and Ivory Coast, the two main cocoa producers, have experienced a loss of nearly one-third of their forested areas in the past few decades to accommodate cocoa crops.¹³³ As a matter of fact, while globally deforestation is driven by soy, timber, palm oil and livestock, the erosion of African forests is mainly attributed to cocoa production, with a huge proportion taking place in West Africa.¹³⁴ This is due to the relationship between increasing demand for cocoa and the necessary forests conversion into land used for cocoa production, which ends up causing severe environmental damage.¹³⁵ More in details, to boost yields, cocoa producers often resort to clearing forests for cocoa monocultures, which involve cultivating a single crop in an area without interference from other plants.¹³⁶ This process frequently relies on harmful pesticides and other chemicals, which undoubtedly lead to further harm the environment.¹³⁷ Furthermore, during cocoa booms, the 'full sun'

¹³⁰ Norman, M., & Saunders, J. (2020). *Tackling (Illegal) Deforestation in Cocoa Supply Chains: What Impact can Demand-Side Regulations have?* Forest Policy Trade and Finance Initiative.

¹³¹ UNEP. (2023). *Mapping the potential for cocoa agroforestry in Ghana for climate change adaptation and mitigation*. Retrieved from United Nations Environment Programme: <https://www.unep-wcmc.org/en/news/mapping-the-potential-for-cocoa-agroforestry-in-ghana-for-climate-change-adaptation-and-mitigation>.

¹³² Norman, M., & Saunders, J. (2020). *Tackling (Illegal) Deforestation in Cocoa Supply Chains: What Impact can Demand-Side Regulations have?* Forest Policy Trade and Finance Initiative.

¹³³ ETIFOR Valuing Nature. (s.d.). *Cocoa Cultivation is Devouring Forests*. Retrieved from ETIFOR Valuing Nature: <https://www.etifor.com/en/updates/responsible-management-updates/deforestation-and-cocoa/#:~:text=The%20typical%20habitat%20of%20this,e.g.%2C%20wood%20or%20fruit>).

¹³⁴ Igini, M. (2023). *How Does Cocoa Farming Cause Deforestation?* Retrieved from Earth Org: <https://earth.org/how-does-cocoa-farming-cause-deforestation/>

¹³⁵ UNEP. (2023). *Mapping the potential for cocoa agroforestry in Ghana for climate change adaptation and mitigation*. Retrieved from United Nations Environment Programme: <https://www.unep-wcmc.org/en/news/mapping-the-potential-for-cocoa-agroforestry-in-ghana-for-climate-change-adaptation-and-mitigation>.

¹³⁶ National Wildlife Federation. (n.d.). *Cocoa and Deforestation*. Retrieved from International Wildlife Conservation: <https://international.nwf.org/cocoa-and-deforestation/>.

¹³⁷ National Wildlife Federation. (n.d.). *Cocoa and Deforestation*. Retrieved from International Wildlife Conservation: <https://international.nwf.org/cocoa-and-deforestation/> and The Chocolate Journalist. (2023). *Here is Exactly How Cocoa Farming is Causing Deforestation*. Retrieved from The Chocolate Journalist: <https://www.thechocolatejournalist.com/blog/cocoa-deforestation>.

or ‘direct sun’ methods used by producers,¹³⁸ which require continuous cutting of forests to respond to the high demand for cocoa beans, adds to this complicated context of forests’ disrespect and exploitation.

As soon as the demand aspect is discussed, the EU becomes a prominent player in the scenario. In the expanding global cocoa and chocolate market, projected to grow from \$48 billion in 2022 to \$67 billion by 2029,¹³⁹ the EU stands as the largest importer of cocoa beans globally, accounting for 56% of the total global imports.¹⁴⁰ It is undeniable that industrial chocolate has emerged as a significant industry in Europe, positioning itself as the foremost chocolate manufacturer and export market.¹⁴¹ Consequently, the EU, while asserting its primacy, has actively contributed to the increasing demand for cocoa beans, thereby indirectly supporting processes that drive deforestation. This intertwines EU-Ghana trade relations since West Africa serves as the primary supplier of cocoa beans to Europe, with Ghana being the second largest exporter after Ivory Coast with 231 thousand tonnes.¹⁴² Hence, the choice of Ghana for studying the potential impact on the cocoa market is driven by the interconnectedness and quasi-interdependencies in the export and import activities between the country and the EU, which might reveal extremely interesting to get some further conclusions for the aim of the thesis.

Furthermore, Ghana presents also an intriguing case for evaluating the effectiveness of the previous approach. In this regard, the country’s management of illegal logging has always represented a significant challenge for the territory posing several threats to forests’ survival and sustainable managements, while also affecting human rights and democratic governance. Ghana’s timber sector indeed has always been signed by the coexistence of a ‘formal’ and an ‘informal’ sector, caused by the fragmented forest managements that occurred during past timber booms in which corruption was alternated with periods of more attentive approaches towards forests.¹⁴³ Within this framework, the ‘informal sector’, lacking of the proper timber rights to harvest, has recorded cuts far higher than the allowed legal cuts assigned to the ‘formal’ sector, leading to a total harvest which surpasses far

¹³⁸ Nitidae & EU REDD Facility. (2021). *Sustainability Initiatives in Ivorian and Ghanaian cocoa supply chains: benchmarking and analysis*. Nitidae.

¹³⁹ The Chocolate Journalist. (2023). *Here is Exactly How Cocoa Farming is Causing Deforestation*. Retrieved from The Chocolate Journalist: <https://www.thechocolatejournalist.com/blog/cocoa-deforestation>.

¹⁴⁰ CBI. (2022). *What is the demand for cocoa on the European market?* Retrieved from CBI - Ministry of Foreign Affairs: <https://www.cbi.eu/market-information/cocoa/what-demand>.

¹⁴¹ Ibidem.

¹⁴² Ibidem.

¹⁴³ Hansen, C. P., & Land, J. F. (2017). *Imagined forestry: The History Of The Scientific Management of Ghana's High Forest Zone*. In C. P. Hansen, & J. F. Land, *Environment and History*. White Horse Press.

beyond any idea of sustainability and preservation of the environment.¹⁴⁴ Some statistics estimated that in 2009 the total amount of timber sold in Ghana was six times the annual allowable cut, reaching a 104% of the log production of doubtful origin, likely to be deemed as illegal.¹⁴⁵ In fact, some other studies corroborated the evidence of a growing illegal logging rising from 0.34 million m³ to about 0.80 m³ among 2001 and 2010.¹⁴⁶

In light of this massive problem, and despite the numerous attempts on the domestic front to address it, the issue of illegal logging in Ghana persists, prompting Europe to take action and offer potential solutions. According to Boakye's study indeed, the significant presence of illegal logging even within Ghana's formal industry, points to a notable lack of compliance and effective law enforcement mechanisms to control this phenomenon.¹⁴⁷ As a response, it is interesting to look at how the EU has entered into the scene and whether it has been capable of promoting sustainable timber harvest and related trade. As mentioned earlier indeed, the EU has resorted to the use of a comprehensive set of trading instruments to address illegal timber as one of the two major cause of deforestation. Regarding this, Ghana was the first country to enter into a VPA with the EU in 2008¹⁴⁸: at the beginning of the negotiations in 2005, nearly 60% of Ghana's timber exports were destined for the EU market,¹⁴⁹ prompting the country to participate in VPA deliberations to ensure continued access to the EU.¹⁵⁰ Therefore, Ghana represents an excellent case for conducting a comprehensive study of both the supply and demand aspects of the pre-EUDR approach.

2.2 EMPIRICAL EVIDENCE OF PRE-EUDR APPROACH

After outlining the distinctive aspects of the context under examination, next steps involve presenting empirical findings pertaining to the initial segment of the analysis, thus, diving into the

¹⁴⁴ Hansen, C. P., & Land, J. F. (2017). Imagined forestry: The History Of The Scientific Management of Ghana's High Forest Zone. In C. P. Hansen, & J. F. Land, *Environment and History*. White Horse Press.

¹⁴⁵ Hansen, C. P., & Land, J. F. (2017). Imagined forestry: The History Of The Scientific Management of Ghana's High Forest Zone. In C. P. Hansen, & J. F. Land, *Environment and History*. White Horse Press and Boakye, J. (2015). Estimation of Illegal Logging by the Formal Timber Sector in Ghana: Implications for Forest Law Compliance, Enforcement and EU-Ghana Voluntary Partnership Agreement. *The International Forestry Review*.

¹⁴⁶ Boakye, J. (2015). Estimation of Illegal Logging by the Formal Timber Sector in Ghana: Implications for Forest Law Compliance, Enforcement and EU-Ghana Voluntary Partnership Agreement. *The International Forestry Review*.

¹⁴⁷ Ibidem.

¹⁴⁸ Hansen, C. P. (2022). Examining the EU Forest Law Enforcement, Governance and Trade (FLEGT) action plan in Ghana through a governmentality lens. *Journal of Political Ecology*.

¹⁴⁹ Beeko, C., & M.Arts. (2010). The EU-Ghana VPA: a Comprehensive Policy Analysis of its Design. *International Forestry Review*.

¹⁵⁰ Overdeest, C., & Zeitlen, J. (2017). Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana. *Regulation & Governance*.

details of the pre-EUDR approach. In particular, this section will be dealing with the first massive cause of deforestation, recognized as the timber market and its intricate trade dynamics. Hence, it will delve into the unique peculiarities of the pre-EUDR approach, which seeks to oversight and steer these complicated transactions. Guided by this objective, the established criteria will facilitate a comprehensive exploration of the implemented EU trading instruments, subsequently enabling the practical application of these criteria within the selected context. More in details, each following section will begin by closely examining the legal technicalities of the two regulatory tools employed by the EU, while, subsequently, shifting the attention to the practical application of such instruments to the chosen context.

Before proceeding further, it is essential to elucidate an additional concept. As mentioned earlier, the overarching pre-EUDR approach comprises a combination of two primary components: the EUTR and VPAs. Despite the initial application of criteria will focus on the unilateral regulation, achieving the ultimate goal of evaluating how the overall approach extends to other territories would not be feasible without delving into the complementary tool, the VPAs. However, the interaction between these elements differs when examining each criterion. To elaborate, the examination of EUTR's technical aspects can be confined to dynamics within the EU territory. Conversely, delving into the intricacies of VPAs necessitates analysing the specific country with which the agreement has been established, thereby making the investigation possible just if analysed in relation to the country itself. Consequently, it is possible that there might be some overlap in the division of the subsequent sections.

2.2.1 Enforcement and Implementation

Beginning with the first criterion, with a focus on ensuring the establishment of robust mechanisms for implementation and enforcement as a foundational step toward effectively fostering sustainability in third countries, the methods through which the EU puts its regulatory instruments into practice will be examined. To do so, the first subsection 2.2.1.1 will focus on exploring the primary entities responsible for these tasks, as also a means to investigate on the eventual supplementary and technical expertise used to enhance the refinement of the process. Then, the discussion will delve into the specific enforcement measures employed by these entities. Notwithstanding the EU's considerable efforts dedicated to implementing these measures, certain shortcomings will be pinpointed, thereby revealing the principal challenges inherent in the pre-EUDR approach, that will also be further specified in relation to Ghana's environment. To proceed, in alignment with the ultimate goal of assessing how the pre-EUDR approach has extended its influence

in third countries, the second subsection 2.2.1.2 will mention the role of VPAs as key complementary instruments to allow for the implementation of the overall approach and to analyse its effects on the supply-side of these complex trading dynamics. Lastly, the third subsection 2.2.1.3 will apply the so far presented technicalities into the practical example of the chosen country under study.

2.2.1.1 Navigating the Complexity of EUTR Implementation and Enforcement: Balancing Technical Details with the Quest for Uniformity

Starting from the demand-side of the pre-EUDR approach and the related Due Diligence Systems (DDS),¹⁵¹ it is interesting to commence by examining the actors responsible for implementing and enforcing this central aspect of the EUTR. In relation to this, Member States seem to play a key role in undertaking this responsibility, as they are tasked with designating ‘one or more competent authorities’,¹⁵² which are then entrusted with conducting inspections to ensure that operators adhere with the requirements through a scheduled plan and a risk-based approach.¹⁵³ As mentioned in Article 4 of the EUTR, ‘the DDS must be maintained and evaluated on a regular basis’¹⁵⁴ with competent authorities continuously cooperating among themselves, in conjunction with the administrative authorities of third countries and with the Commission.¹⁵⁵

Conversely, operators, who are the primary addresses of the regulation, must respond to checks from competent authorities, with the possibility to seek assistance from EU-recognized monitor organizations (MOs) to fulfil their essential obligations outlined in the law.¹⁵⁶ MOs commonly encompass commercial enterprises involved in offering certification or oversight services, as well as trade associations that assist indeed operators in adhering to the requirements of the EUTR.¹⁵⁷

The custom authorities are also contributing to the implementation process: however, they are neither part of the checks nor involved in the exchange of data with other institutions; they solely

¹⁵¹ Groutel, E., Duhesme, W., & Duhesme, C. (2023). *Publication of a brochure of analysis and comparison of EUDR with the EUTR*. Retrieved from Atibt : <https://www.atibt.org/en/news/13318/publication-of-a-brochure-of-analysis-and-comparison-of-eudr-with-the-eutr>.

¹⁵² European Union. (2010). *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance* OJ L 295. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995>.

¹⁵³ Ibidem.

¹⁵⁴ Ibidem.

¹⁵⁵ Massarenti, E., Andrighetto, N., & Masiero, M. (2022). *The Upcoming EU Proposal on 'Deforestation-Free Products': from Theory to Practice through the Lessons Learned from the Eutr Implementation*. Padova.

¹⁵⁶ Groutel, E., Duhesme, W., & Duhesme, C. (2023). *Publication of a brochure of analysis and comparison of EUDR with the EUTR*. Retrieved from Atibt : <https://www.atibt.org/en/news/13318/publication-of-a-brochure-of-analysis-and-comparison-of-eudr-with-the-eutr>.

¹⁵⁷ Jonsson, R., Giurca, A., Masiero, M., Pepke, E., Pettenella, D., Prestemon, J., & Winkel, G. (2015). *Assessment of the EU Timber Regulation and FLEGT Action Plan*. European Forest Institute.

handle the verification of final FLEGT licences.¹⁵⁸ Collectively, such intricate system of governance involves a complex interplay of dynamics and specialized expertise to support member states in their implementation endeavours and to assist individual operators in adjusting to new legal prerequisites.

Certainly, enforcement becomes a pivotal part of the Member States' implementation process. Each MS has a series of 'immediate interim measures including: a) the seizure of timber and timber-by products; b) a ban on the sale of timber and timber by-products'.¹⁵⁹ This places the responsibility on MS to determine the most suitable system of penalties and appropriate fines to address the identified problems arising from operators' behaviours.¹⁶⁰ In this framework, the designated competent authorities assume a crucial role in taking proactive steps and adopting corrective actions, all while informing operators of the identified shortcomings.¹⁶¹

However, researchers widely agree that the EUTR has not reached its maximum potential.¹⁶² In the 2021 Fitness Check on the regulation, the Commission acknowledged that primary goals of the law have not been completely achieved.¹⁶³ In fact, as claimed by some scholars, the technical difficulties in implementation with competent authorities not operating as planned,¹⁶⁴ coupled with occasional difficulties in interpreting requirements and applying penalties, have created confusion among operators, thereby impeding the intended outcomes of the regulation.¹⁶⁵ It is evident that the

¹⁵⁸ Massarenti, E., Andrighetto, N., & Masiero, M. (2022). *The Upcoming EU Proposal on 'Deforestation-Free Products': from Theory to Practice through the Lessons Learned from the Eutr Implementation*. Padova.

¹⁵⁹ European Union. (2010). *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance OJ L 295*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995>.

¹⁶⁰ Ibidem.

¹⁶¹ Ibidem.

¹⁶² Köthke, M. (2019). Implementation of the European Timber Regulation (EUTR) by German importers. *Thünen Institute of International Forestry and Forest Economics*; Levashova, Y. (2011). How Effective is the New EU Timber Regulation in the Fight against Illegal Logging? *Review of European Community & International Environmental Law*; McDermott, C., & Sotirov, M. (2018). A political economy of the European Union's timber regulation: Which member states would, should or could support and implement EU rules on the import of illegal wood? *Forest Policy and Economics*; Patel, N. (2019). Illegal Timber Trade: Analysing the Effectiveness of European Union Timber Regulation (EUTR) in the UK. Kingston University and Nermin, H., & Francesco, C. (2022). Evidence Emerging from the Survey on European Union Timber Regulation. *Open Journal of Forestry*.

¹⁶³ European Commission. (2021). SWD/2021/329 final. *Commission Staff Working Document Executive Summary Of The Fitness Check on Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation) and on Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (FLEGT Regulation) Accompanying the document Proposal for a Regulation Of The European Parliament And Of The Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021SC0329>.

¹⁶⁴ Rijn, S. V. (2022). A qualitative cross-sectional study: from EU Timber Regulation to EU Deforestation-Free Products Regulation. Rijkuniversiteit Groningen.

¹⁶⁵ Köthke, M. (2019). Implementation of the European Timber Regulation (EUTR) by German importers. *Thünen Institute of International Forestry and Forest Economics*; Leipold, S. (2018). How to move companies to source responsibly? German implementation of the European Timber Regulation between persuasion and coercion. *Forest Policy*

constrained capabilities and uneven allocation of resources among MS,¹⁶⁶ have provoked notable challenges for competent authorities, impairing their ability to initiate legal actions in cases of non-compliance.¹⁶⁷ Furthermore, it is of no doubt that smaller operators consistently encounter several difficulties in setting up effective DDS due to their limited awareness and grasp of the obligations.¹⁶⁸ Unless adequately supported from cited implementing bodies indeed, these limitations can become critical for such operators.

Moreover, the lack of uniformity across MS and the differences in enforcing mechanisms have hindered the desired exchange of information between competent authorities and the European Commission.¹⁶⁹ Although every MS has instituted legislative frameworks for EUTR implementation, variations in the rigor of enforcement experiences by operators have led to motivations for certain operators to import products with market-related risks through specific EU MS.¹⁷⁰ In sum, achieving uniformity among Member States remains a significant distant goal that requires further substantial effort and, despite the apparent support from additional groups of expertise, certain drawbacks will need to be addressed.

2.2.1.2 VPA: an Essential Complementary Tool for Ensuring Proper Implementation of the EUTR

After outlining the technical intricacies of the regulation along with the associated challenges encountered within the EU region, it becomes mandatory to examine how the ultimate objective of this regulatory technique – territorial extension – is accomplished. Discussing the effects of the EUTR on foreign countries and global territory necessitates acknowledging the supply-side component of the FLEGT Action Plan, namely VPA. If, indeed, the ultimate goal is to assess how these measures

and Economics and Trishkin, M., Lopatin, E., & Karjalainen, T. (2015). Exploratory Assessment of a company's due diligence system against the EU Timber Regulation: A case study from Northwestern Russia. *Forests*.

¹⁶⁶ Jonsson, R., Giurca, A., Masiero, M., Pepke, E., Pettenella, D., Prestemon, J., & Winkel, G. (2015). *Assessment of the EU Timber Regulation and FLEGT Action Plan*. European Forest Institute.

¹⁶⁷ *Ibidem*.

¹⁶⁸ *Ibidem*.

¹⁶⁹ ClientEarth. (2021). *The proposed EU law on deforestation-free products: how does it compare to the EUTR framework?* Retrieved from ClientEarth: <https://www.clientearth.org/latest/documents/the-proposed-eu-law-on-deforestation-free-products-what-does-it-include-and-what-is-left-out/>.

¹⁷⁰ European Commission. (2021). SWD/2021/329 final. Commission Staff Working Document Executive Summary Of The Fitness Check on Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation) and on Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (FLEGT Regulation) Accompanying the document Proposal for a Regulation Of The European Parliament And Of The Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010. Retrieved from EUR-lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021SC0329>.

of territorial extension and the approaches involving these laws contribute to sustainability in foreign countries, the focus must not only remain on the perspective of importers but must also encompass exporters. To do so, VPAs, representing the bilateral and cooperative instruments employed by the EU, play a substantial role in offering comprehensive insights for each individual country under examination. Regarding this, the Commission highlighted that a DDS could be better aligned with its purpose if improved and customized to the main tool for its implementation and operation, namely VPA.¹⁷¹ In 2014, the EU has financed a five-year project named Independent Market Monitoring (IMM), by awarding the International Tropical Timber Organization (ITTO) to provide assistance in the implementation of VPAs between the EU and timber supplying countries.¹⁷² This supplementary assistance has the purpose of overseeing the evolution of timber trade throughout the VPA's duration and enhancing the efficacy of programs aimed at developing timber markets.¹⁷³

Generally speaking, however, the implementation and enforcement of VPAs has also encountered some challenges: as already claimed in the previous chapter, VPAs entail consistent cooperation among a wide range of actors. As a consequence, these negotiations can result to be even more complicated, slow and time-consuming than adapting EUTR into the national laws of MS. In other terms, when looking at VPAs, diverse and disparate obstacles can arise from different levels, resulting in significant costs not only for European operators but also for foreign entities signing the agreement.¹⁷⁴ However, as the specifics of each country's implementations plans are customized to suit their individual circumstances, a specific section will be devoted to study the intricacies of the chosen country's VPA implementation and enforcement characteristics.

¹⁷¹ Ibidem.

¹⁷² ITTO. (2018). *FLEGT Independent Market Monitoring*. Retrieved from ITTO - International Tropical Timber Organization: <https://www.itto.int/imm/> and European Forest Institute. (s.d.). *VPA annex on Independent Market Monitoring*. Retrieved from EUFLEGT Facility : <https://vpaunpacked.org/www.vpaunpacked.org/en/independent-market-monitoring.html>.

¹⁷³ ITTO. (2018). *FLEGT Independent Market Monitoring*. Retrieved from ITTO - International Tropical Timber Organization: <https://www.itto.int/imm/>.

¹⁷⁴ European Commission. (2021). SWD/2021/329 final. Commission Staff Working Document Executive Summary Of The Fitness Check on Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation) and on Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (FLEGT Regulation) Accompanying the document Proposal for a Regulation Of The European Parliament And Of The Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010. Retrieved from EUR-lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021SC0329>.

2.2.1.3 Ghana: Advocating Increased Support for Strengthening VPAs positive advancements in the Implementation and Enforcement of the EU Regulatory Approach

We shall assess now how and whether the complementary instrument in Ghana, the VPA, has facilitated or not the establishment of an effective overall system, by also exploring the eventual alterations instigated by the EUTR within the foreign country. By doing so, this analysis aims to address the concerns of both importers and exporters' concerns about implementation and enforcement, representing a critical first brick in assessing the effectiveness of the pre-EUDR approach in promoting sustainability.

In order to gain a deeper understanding of the impacts of the EUTR on the territory, it is important to highlight the significant measures undertaken by Ghana in collaboration with the EU even prior to the enactment of the EUTR. Negotiations for the VPA with the EU commenced in March 2007, representing the sole precursor to the EUTR, whereby participants found themselves setting and formulating rules rather than relying on pre-established guidelines.¹⁷⁵ This distinctive feature facilitated the establishment of a participatory and comprehensive process in which both stakeholders and civil society groups emerged as essential participants in guiding the progression of this approach. This initial uniqueness of the EU-Ghana agreement inherently serves as a favourable starting point for the implementation and enforcement of the VPA. It can be affirmed that, aligning with the normative perspective of this work, participatory proceedings possess the capacity to bolster the legitimacy of enforcement mechanisms. This, in turn, encourages individuals to be more inclined to adhere to the stipulated regulations. As stated by Hansen et al., 'the VPA has established important fora for discussion and dialogue like never before in the forestry sector in Ghana'.¹⁷⁶ Consequently, the negotiations strived not only to establish a timber legality definition aligned with input from a diverse set of stakeholders but also sought to address significant socio-economic concerns.¹⁷⁷ VPA's application has indeed brought about heightened policy focus and enhancement of procedures,

¹⁷⁵ Overdevest, C., & Zeitlen, J. (2017). Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana. *Regulation & Governance*.

¹⁷⁶ Hansen, C., Rutt, R., & Acheampong, E. (2018). Experimental or business as usual? Implementing the European union forest law enforcement, governance and trade (FLEGT) voluntary partnership agreement in Ghana. *Forest Policy and Economics*.

¹⁷⁷ Beeko, C., & M.Arts. (2010). The EU-Ghana VPA: a Comprehensive Policy Analysis of its Design. *International Forestry Review*; Lartey, E., Kwesi, T., Kwesi, E., & H.Lartey. (2012). *Forest Law Enforcement, Governance and Trade Processes in Ghana: Strengthening the Weak Elements of Community Participation*. Retrieved from Compendium on Experiences from the Voluntary Partnership Agreement process in Central and West African countries: <https://www.fao.org/forestry/37830-09c6e70d4769baf6bbe6721cbd5422b58.pdf> ; FERN. (2013). *Improving Forest Governance: a comparison of FLEGT VPAs and their impact*. Retrieved from FERN: https://www.fern.org/fileadmin/uploads/fern/Documents/VPAComparison_internet_0.pdf and Ghana Forest Governance COs. (2015). *Reflections on the FLEGT Process in Ghana: Success and Challenges from a Civil Society Perspective*. Retrieved from LoggingOff: <https://loggingoff.info/wp-content/uploads/2015/09/REFLECTIONS-ON-THE-FLEGT-PROCESS-IN-GHANA-.pdf>.

potentially leading to greater awareness and enforcement of Social Responsibility Agreements in Ghana.¹⁷⁸

Furthermore, it is obvious to observe that VPAs have prompted positive advancements such as the establishment of governance structures, tools, and procedures.¹⁷⁹ Overdevest and Zeitlin affirmed that ‘an impressive array of institutional mechanisms for auditing, monitoring, and reviewing the operations of the national timber legality assurance regime’ were set,¹⁸⁰ while Cerutti et.al has noted a more consistent implementation of penalties for logging companies in response to the VPA.¹⁸¹ Regarding this, the broader framework of the overall Ghana’s Timber Legality Assurance System (TLAS) has led to the setting up of two verification bodies, named Timber Validation Department (TVD) of the Forestry Commission and the Independent Monitoring (IM) by third parties.¹⁸² The former is responsible for crucial data analysis concerning timber legality throughout the value chain, functioning as an auditor that regularly confirms compliance with legal standards in the field. The latter, on the other hand, conducts a secondary verification to ensure the overall TLAS operates effectively.¹⁸³ Lastly, the external Joint Monitoring and Review Mechanism (JMRRM), comprising representatives from both Ghana and the EU, is tasked with assessing the VPA’s overall effectiveness, involving publishing annual reports that cover implementation, legality enforcement and FLEGT licensing.¹⁸⁴ This joint system witnesses EU-Ghana agreement’s role in advancing better forest governance in Ghana, through offering technical and financial assistance as required, which includes the creation of technical systems and support for capacity building.¹⁸⁵

Nonetheless, the VPA’s implementation and enforcement procedures were not free from challenges. Regarding implementation, some important technical issues have been identified. The

¹⁷⁸ Hansen, C., Rutt, R., & Acheampong, E. (2018). Experimental or business as usual? Implementing the European union forest law enforcement, governance and trade (FLEGT) voluntary partnership agreement in Ghana. *Forest Policy and Economics*.

¹⁷⁹ Villanueva, F., Tegegne, Y., Winkel, G., Cerutti, P., Ramcilovic-Suominen, S., McDermott, C., . . . Giessen, L. (2023). Effects of EU Illegal Logging Policy on Timber-Supplying countries: a systematic review. *Journal of Environmental Management*.

¹⁸⁰ Overdevest, C., & Zeitlin, J. (2014). Constructing a transnational timber legality assurance regime: architecture, accomplishments, challenges. *Forest Policy and Economics*.

¹⁸¹ Cerutti, P., Goetghebuer, T., Leszcynska, N., Dermawan, N., J.Newbery, Eckebil, P. T., & Tsanga, R. (2021). Voluntary Partnership Agreements: Assessing Impacts For Better Policy Decisions. *Forest Policy and Economics*.

¹⁸² Arts, B., Heukels, B., & Turnhout, E. (2021). Tracing Timber Legality in Practice: the case of Ghana and the EU. *Forest Policy and Economics*.

¹⁸³ Ibidem.

¹⁸⁴ Ibidem.

¹⁸⁵ Beeko, C., & M.Arts. (2010). The EU-Ghana VPA: a Comprehensive Policy Analysis of its Design. *International Forestry Review* and Woolfrey, S. (2021). Can Trade Policies help promote sustainable forest management? An Analysis of the EU-Ghana FLEGT Voluntary Partnership Agreement. *ECDPM - European Centre for Development Policy Management*.

intermittent power supply and internet connectivity,¹⁸⁶ alongside the fragmented and intricate political environment unable to consistently allocate the necessary resources,¹⁸⁷ have certainly compromised the effective implementation of such measures.

Furthermore, it has been often argued that practical law compliance has encountered several limitations.¹⁸⁸ While the initial distinctiveness of the EU-Ghana VPA seemingly prompted participatory processes, some studies have raised concerns about the uneven distribution of power among the actors engaged in forest policy discourse,¹⁸⁹ witnessing a notable disparity and a remaining substantial gap among truly inclusive participation and its practical implementation.¹⁹⁰ Ghana's limited administrative coordination and governance capacity posed challenges for the government to effectively involve a substantial number of stakeholders,¹⁹¹ leading to a disorganized management of various groups' interests.

Thus, from the normative perspective of compliance theories, the Ghanaian stakeholders feeling of being disconnected from their own involvement led them to increasingly perceive the FLEGT agenda as an imposition from the EU.¹⁹² Reasonably, the introduction of the EUTR as a punitive mechanism within the broader FLEGT Action Plan further exacerbated this sentiment. As a result, they came to interpret the overall approach and EU involvement as inequitable and unjust, stemming from the EU's prevailing perspective on forest governance regulations.¹⁹³ From an instrumental perspective instead, which considers compliance as an assessment of advantages that outweigh the expenses of adhering to law, the limited engagement of the private sector, specifically in the initial stages of its implementation, posed a substantial barrier to the VPA's effectiveness.¹⁹⁴ Within this

¹⁸⁶ Overdeest, C., & Zeitlen, J. (2017). Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana. *Regulation & Governance*.

¹⁸⁷ Woolfrey, S. (2021). Can Trade Policies help promote sustainable forest management? An Analysis of the EU-Ghana FLEGT Voluntary Partnership Agreement. *ECDPM - European Centre for Development Policy Management*.

¹⁸⁸ Villanueva, F., Tegegne, Y., Winkel, G., Cerutti, P., Ramcilovic-Suominen, S., McDermott, C., . . . Giessen, L. (2023). Effects of EU Illegal Logging Policy on Timber-Supplying countries: a systematic review. *Journal of Environmental Management*.

¹⁸⁹ Mustalahti, I., Cramm, M., Ramcilovic-Suominen, S., & Tegegne, Y. (2017). Resources and rules of the game: participation of civil society in REDD + and FLEGT-VPA processes in Lao PDR. *Forests* and Ramcilovic-Suominen, S., Lovric, M., & Mustalahti, I. (2018). Mapping Policy Actors Network And Their Interests in the FLEGT Voluntary Partnership Agreement in Lao PDR. *Word Development*.

¹⁹⁰ Satyal, P. (2018). Civil Society Participation in REDD+ and FLEGT Processes: Case Study Analysis from Cameroon, Ghana, Liberia and the Republic of Congo. *Forest Policy and Economics*.

¹⁹¹ Nketiah, S., Ansah, M., Asumang-Yeboah, D., Owusu-Addai, O., Mawutor, S., & Koning, P. d. (2018). Scoping Study on the Relevance of FLEGT-VPA for Sustainable Agro-Commodity (cocoa) Initiatives in Ghana . *Tropenbos International*.

¹⁹² Woolfrey, S. (2021). Can Trade Policies help promote sustainable forest management? An Analysis of the EU-Ghana FLEGT Voluntary Partnership Agreement. *ECDPM - European Centre for Development Policy Management*.

¹⁹³ CBI. (2022). *What is the demand for cocoa on the European market?* Retrieved from CBI - Ministry of Foreign Affairs: <https://www.cbi.eu/market-information/cocoa/what-demand> and Hansen, C., Rutt, R., & Acheampong, E. (2018). Experimental or business as usual? Implementing the European union forest law enforcement, governance and trade (FLEGT) voluntary partnership agreement in Ghana. *Forest Policy and Economics*.

¹⁹⁴ TERA. (2016). Evaluation of the EU FLEGT Action Plan (Forest Law Enforcement Governance and Trade).

context, not only was the VPA seen as unjust, but it also failed to yield advantages significant enough to justify the expenses linked to conforming to the mandated EU approach.

Overall, it can be argued that, while effective enforcement and implementation mechanisms under the EUTR contribute to internal credibility, the VPA and the corresponding FLEGT licenses remain the key foundational elements for driving tangible progress toward sustainability. In essence, the EUTR's consistency becomes relevant only once the VPA operates effectively. Therefore, when assessing the impact of the pre-EUDR approach's enforcement and implementation mechanisms on third countries, it becomes essential to prioritize the challenges faced by VPA applications over those of the EUTR. This is also underscored by the fact that the EUTR, as mentioned earlier, does not require EU operators to carry out supplementary assessments on the products they import if these products are deemed in compliance with the established FLEGT legality framework and the requisite due diligence criteria. In conclusion, aside from establishing uniform regulations that enhance credibility for exports to the EU, challenges related to the implementation and enforcement of the EUTR appear to be more significant within the EU territory rather than in the foreign country.

2.2.2 Traceability Requirements and Transparency Issues

Moving forward into the analysis of the pre-EUDR approach, this section takes a deep dive into the intricate specifics of the pre-EUDR strategy aimed to establish appropriate and effective traceability and address transparency issues. Highlighting the significance of monitoring the comprehensive product trading patterns and enhancing the transparency of essential information, indeed, has proven to be another critical brick to the research's purpose. Furthermore, this second criterion has been chosen also to assess whether and to what extent producers have adjusted to the new system and whether the EU has effectively immersed itself within the context of the trading partner.

In this regard, the first subsection 2.2.2.1 goes through the details of the EUTR's traceability obligations, shedding light on the extent to which importers will truly understand the context of their trade. Additionally, it is crucial to emphasize that uniformity plays a pivotal role in this scenario too, as it ensures consistency among Member States and prevents a 'race-to-the-bottom' dynamics which trading partners may seek to adhere to lower standards. To follow, the brief section 2.2.2.2 will remind of the importance of considering VPA as supplementary tool to assist countries in developing the necessary systems to comply with the new requirements of the EUTR. Lastly, Ghana will be taken again as the reference example to analyse the real-world application in section 2.2.2.3.

2.2.2.1 *The EUTR's Due Diligence Systems and the Importance of Ensuring Consistency among Member States*

Again commencing from the demand-side of the pre-EUDR approach and as mentioned above, DDS serve as the primary mechanism utilized by the EU operators in their dealings with the EUTR. Article 5 of the regulation indeed stresses on the traders' obligation of gathering and maintaining information from their suppliers throughout the whole supply chain.¹⁹⁵ In details, 'when an operator places timber products on the EU market, it shall implement a DDS contain the following items: a) access to information; b) risk analysis; c) risk mitigation'.¹⁹⁶

More in details, the first element requires operators to gather information pertaining to the following elements: product description encompassing name, type and imported quantity, the country or region of harvest, supplier and buyer information including names and contact details, and product compliance with applicable legislation.¹⁹⁷

The second element instead concerns risk and necessitates examination based on the subsequent principles: previously collected information, confirmation of adherence to relevant laws such as third-party certification, the extent of illicit practices in the timber's origin area of harvest, the existence of sanctions imposed by external entities such as the EU or UN, and, lastly, the complexity of the supply chain.¹⁹⁸

Ultimately, the third component addresses risk mitigation when a risk is pinpointed during the second stage, requiring additional measures and procedures to minimise effectively and demonstrate minimal risk for the imported product.¹⁹⁹

¹⁹⁵ European Union. (2010). *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance* OJ L 295. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995>.

¹⁹⁶ Ibidem.

¹⁹⁷ Massarenti, E., Andrighetto, N., & Masiero, M. (2022). *The Upcoming EU Proposal on 'Deforestation-Free Products': from Theory to Practice through the Lessons Learned from the Eutr Implementation*. Padova and Groutel, E., Duhesme, W., & Duhesme, C. (2023). *Publication of a brochure of analysis and comparison of EUDR with the EUTR*. Retrieved from Atibt : <https://www.atibt.org/en/news/13318/publication-of-a-brochure-of-analysis-and-comparison-of-eudr-with-the-eutr>.

¹⁹⁸ Massarenti, E., Andrighetto, N., & Masiero, M. (2022). *The Upcoming EU Proposal on 'Deforestation-Free Products': from Theory to Practice through the Lessons Learned from the Eutr Implementation*. Padova; Groutel, E., Duhesme, W., & Duhesme, C. (2023). *Publication of a brochure of analysis and comparison of EUDR with the EUTR*. Retrieved from Atibt: <https://www.atibt.org/en/news/13318/publication-of-a-brochure-of-analysis-and-comparison-of-eudr-with-the-eutr> and Rijn, S. V. (2022). A qualitative cross-sectional study: from EU Timber Regulation to EU Deforestation-Free Products Regulation. Rijksuniversiteit Groningen.

¹⁹⁹ European Commission. (2021). COM/2021/706 final. *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0706> and European Union. (2010). *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995>.

The precision of traceability requirements within DDS dictates the extent to which EU operators are informed about their trade partners and the methods employed in the production of the intended imported goods. Greater levels of detail mandated by these requirements enable the EU to exercise heightened control over its trade interactions, delving deeper into the actualities and dynamics occurring within the timber market. Conversely, exporters would be required, if necessary, to adjust their approach in order to gather the necessary information, ensuring their ability to maintain trade with the EU and avoid being excluded from the list of eligible traders. As a result, it can be argued that, when compared to the initial criterion of the comparative analysis, this second parameter facilitates an immediate engagement and internal assessment of the country by just scrutinizing the stipulations outlined in the EUTR.

In this context, and as a consequence, the matter of uniformity within the EUTR gains even more significance. As a matter of fact, certain countries took longer than others to establish the appropriate protocols for examining and assessing operators' DDS.²⁰⁰ This resulted in notable gaps that could be exploited for the entry of illicit timber into the EU market, consequently undermining the regulation's effectiveness.²⁰¹ Reasonably, if MS fail to ensure consistent traceability systems, foreign exporters exploit these identified loopholes and steer their practices to evade the elevated costs of stringer demanding requirements. Hence, despite the initial traceability requirements specified in the regulation have a common basis, it is equally vital to ensure their consistent implementation across all MS. In other words, this can be viewed as interconnected with the previously examined criterion, wherein implementation and effective enforcement emerge as pivotal milestones.

2.2.2.2 VPAs as a Possible Aid for Advancing Traceability Systems and Promoting Transparent Information Exchange

Even in this case, to accurately examine whether these traceability requirements and associated transparency concerns have triggered responses in a foreign country, the thesis concentrates on their application within a singular country. It is therefore relevant to explore how the complementary aspect of the FLEGT Action Plan, the VPA, has contributed to facilitating exporters' eventual adjustments in response to importers' expectations and how this might have established a bridge for the exchange of information between exporters and importers. How a country perceives and responds to the

²⁰⁰ European Court of Auditors. (2015). *EU support to timber-producing countries under the FLEGT action plan*. European Court of Auditors.

²⁰¹ *Ibidem*.

agreement it signs with the EU could lead to the creation of support systems that help exporters comply with the overall pre-EUDR approach. Simultaneously, it may incentivize EU importers to continue trading with that particular country, as the relatively easy access to information facilitates their due diligence obligations.

However, it is important to recognize that establishing complete transparency within this framework might not be consistently straightforward, given the intricate nature of the circumstances involved. Striving for absolute transparency can sometimes be overly idealistic, especially in such complex scenarios. In other words, stringent requirements are not always synonymous with enhanced transparency. Indeed, as already stressed in the first criterion's analysis, certain actors, like small-scale farmers, might lack the capacity to manage the expenses or possess the necessary expertise to engage with such tracking systems. Or, if the VPA is perceived solely as a tool imposed by the EU for pursuing its own interests, it might discourage local actors from adopting transparency measures. In this context, the effectiveness of a cooperative instrument such as the VPA, and the perception of it by local populations can provide valuable insights into the potential efforts to enhance the flow of transparent information.

2.2.2.3 Assessing the Effectiveness of Ghana's Innovative Wood Tracking System and Timber Legality Transparency Portal: The Call for Enhancing Support via VPAs

As outlined previously, it becomes straightforward to start from mentioning the most evident change that has occurred in Ghana as a consequence of the overall pre-EUDR approach: Ghana's commitment to establish a TLAS, designed to monitor and track the timber's journey throughout the supply chain.²⁰² This encompasses not only the establishment of a clear definition of legality based on national consensus along with a licensing program in order to guarantee that exclusively legal timber products are exported to the EU, but also entails the implementation of a timber tracking mechanism.²⁰³ This latter is based on an integrated national Wood Tracking System (WTS) that serves, firstly, to track logs and timber movement throughout its various 'Critical Control

²⁰² Ghana and the EU. (2018). *Progress Report 2013-2017. Implementing the Ghana-EU FLEGT Voluntary Partnership Agreement*. Retrieved from FLEGTVPafacility: <https://flegtvpafacility.org/wp-content/uploads/2022/05/Annual-Progress-Report-VPA-Implementation-Ghana-EU-2013-2017.pdf> .

²⁰³Jonsson, R., Giurca, A., Masiero, M., Pepke, E., Pettenella, D., Prestemon, J., & Winkel, G. (2015). *Assessment of the EU Timber Regulation and FLEGT Action Plan*. European Forest Institute; Hoare, A. (2015). *Tackling Illegal Logging and the Related Trade: What Progress and Where Next?* Chatham House; Brack, D. (2013). *Combating Illegal Logging: Interaction with WTO rules*. Catham House and Maryudi, A. (2016). Choosing Timber Legality Verification as a policy instrument to combat illegal logging in Indonesia. *Forest Policy and Economics*.

Points'(CCP) spanning from the forest to the mill and to the port²⁰⁴ and, secondly, to monitor the compliance of logs with the legal standards.²⁰⁵ In details, during each individual CCP, forestry authorities assess whether logs and timber remain within the bounds of legality, ensuring that all activities involving harvesting, transportation, trading, and processing adhere to both Ghanaian forest regulations and the legal principles of the VPA.²⁰⁶

Within this framework, a significant step has been the digitalization process. Indeed, while before checks of legality were carried out using a paper-based system, a digital WTS was subsequently established.²⁰⁷ The process of developing this online system has been fragmented and marked by various issues. Initially, an international software firm has been called into action to create a fully digitalized 'track-and-trace system', encompassing a GPS-based system for pinpointing individual trees and their positions in the field, along with digital barcodes intended for affixing to both tree stumps and trunks.²⁰⁸ Nevertheless, due to the significant technical and technological issues of unreliable internet connectivity and unstable power supply, relying solely on online information in such delicate context could be precarious. Furthermore the practical difficulties in reaching forests located in remote and poor zones have compromised the optimal use of GPS identifiers.²⁰⁹ As a solution, the system opted to utilize physical tags instead of digital barcodes, and at the same time, keep record of the information both digitally and on paper form, to provide a paper-based backup alternative in case of technical issues.²¹⁰ Therefore, as a fully digitalized system might lead to notable challenges in synchronizing data and could potentially lead to data losses,²¹¹ the new WTS was modified to deliver a hybrid system incorporating both digitized and paper-based components, designed to conform to the unique conditions and peculiarities of the country analysed.

The new WTS came to function as a significantly quicker approach for tracing information about identified trees, generating a digital map of species in two days, a marked contrast to the laborious process of creating hand-drawn maps, facilitating the update of sustainable forest

²⁰⁴ Overdevest, C., & Zeitlen, J. (2017). *Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana. Regulation & Governance.*

²⁰⁵ European Union. (2010). *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance OJ L 295.* Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995>.

²⁰⁶ Arts, B., Heukels, B., & Turnhout, E. (2021). *Tracing Timber Legality in Practice: the case of Ghana and the EU. Forest Policy and Economics.*

²⁰⁷ Forests Trend. (2021). *Timber Legality Risk Dashboard: Ghana.* Retrieved from Forests Trend: <https://www.forest-trends.org/wp-content/uploads/2022/01/Ghana-Timber-Legality-Risk-Dashboard-IDAT-Risk.pdf>.

²⁰⁸ Overdevest, C., & Zeitlen, J. (2017). *Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana.*

²⁰⁹ Arts, B., Heukels, B., & Turnhout, E. (2021). *Tracing Timber Legality in Practice: the case of Ghana and the EU. Forest Policy and Economics.*

²¹⁰ Ibidem.

²¹¹ Ibidem.

management plans.²¹² To better illustrate the system, any instances of non-compliance or irregularity that the system catches are promptly highlighted with a ‘red’ flag, drawing attention of relevant authorities and prompting subsequent actions.²¹³ By reconciling real-time data, discrepancies in entered information are automatically and instantly pinpointed.²¹⁴ In simpler terms, this system enables a comprehensive and immediate overview of all gathered information, achieved through a more efficient and rapid data collection process.

Moreover, among the worth noticing improvements in the country is the introduction of a publicly accessible portal of forest governance information, named Timber Legality Transparency Portal, which marked a significant milestone in Ghana’s forest sector, enhancing its transparency through the offer of comprehensive insights into timber logging enterprises and their operational zones.²¹⁵ This new instrument would complement and reinforce the credibility of the previously explained WTS,²¹⁶ by ultimately contributing to provide additional information needed for the requirements demanded. Some studies also affirmed that this more transparent system and more precise tracking devices have diminished prospects for corruption and non-transparent illegal timber-related behaviours.²¹⁷

Regarding this, some scholars have endeavoured to evaluate the influence of VPAs on transparency of information, expanding their analysis of the newly updated Ghana’s tracking system. While lacking a dedicated transparency annex, the VPA compels Ghana to ensure the broad dissemination of various forest-related information to the public and mandates the JMRRM to prioritize transparency in its operations as much as possible.²¹⁸ For instance, Adams et al. observed that ‘VPA information disclosure mechanisms contain comprehensive records of legally recognised harvesting rights and related permits’ and that ‘legality verification, boosted by the VPA process, provides a transparent system’ in Ghana.²¹⁹ However, if some studies have supported the idea that ‘positive contributions of the VPA process lead to improved transparency’,²²⁰ some others have indicated that

²¹² Overdevest, C., & Zeitlen, J. (2017). Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana.

²¹³ Arts, B., Heukels, B., & Turnhout, E. (2021). Tracing Timber Legality in Practice: the case of Ghana and the EU. *Forest Policy and Economics*.

²¹⁴ Ibidem.

²¹⁵ Forests Trend. (2021). *Timber Legality Risk Dashboard: Ghana*. Retrieved from Forests Trend: <https://www.forest-trends.org/wp-content/uploads/2022/01/Ghana-Timber-Legality-Risk-Dashboard-IDAT-Risk.pdf>.

²¹⁶ Ibidem.

²¹⁷ Arts, B., Heukels, B., & Turnhout, E. (2021). Tracing Timber Legality in Practice: the case of Ghana and the EU. *Forest Policy and Economics*.

²¹⁸ Ibidem.

²¹⁹ Adams, M., Kayira, J., Gruber, J., Idemudia, U., Tegegne, Y., Attah, A. N., . . . Amsong, M. (2021). Good Governance Practices in Ghana's FLEGT Voluntary partnership Agreement Process: an Application of Q methodology. *Journal of Environmental Policy*.

²²⁰ Cerutti, P., Goetghebuer, T., Leszcynska, N., Dermawan, N., J.Newbery, Eckebil, P. T., & Tsanga, R. (2021). Voluntary Partnership Agreements: Assessing Impacts For Better Policy Decisions. *Forest Policy and Economics*.

²²⁰ Arts, B., Heukels, B., & Turnhout, E. (2021). Tracing Timber Legality in Practice: the case of Ghana and the EU

the ‘intended effect’ of transparent information still faces limitations.²²¹ Greater information disclosures does not necessarily result in its straightforward utilization and comprehension by stakeholders.²²²

While transparent production processes would simplify importers’ access to necessary information, making information gathering easier and encouraging the acceptance of those products in the EU market, stricter traceability requirements also have the potential to trigger unfavourable and undesirable actions among exporters. From the exporters’ perspective in fact, the EUTR’s process is often seen as burdensome with its stringent wood quality standards and the required documentation risking to become overly complex.²²³ It is evident that the EUTR’s DDS raise the export costs and impacts the profits for exporters, thereby diminishing the appeal of the EU market.²²⁴ Consequently, as reported by research conducted by Chatham House regarding combatting illegal logging and its associated trade, EU initiatives to address this issue have been overshadowed by new timber markets, thereby diluting the effects of measures introduced by developed nations.²²⁵ It has been estimated that the volume of illegal products imported by emerging economies of China, India and Vietnam increased by over 50% between 2013 and 2016, diminishing the impact of EU policies.²²⁶

In other words, the implementation of due diligence measures under the EUTR, which has led to stricter enforcement of regulations concerning chainsaw milling, has left illegal loggers with diminished income prospects if they solely rely on the EU market.²²⁷ This situation prompts questions regarding whether the newly introduced components of the FLEGT-VPA were developed to address sustainability within the country or if they are simply serving as mechanisms to meet the increasingly stringent requirements of the EU systems.²²⁸ In essence, this raises the fundamental query of whether the overarching strategy, including the adoption of more comprehensive traceability and tracking systems, is primarily designed towards fulfilling the interests of the EU or genuinely aimed at fostering improved forest management practices in the country.

In conclusion, it can be argued that despite the influence of the EUTR’s traceability demands on prompting more advanced tracking systems fostered as well by the VPA, transparent information

²²¹ Villanueva, F., Tegegne, Y., Winkel, G., Cerutti, P., Ramcilovic-Suominen, S., McDermott, C., . . . Giessen, L. (2023). Effects of EU Illegal Logging Policy on Timber-Supplying countries: a systematic review. *Journal of Environmental Management*.

²²² Ibidem.

²²³ Acheampong, E., & Maryudi, A. (2020). Avoiding Legality: Timber Producers' Strategies And Motivations Under FLEGT In Ghana And Indonesia. *Forest Policy And Economics*.

²²⁴ Ibidem.

²²⁵ Hoare, A. (2015). *Tackling Illegal Logging and the Related Trade: What Progress and Where Next?* Chatham House.

²²⁶ Ibidem.

²²⁷ TERA. (2016). Evaluation of the EU FLEGT Action Plan (Forest Law Enforcement Governance and Trade).

²²⁸ Woolfrey, S. (2021). Can Trade Policies help promote sustainable forest management? An Analysis of the EU-Ghana FLEGT Voluntary Partnership Agreement. *ECDPM - European Centre for Development Policy Management*.

remains a challenge. If the newly implemented Ghanaian traceability system lacks sufficient support to address the challenges in the country such as poor and remote areas, the insights offered by the GLAS will always have limitations. The EU should advance steps through the bilateral agreement to enhance this support, serving as a means to facilitate the effective adjustment for Ghana's exporters within their forest environment, while also helping the EU to better engage with the context of its trading partner.

2.2.3 Level of Territorial Extension

Finally, and of utmost significance, this concluding section delves into a highly important facet of the investigation carried out in this chapter. The following lines complete the examination, serving as the last component necessary for constructing a comprehensive analysis that paves the way for drawing practical inferences about the first pre-EUDR approach of the comparative analysis. In this context, examining to what level of territorial extension the pre-EUDR approach has expanded, provides insights into the potential regulatory effects the EU strategy could exert on a worldwide scale.

As outlined in the methodology, the unilateral measure within the pre-EUDR approach possesses the capability to extend its influence across boundaries by encompassing diverse realms of regulation. Grasping the extent of territorial reach affected by EUTR might not always be a simple task, mainly due to the existence of other employed trading instruments and the consequent potential emergence of a complex multi-level territorial expansion.

Regarding this, differently from the analysis of the two already examined criteria, this section 2.2.3 will consist of just two additional subsections. It is essential to recognize that a comprehensive analysis of the territorial reach of the EUTR within the context of the pre-EUDR approach cannot be complete without considering the supplementary tool of VPAs. Consequently, the first subsection 2.2.3.1 will outline the intricacies and complexities within the EU regulatory approach, thereby enabling a thorough assessment of the broader potential of the pre-EUDR approach to promote sustainability in third countries. Lastly, the final subsection 2.2.3.2 represents a concrete attempt to furnish some empirical evidence regarding the territorial reach of pre-EUDR approach in Ghana and the effects of such regulatory powers on the involved realms, by understanding if real changes on forests management have been truly achieved.

2.2.3.1 The EUTR's Territorial Reach and the Prospects for Higher Expansion via VPAs

The EUTR works at the level of an individual transaction given that a shipment of timber may gain access to the EU market just if the shipment of timber has been aligned with the proper legality definitions and in line with the traceability requirements cited above. As stated in Article 4 of the EUTR in fact, the EU forbids the introduction of illicit harvested timber that has been unlawfully produced, determining their legality based on the laws of third countries.²²⁹ Therefore, when considered in isolation, it comes straightforward to label the EUTR as having a 'transaction-level' territorial extension.²³⁰

As anticipated, it would not be inaccurate to confine the examination of the overall pre-EUDR approach to the impact of EUTR without mentioning the complementing role played by the VPA. As a matter of fact, the EU provides different possible pathways toward compliance with EU regulations, thus offering the choice between 'transaction-level' or 'country-level' compliance.²³¹ The supplementary mechanism introduced by VPA, which establishes a sort of 'green line' or automatic access to the EU market for countries that have ratified the agreement, constitutes a significant strategy for extending territorial expansion beyond individual transactions and reaching a more pronounced 'country-level' territorial influence. This can be clearly observed whenever shipments of timber are exempted from the EU's DDS if they originate in a country that has finalized a VPA with the EU.²³² In such case indeed, once a timber exporter fulfils the legality criteria outlined in the signed VPA, it can directly access the EU market without undergoing the additional inspections mandated by the EUTR. As a result, this assumes the characteristics of a more country-level approach, wherein the EU regulator must consider actions or conditions occurring in the third country, rather than focusing solely on the single transaction it deals with.²³³

In the described scenario indeed, the EU aims at reaching 'higher level territorial extension', whereby its regulatory strategy extends far beyond individual transactions but rather encompasses more extensive realms of regulatory influence.²³⁴ Reasonably, the EU endeavours to attain a broader scope of regulatory influence by 'bundling together' transactions that would otherwise remain

²²⁹ European Union. (2010). *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance* OJ L 295. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995>.

²³⁰ Scott, J. (2014). Extraterritoriality and Territorial Extension in EU Law. *The American Journal of Comparative Law*.

²³¹ Scott, J. (2020). Reducing the European Union's Environmental Footprint Through 'Territorial Extension'. *European University Institute*.

²³² European Union. (2010). *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance* OJ L 295. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995>.

²³³ Scott, J. (2014). Extraterritoriality and Territorial Extension in EU Law. *The American Journal of Comparative Law*.

²³⁴ Ibidem.

unaffected and untouched by EU laws.²³⁵ While making use of both unilateral measure and cooperative tools in fact, the EU has effectively generated motivations and granted added benefits to nations that engage in VPAs, expanding its regulatory power to the entire country's territory rather than just the single transaction.²³⁶ Regarding this, EU measures frequently incentivize compliance at the country level by introducing increased flexibility in the requirements that a third country needs to satisfy.²³⁷ As a consequence, this triggers a more comprehensive transformation at the exporting country's level as the EU keeps lessening the stringency of its requirements in the trading partner's territory.²³⁸ In other words, this represents a win-to-win strategy, where the foreign country benefits from relaxed standards while the EU extends its regulatory influence.

Furthermore, it is logical to argue that the aforementioned 'higher-level' of territorial extension, described in the case of the pre-EUDR approach in relation to timber trade, can encompass the prompting of new third-country laws adaptation, leading to position the EU as a 'norm catalyst'.²³⁹ Therefore, it becomes interesting to look at how countries respond to this greater regulatory influence, which in turn, has the capability of triggering change within their internal regulatory frameworks. In certain cases, this EU regulatory power can indeed serve as an avenue for country to encourage greater compliance with their own domestic regulations or more broadly, to instigate international actions where urgent issues have yet to be addressed.²⁴⁰ The first chapter outlying the existing regulatory framework concerning deforestation has already stressed the inexistence of international agreement geared to safeguard forests' condition. Hence, the intervention of the EU and its broad territorial extension reach could offer a significant opportunity to disseminate and incite efforts to address this massive lack. In other terms, higher level of territorial reach of EU law might serve as an example of the necessity for more stringent standards to conserve forests, while steering the dynamics of the timber market that represents one of its major causes.

Having explored this significant potential, the research proceeds to examine the impact of the pre-EUDR approach's territorial extension on the particular context under consideration. Moving beyond the scope of individual transactions with timber exporters, the pre-EUDR approach has demonstrated its ability to trigger substantial transformation at the country-level. Thus, also this part necessitates a detailed case study to tangibly comprehend how these intricacies of the EUTR and VPA's territorial reach can truly provoke impact on one single country.

²³⁵ Ibidem.

²³⁶ Ibidem.

²³⁷ Ibidem.

²³⁸ Ibidem.

²³⁹ Ibidem.

²⁴⁰ Ibidem.

2.2.3.2 Ghana: Utilizing VPA as a Beneficial Means to Extend Territorial Influence and the Need for Enhanced Direct Support to Address the Country's Shortcomings

This last section represents a crucial contributor to the thesis' analysis as it delves into how the pre-EUDR approach has been truly capable of exerting significant influence in advancing forests sustainability efforts in third countries. As mentioned earlier, focusing on one single country becomes imperative to explore the practical application of these regulatory approaches. Nonetheless, its findings should not intended to be universally applicable to all African countries neither to the wider concept of 'developing countries'. As a matter of fact, Ghana presents some peculiarities that cannot be observed easily in other contexts. Nonetheless, Ghana's in-depth examination will hopefully serve as a means to further reflect on the reach of EU law on the contexts of other countries.

With a deeper understanding of the environment in which the pre-EUDR approach operates, taking into account both the advantages and constraints faced by the regulatory framework within the specific country, the next step involves concluding the analysis by conducting an examination of how the EU's intervention has effectively instigated measurable transformation in the governance of the forest sector. In line with the very purpose of VPA – i.e. the promotion of sustainable and inclusive forest governance in the exporting country²⁴¹ – researches have tried to gather evidence on how the EU regulatory power has truly determined positive change. Before digging into the details, it becomes important to link such analysis with the above reported theory of territorial extension. This entails presenting empirical evidence to determine whether the EU's regulatory framework has remained confined to influencing transaction-level dynamics in EU-Ghana trade, or whether its effects have extended significantly beyond that scope. To do so, empirics regarding the country's situation subsequent to the implementation of pre-EUDR approach will be used to prove whether a 'higher-level' of territorial extension has indeed been achieved or not.

Since the EUTR applies to all traders seeking to export timber to the EU market, it's evident that every Ghanaian exporter wishing to engage in trade with the EU must adhere to the EUTR requirements, thereby proving the existence of a first level of territorial extension related to the mere single transaction among a timber exporter and a EU importer. That being said, the EUTR possesses the ability to guide individual timber producers in shaping their strategies, particularly when they view their entry into the EU market as crucial for their profits. In the specific case of Ghana indeed, where the EU accounted for approximately 60% of the country's total timber exports during the years

²⁴¹ Overdevest, C., & Zeitlen, J. (2017). Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana. *Regulation & Governance*.

of VPA negotiations,²⁴² the reliance of Ghanaian timber producers on EU access compels them to make additional endeavours to align their production processes with EU regulations. As a result, the EU demand-side measure could capitalize on these circumstances to enhance its impact on Ghanaian exporters, thereby exerting significant pressure on their operational dynamics.

Nevertheless, the reach of EU law in provoking territorial extension must take into consideration the potential for Ghanaian producers to redirect and diverge their exportations towards other countries. Avoiding the legality obligations set by EU regulations and opting to sell their products in non EU-markets with less rigorous criteria may always become a choice whenever the costs of conforming with EU law become impractical and too expensive for producers.²⁴³ The Ghana's context marked by factors like poverty, corruption, property rights, forest conflicts and livelihood needs amplify the motivation for non-compliance, pushing producers to forgo EU access and choose alternative markets.²⁴⁴ In this regard, data illustrates that the period between 2013 and 2018, just after the EUTR implementation, recorded a consistent decrease from 30.72% to 10.91% in the overall quantity of wood products exported from Ghana to the EU, while a growing exportations to Asian markets from 24.09% to 75.55%.²⁴⁵ Therefore, the purpose of EUTR to broaden its territorial reach in individual transactions carries the risks of overlooking producers who opt for alternative markets, ultimately undermining the primary objective of the legislative measure to meaningfully influence their behaviours.

As already mentioned above, in such cases, the EU may employ the use of other regulatory techniques to embrace those several individual transactions that would otherwise escaped its global reach. In the specific case of Ghana indeed, the already signed EU-Ghana VPA plays a pivotal role in achieving this objective. The cooperative instrument used in the pre-EUDR approach established a form of compliance at the national level, thereby reducing the imperative to address traceability requirements for each individual transaction imposed by the EU. This entails that Ghanaian producers now find themselves compelled to align their exports with the nationally agreed timber legality program, leading them to face a more country-level compliance capable of better fitting with their needs and reducing the costs of conformity with external imposed rules. Regarding this, it can be argued that being VPA, at least theoretically, constructed on the foundation of national ownership

²⁴² Woolfrey, S. (2021). Can Trade Policies help promote sustainable forest management? An Analysis of the EU-Ghana FLEGT Voluntary Partnership Agreement. *ECDPM - European Centre for Development Policy Management*.

²⁴³ Acheampong, E., & Maryudi, A. (2020). Avoiding Legality: Timber Producers' Strategies And Motivations Under FLEGT In Ghana And Indonesia. *Forest Policy And Economics*.

²⁴⁴ Ramcilovic-Suominen, S., Matero, J., & Shannon, M. (2013). Do forest values influence compliance with forestry legislation? The case of farmers in the fringes of forest reserves in Ghana. *Small-Scale Forestry*

²⁴⁵ ITTO. (2018). *FLEGT Independent Market Monitoring*. Retrieved from ITTO - International Tropical Timber Organization: <https://www.itto.int/imm/> and Timber Industry Development Division. (2018). Report on Ghana's export of Timber and Wood Products. *Forestry Commission of Ghana*.

and envisioned to encompass both export and domestic markets, it serves as a tool that aligns more effectively with Ghana's requirements.²⁴⁶ All of this played a key role in incentivizing the private sector to achieve compliance with the underlying VPA's requirements,²⁴⁷ consequently reducing the appeal of pursuing alternative export options. In other words, the VPA has managed to be viewed as an inventive and more flexible framework rather than an imposition of environmental and social norms from the 'global north' onto the 'global south', being more respectful of territorial rights and of local needs.²⁴⁸ Hence, by utilizing a tool that more effectively addresses the requirements of the Ghanaian population, the EU presents this alternative of country-level compliance to achieve an elevated degree of territorial extension.

Moreover, the VPA not only led to reduced requirements for producers but also demonstrated, at least theoretically, positive impacts on the broader national economy, thus further enhancing the attractiveness of the system. In particular, it becomes crucially important to look at how this higher level of territorial extension has allowed better advancements in the country itself. In relation to proving the EU's role also as a 'norm catalyst', some scholars have claimed that VPA have 'initiated far-reaching processes of legal reform...'.²⁴⁹ Emerging from a context of corruption, illegal activities and social inequality, it appears that the initiatives prompted by VPA in Ghana have established platforms capable of tackling these pressing political concerns.²⁵⁰ Moreover, some other scholars have also claimed that VPA processes have generated positive enhancements in forest governance by fostering efforts against illegal logging, amplifying the collection of logging taxes, and introducing new mechanisms to expose corruption.²⁵¹ Specifically concerning legal reforms, efforts have been directed towards the 'streamlining' of timber rights allocation and the enhancement of transparency in this process.²⁵² It appears that the illicit exploitation of timber has been halted and replaced by a

²⁴⁶ Jonsson, R., Giurca, A., Masiero, M., Pepke, E., Pettenella, D., Prestemon, J., & Winkel, G. (2015). *Assessment of the EU Timber Regulation and FLEGT Action Plan*. European Forest Institute.

²⁴⁷ Woolfrey, S. (2021). Can Trade Policies help promote sustainable forest management? An Analysis of the EU-Ghana FLEGT Voluntary Partnership Agreement. *ECDPM - European Centre for Development Policy Management*.

²⁴⁸ Hansen, C. P. (2022). Examining the EU Forest Law Enforcement, Governance and Trade (FLEGT) action plan in Ghana through a governmentality lens. *Journal of Political Ecology*.

²⁴⁹ Overdeest, C., & Zeitlin, J. (2014). Constructing a transnational timber legality assurance regime: architecture, accomplishments, challenges. *Forest Policy and Economics*.

²⁵⁰ Nketiah, S., Ansah, M., Asumang-Yeboah, D., Owusu-Addai, O., Mawutor, S., & Koning, P. d. (2018). Scoping Study on the Relevance of FLEGT-VPA for Sustainable Agro-Commodity (cocoa) Initiatives in Ghana. *Tropenbos International* and Hansen, C., Rutt, R., & Acheampong, E. (2018). Experimental or business as usual? Implementing the European union forest law enforcement, governance and trade (FLEGT) voluntary partnership agreement in Ghana. *Forest Policy and Economics*.

²⁵¹ Overdeest, C., & Zeitlen, J. (2017). Experimentalism in Transnational Forest Governance: Implementing EU Forest Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreements in Indonesia and Ghana and Brack, D. (2019). *Towards Sustainable Cocoa Supply Chains: Regulatory options for the EU*. FERN, Tropenbos International and Fair Trade Advocacy Office.

²⁵² Hansen, C. P. (2022). Examining the EU Forest Law Enforcement, Governance and Trade (FLEGT) action plan in Ghana through a governmentality lens. *Journal of Political Ecology*.

more effective system that ensures improved safeguarding of landowners' rights, even those of small-scale timber producers, and that define more effective procedures for concessions' award.²⁵³ Additionally, in 2013, as a direct follow-up to the VPA, a Strategic Plan for Addressing Illegal Chainsaw Activities was adopted by the Ghanaian government, within which an important policy on public procurement has been designed.²⁵⁴ This policy dictates that only timber harvested in accordance with VPA agreed legality standards should be utilized in government projects.²⁵⁵ Considering that government agencies are the primary consumers of timber products in Ghana,²⁵⁶ this step can be viewed as a significant stride towards achieving positive progress.

However, the adoption of this policy has not yet materialized, witnessing a lack of progress and the substantial permanency of domestic market issues that still undermine the positive effects that might have been generated by the VPA's system.²⁵⁷ As a result, it becomes apparent that even though the VPA establishes the appropriate intentions for the Ghanaian government to make progress, technical and internal factors still hinder the necessary leap forward in the sector.

All of the above being said, the overall pre-EUDR approach enabled the EU to exert a 'higher level of territorial extension' thanks to the existence of the VPA among the two parties. It appears that the existence of the EU-Ghana agreement, coupled with the more adaptable and flexible country-level compliance, permits the EU to encompass those producers that would otherwise evade its control. In other terms, the EU chooses to forego stricter standards in individual transactions, as set by the EUTR, to shrewdly wide its sphere of influence. Furthermore, the theoretically positive advancements spurred by the VPA further motivate producers to adjust their behaviours to meet EU's standards and keep accessing the EU market. Finally, contrasting results have been instead observed in the role of the EU to play as a 'norm catalyst'. On one hand, the reached higher territorial influence of EU law appears to hold promising prospects for the country, aimed at generating positive progress. On the other hand, when examined in practice, it becomes evident that Ghana struggles to effectively translate these ambitions into action. As will be elaborated further in the final chapter of the thesis, it is foreseen that the EU might need to offer additional first-hand assistance to address these unique circumstances, together with enhanced effective implementation of the VPA, finally including all those issues encountered also in the criteria studied above.

²⁵³ Ibidem.

²⁵⁴ Ghana-EU. (2019). *Progress report 2013-2017. Implementation of the Ghana-EU FLEGT Voluntary Partnership Agreement.*

²⁵⁵ Hansen, C. P. (2022). Examining the EU Forest Law Enforcement, Governance and Trade (FLEGT) action plan in Ghana through a governmentality lens. *Journal of Political Ecology.*

²⁵⁶ Ibidem.

²⁵⁷ Obeng, E., Oduro, K., Seidu, M., Asoomang, G., & Owusu, F. (2020). Bottlenecks to supplying legal wood to the domestic market. *Tropenbos International and Nature & Development Foundation.*

The conclusions drawn and the insights gleaned stemming from the theoretical and practical application of the pre-EUDR approach will serve as a valuable benchmark for evaluating the recent steps undertaken by the EU. In this regard, the upcoming chapter aims to analyse the potential effects of the newly adopted EU regulatory approach on the issue of deforestation, by considering the drawbacks identified in this chapter to ascertain whether the pre-EUDR approach's shortcomings have been effectively rectified or persists unaddressed.

CHAPTER 3:

THE NEW EU DEFORESTATION REGULATION

This chapter aims to analyse the recently adopted EU Deforestation Regulation. When addressing the increasingly recognized massive issue of converting vast forested areas into agricultural land for product manufacturing and trade, the EU has endeavoured to shift its approach in tackling the growing impact of industrial agriculture on forests. To achieve this, a new combination of trading instruments has been employed to extend the Union's regulatory influence globally, marking the emergence of a different approach to the enhancement of global forest management. By applying the three criteria listed in the methodology, the effects of the EUDR will be analysed. This will allow to explore how the new EUDR approach – now consolidated into the single new regulation – contributes to impact more or less beneficially the sustainability and forests condition in third countries.

In this regard, the first part of the chapter will analyse this innovative regulatory strategy, which encompasses a broader array of forest-risk commodities under jurisdiction. Additionally, substantial attention will be directed towards the legislative history that underpins the EU's decision-making process in adopting this particular legislation. This will require the discussion of the steps and potential conflicts that emerged within the EU's legislative and executive branches, alongside other involved actors, in the development of this novel approach.

Subsequently, the second part of the chapter will proceed to advance the comparative analysis undertaken in the thesis, by outlying the eventual similarities and distinctive features to be observed with the previously studied pre-EUDR approach. Finally, coherently with the exploration of the previously implemented approach, the research will scrutinize its distinctive features within the context of the Ghanaian case study. As already explained, there is no doubt that the huge cocoa market of the country and its trade relations with the EU will experience notable repercussions due to this innovative piece of legislation, which sees cocoa involved as being one of the seven targeted commodities.

3.1 EUDR AND THE NEW APPROACH TO GLOBAL FOREST MANAGEMENT

3.1.1 Responding to a New Challenge: Agricultural Land Use

As seen, in the first years of the 2000s, the Union has launched programmes to halt the illegal logging trade and the placement of illegally harvested timber products on its market, as its first priority to contribute to better forests treatment.²⁵⁸ With the emergence of more precise information shedding light on the drivers of deforestation, the policy objectives of the EU have undergone a transformation and expansion, leading to the proposition of something new.²⁵⁹ The advancement of scientific research and the availability of extensive data have made it inevitable to address the issue of deforestation from industrial and agricultural practices perspective that massively undermines forests sustainability. Therefore, while beforehand the EU focused primarily on regulating timber markets and reducing the change of illicitly sourced timber being traded within the EU's domestic market, the recent legislative action taken by the EU marks a progression in EU's efforts to reduce deforestation.²⁶⁰ Acknowledging its even greater responsibility and complicit engagement in this environmental issue driven by agricultural products' high demand, the EU has taken steps to develop a fresh legislative proposal aimed at ensuring that the products consumed in the EU do not further foster this urgent issue.

After several negotiations, that will be subsequently shown in details, in the mid-May of 2023, the Council gave the final go-ahead to this unique piece of legislation, which proved the umpteenth EU's attempt to take the lead in guiding the movement towards better and more sustainable development.²⁶¹ In this regard, the EUDR was designed to prevent that forest-risk commodities were imported and sold in the EU market or exported from it with the purpose of curtailing deforestation and forest degradation in the EU and globally.²⁶² The Union aimed at steering consumption habits to encompass only those goods that were certified as 'deforestation-free' and not associated with the depletion of forests.

The choice of forest risk-related commodities that should have fallen within the scope of the regulation was the result of an attentive examination aimed at identifying those commodities where

²⁵⁸ Hedemann-Robinson, M. (2022). Legislative Pioneer on Global Forest Protection? A Commentary on the European Union's Proposed Deforestation-Free Product Regulation. *European Energy and Environmental Law Review*.

²⁵⁹ Bager, S., Persson, U., & Reis, T. D. (2021). Eight-Six Policy Options for Reducing Imported Deforestation. *One Earth*.

²⁶⁰ Hedemann-Robinson, M. (2022). Legislative Pioneer on Global Forest Protection? A Commentary on the European Union's Proposed Deforestation-Free Product Regulation. *European Energy and Environmental Law Review*.

²⁶¹ European Council. (2023). *Council of the EU, Press release: Council adopts new rules to cut deforestation worldwide*. Retrieved from European Council: https://www.consilium.europa.eu/en/press/press-releases/2023/05/16/council-adopts-new-rules-to-cut-deforestation-worldwide/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Council+adopts+new+rules+to+cut+deforestation+worldwide.

²⁶² Forwood, G., Connellan, C., & Nordin, S. (2023). *EU Adopts New Rules for Deforestation-Free Products*. Retrieved from White & Case: <https://www.whitecase.com/insight-alert/eu-adopts-new-rules-deforestation-free-products>.

the ‘Union consumption was the most relevant in terms of driving global deforestation and forest degradation and for which a Union policy intervention could bring the highest benefits per unit value of trade’.²⁶³ Following extensive estimations and multiple assessments, the EUDR ultimately came to cover seven commodities, namely oil palm, soya, wood, cocoa, coffee, cattle and rubber, considered to cause the major Union-driven deforestation’s contribution.²⁶⁴ In addition, the EUDR sought to include products that are derived from the aforementioned list of commodities. As stated in Article 1 indeed, the regulation ‘lays down rules regarding the placing and making available on the Union market as well as the export from the Union of relevant products, as listed in Annex I, that contain, have been fed with or have been made using relevant commodities’, with the latter referring to the previously mentioned list.²⁶⁵ Therefore, it is worth highlighting that the EUDR expanded its scope significantly by incorporating derived products or items manufactured using the listed commodities, with examples like chocolate, beef, leather, furniture, or printed paper taken from the long list of Annex I.²⁶⁶ However, in line with the EU’s objective to ensure an overall sustainable development, the EUDR excludes from its scope those products that have already completed their lifecycle, being otherwise subject to waste.²⁶⁷

In addition to significantly broadening the range of covered products, the regulation serves as a symbol of the EU’s commitment to the sustainability cause, an aspect that had been overlooked in previously implemented EU strategies. The EUDR, indeed, broadened the conditions for operators and traders to legally introduce the seven commodities and their derived products into the market and for export, by requiring them not only to comply with the relevant legislation of the country of production but also to meet the condition of deforestation-free.²⁶⁸ Like the EUTR, the EUDR falls

²⁶³ European Parliament & Council. (2023). *Proposal for Regulation Of The European Parliament And Of The Council 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 the Regulation on Deforestation and Forest Degradation*. Retrieved from European Council: <https://data.consilium.europa.eu/doc/document/PE-82-2022-INIT/en/pdf>.

²⁶⁴ Ibidem.

²⁶⁵ European Union. (2023). *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 OJ L 150*.. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

²⁶⁶ Herbert Smith Freehills. (2023). *Re-greening the Planet: Is the EU Charting the Way Forward with the Deforestation-free Products Regulation?* Retrieved from ESG Notes: <https://hsfnotes.com/esg/2023/07/06/re-greening-the-planet-is-the-eu-charting-the-way-forward-with-the-deforestation-free-products-regulation/>.

²⁶⁷ European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

²⁶⁸ European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj> and Durán, G. M., & Scott, J. (2022). Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union. *Journal of Environmental Law*.

into the category of those trading instruments classified as unilateral measures, aiming to extend their reach and regulatory influence beyond borders.²⁶⁹ The practice of ‘territorial extension’ was indeed enshrined in the new regulation, but with an even greater objective of propagating the Union’s objectives and ideologies beyond legality. In light of this, exactly as the EUTR, the EUDR focuses on the demand-side to enforce controls on forest-risk commodities, but through the requirement of checks that go far beyond verifying the legality of production in the country of origin.²⁷⁰ By disassociating regulatory oversight from the narrow focus on legality, the EUDR seeks to take a substantial stride towards guaranteeing that production adheres to sustainable practices transcending the realm of mere legal compliance, unable to signal the existence of sustainable patterns.²⁷¹ Hence, it becomes clear that the previous emphasis on legality, as embedded in the pre-EUDR approach, is no longer enough to ensure sustainable advancement in global landscape, leading the new approach to be better shaped for responding to greater challenges in today’s scenario.

The highly demanding new regulation would only be effective if backed up by proper EU support, especially towards those most hit by its stringent requirements. As stated by the Vice President and Regional Director for Europe, van Veldhoven, ‘the EU regulation could be a major boon to global efforts to stop deforestation and fight climate change – yet its success will hinge on whether the EU can meaningfully partner with the countries, companies and smallholder farmers who are producing the goods’.²⁷² Hence, it was immediately underlined the importance of creating strong support network with the EUDR’ addresses to guide them through the process of adapting to such ambitious regulation. If properly implemented, the regulation could also serve as a decisive signal to global markets, conveying the idea that sourcing food and commodities does not have to necessarily entail environmental destruction.²⁷³ Hopefully, this outcome could also encourage other emerging and lower-standards countries to follow the EU’s example and adopt a similar approach,²⁷⁴ thus triggering that collective push for worldwide change in addressing this urgent issue.

In short, the new legislation replacing the former EUTR has marked a significant step forward both at the EU level and in the global context. Yet the legislation faced formidable challenges. Balancing various interests, while striving to maximize sustainability outcomes and simultaneously

²⁶⁹ Scott, J. (2014). Extraterritoriality and Territorial Extension in EU Law. *The American Journal of Comparative Law*.

²⁷⁰ Hedemann-Robinson, M. (2022). Legislative Pioneer on Global Forest Protection? A Commentary on the European Union’s Proposed Deforestation-Free Product Regulation. *European Energy and Environmental Law Review*.

²⁷¹ Ibidem.

²⁷² World Resources Institute. (2023). *STATEMENT: Landmark European Union Deforestation Regulation is Formally Adopted, Will Enter into Force*. Retrieved from World Resources Institute: [https://www.wri.org/news/statement-landmark-european-union-deforestation-regulation-formally-adopted-will-enter-force#:~:text=BRUSSELS%20%20BELGIUM%20\(May%2016%2C,the%20bloc's%2027%20member%20states](https://www.wri.org/news/statement-landmark-european-union-deforestation-regulation-formally-adopted-will-enter-force#:~:text=BRUSSELS%20%20BELGIUM%20(May%2016%2C,the%20bloc's%2027%20member%20states).

²⁷³ Ibidem.

²⁷⁴ Ibidem.

cater to the requirements of operators who must adjust their behaviours, set the tone for a lengthy deliberation process among the decision-makers responsible for the final adoption of the EUDR.

3.1.2 The Thorny Adoption of the EUDR: the Parliament's Comprehensive Legislative Proposal versus the Commission's More Stringent Approach

As anticipated, embarking on the deliberation of such ambitious regulation involved an extensive series of consultations among EU decision makers, simultaneously triggering a subsequent intense debate on its feasibility. While the discussion on its viability will be primarily addressed in the final paragraphs of this chapter, this section delves into procedural steps that shape the legislative history characterising the final adoption of the EUDR.

In this regard, the EUDR undertook a long path of back-and-forth proposals within EU institutions and involved actors. Faced with still high pace of deforestation, alongside increasingly clear complicity in fostering this issue, the EU's first reactions were reflected in the Commission 2019 Communication *Stepping up EU Action to Protect and Restore the World's Forests*,²⁷⁵ later endorsed by the EU Environmental Council too.²⁷⁶ The need to start making some advancements in its regulatory activities was also reiterated in the subsequent European Green Deal Communication²⁷⁷ in the EU biodiversity strategy for 2030 and the Farm to Fork strategy.²⁷⁸

In response to this context, on the 22nd of October 2020, the European Parliament took action by issuing an own-initiative legislative resolution by calling upon the Commission to take concrete steps to drive its regulatory activities towards deforestation-related changes²⁷⁹. Coherently with the EU treaty framework indeed, the EP made use of its power to 'request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for purpose of

²⁷⁵ European Commission. (2019). COM/2019/352 final. *Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions - Stepping Up EU Action To Protect And Restore The World's Forests*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0352>.

²⁷⁶ European Council. (2019). *Conclusions of the Council and of the Governments of the Member States sitting in the Council on the Communication on Stepping Up EU Action to Protect and Restore the World's Forests*. Retrieved from <https://www.consilium.europa.eu/en/press/press-releases/2019/12/16/eu-action-to-protect-the-world-s-forests-council-adopts-conclusions/>.

²⁷⁷ European Commission. (2019). COM/2019/640 final. *Communication From The Commission To The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions - The European Green Deal*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2019%3A640%3AFIN>.

²⁷⁸ Halleux, V. (2023). *Toward Deforestation-Free Commodities and Products in the EU*. Retrieved from European Parliament Research Service: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698925/EPRS_BRI\(2022\)698925_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698925/EPRS_BRI(2022)698925_EN.pdf).

²⁷⁹ European Parliament. (2020). *European Parliament resolution of 22 October 2020 with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation (2020/2006(INL)) OJ C 404*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52020IP0285>.

implementing the Treaties',²⁸⁰ while presenting specific perspectives that should fall under the purview of future regulatory initiatives.²⁸¹

In response to this, the Commission adopted its legislative proposal on 17 November 2021 with the introduction of a draft for a new Deforestation-Free Products Regulation.²⁸² Nevertheless, the Commission's proposal showed relevant variations compared to the original request outlined in the EP's resolution. Some scholars have gone as far as to say that the proposal was far less ambitious than the EP's initial endeavour to address the overall issue of deforestation and related problems.²⁸³ In this regard, the following lines will attempt to go through the key discrepancies between the two approaches, with a primary focus on the aspects deemed most relevant for the final discussion of the thesis.

One crucial point that deserves attention is the difference in how the protection of human rights is addressed. The EC's proposal appears to be less robust in terms of ensuring the respect of social and human rights, including those of land owners and indigenous people,²⁸⁴ with no formal written obligation to adhere to international standards on land tenure rights.²⁸⁵ In other terms, the access of forest-risk commodities is not made contingent upon due diligence that considers the risks associated with these products being produced in or linked to violations of the rights of local populations.²⁸⁶ As a reaction to this, other EU actors involved in the EU regulatory system like the European Economic and Social Committee (EESC) has expressed its discontent on such Commission's gear change while stressing on the need to incorporate workers, small-scale farmers and human rights in the proposed regulation.²⁸⁷ Furthermore, the draft EUDR has faced criticism for not providing for the right to access

²⁸⁰ European Union. (2016). *Consolidated Version Of The Treaty On The Functioning Of The European Union; Part Six - Institutional And Financial Provisions; Title I - Institutional Provisions; Chapter 1 - The Institutions; Section 1 - The European Parliament; Article 225 (Ex Article 192, Second Subparagraph, Tec) [2016] OJ C 202*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E225>.

²⁸¹ Hedemann-Robinson, M. (2022). Legislative Pioneer on Global Forest Protection? A Commentary on the European Union's Proposed Deforestation-Free Product Regulation. *European Energy and Environmental Law Review*.

²⁸² European Commission. (2021). COM/2021/706 final. *Commission Proposal for an EU Regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Reg. 995/2010*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0706>.

²⁸³ Durán, G. M., & Scott, J. (2022). Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union. *Journal of Environmental Law*.

²⁸⁴ European Parliament. (2020). *European Parliament resolution of 22 October 2020 with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation (2020/2006(INL)) OJ C 404*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52020IP0285>.

²⁸⁵ FAO. (2022). *Voluntary Guidelines on Tenure*. Retrieved from Governance of Tenure: <https://www.fao.org/tenure/voluntary-guidelines/en/#:~:text=The%20Voluntary%20Guidelines%20on%20Tenure,%2C%20indigenous%2C%20customary%20and%20informal>.

²⁸⁶ Durán, G. M., & Scott, J. (2022). Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union. *Journal of Environmental Law*.

²⁸⁷ Halleux, V. (2023). *Toward Deforestation-Free Commodities and Products in the EU*. Retrieved from European Parliament Research Service: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698925/EPRS_BRI\(2022\)698925_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698925/EPRS_BRI(2022)698925_EN.pdf).

justice for those individuals most hit by environmental harm or human rights violations committed by operators.²⁸⁸ Therefore, it can be argued that the proposal could have placed greater emphasis on the social aspect and the role of civil society, by incorporating civil liability mechanisms that would compel operators to compensate the most adversely affected third parties for any violations.²⁸⁹

Another significant difference relates to the ‘substantive coverage’ of the proposal when compared to the resolution put forth by the Parliament.²⁹⁰ First of all, while the EP had initially advised that EU legislation should encompass actors in the financial sector among the category of operators subject to due diligence obligations,²⁹¹ the proposal excludes them from the coverage of the law’s provisions,²⁹² thereby overlooking their potential contribution to deforestation.²⁹³ Moreover, concerns have also been raised about the breadth of products addressed by the law. Initially, the Commission’s proposal limited the scope to six commodities, omitting maize and rubber, since considered less relevant to the purpose of curbing EU-driven deforestation.²⁹⁴ In fact, although the ultimate agreement eventually returned to the seven commodities listed above, the Commission consistently leaned towards reducing the variety of products rather than expanding it. Additionally, the proposed draft, whose only focus is on forests, stands out from the EP’s resolution by encompassing other natural ecosystems likewise at risk of degradation due to conversion and agricultural practices, such as savannahs, peatlands and wetlands.²⁹⁵ Lastly, doubts have emerged

²⁸⁸ Friends of the Earth Europe. (2021). *Uproot EU Deforestation Strategy to Protect All Ecosystems and People*. Friends of the Earth Europe; Greenpeace. (2022). *Greenpeace's Views on the Commission's Proposal for an EU Regulation on Deforestation-Free Products*. Greenpeace and ClientEarth. (2021). *The proposed EU law on deforestation-free products: how does it compare to the EUTR framework?* Retrieved from ClientEarth: <https://www.clientearth.org/latest/documents/the-proposed-eu-law-on-deforestation-free-products-what-does-it-include-and-what-is-left-out/>.

²⁸⁹ Forest Declaration Platform. (2014). *New York Declaration on Forests*. Retrieved from https://forestdeclaration.org/wp-content/uploads/2021/08/NYDF_Declaration.pdf and Hedemann-Robinson, M. (2022). Legislative Pioneer on Global Forest Protection? A Commentary on the European Union’s Proposed Deforestation-Free Product Regulation. *European Energy and Environmental Law Review*.

²⁹⁰ Hedemann-Robinson, M. (2022). Legislative Pioneer on Global Forest Protection? A Commentary on the European Union’s Proposed Deforestation-Free Product Regulation. *European Energy and Environmental Law Review*.

²⁹¹ European Parliament. (2020). *European Parliament resolution of 22 October 2020 with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation (2020/2006(INL)) OJ C 404*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52020IP0285>.

²⁹² European Commission. (2021). COM/2021/706 final. *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0706>.

²⁹³ GlobalWitness. (2021). *Deforestation Dividends: How Global Banks Profit from Rainforest Destruction and Human Rights Abuse*. Retrieved from GlobalWitness: <https://www.globalwitness.org/en/campaigns/forests/deforestation-dividends/#:~:text=Financial%20institutions%20made%20an%20estimated,December%202015%2C%20our%20analysis%20suggests>.

²⁹⁴ Halleux, V. (2023). *Toward Deforestation-Free Commodities and Products in the EU*. Retrieved from European Parliament Research Service: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698925/EPRS_BRI\(2022\)698925_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698925/EPRS_BRI(2022)698925_EN.pdf).

²⁹⁵ Friends of the Earth Europe. (2021). *Uproot EU Deforestation Strategy to Protect All Ecosystems and People*. Friends of the Earth Europe; EP Committee on the Environment, Public Health and Food Safety. (n.d.). *Draft Report on the Commission's Proposal (2021/0366)*. Retrieved from EP, Legislative Observatory:

regarding the primary target of these activities, which seem to concentrate much more on addressing deforestation and less on forest degradation.²⁹⁶ This is also triggered by the unclear definition of these phenomena, which disregards the EP's insistence on establishing clear and enforceable definitions.²⁹⁷

After outlying the main divergences among the initial EP's resolution and the 2021 Commission' proposal, the following months were marked by extensive negotiations that, by reaching the final political agreement among Parliament, Council and Commission just on the 6th of December 2022, led to deliver such highly debated and crucial regulation.²⁹⁸ In line with the EU' decision making process, forthcoming steps have involved the adoption of this ultimate text collectively by both the legislative branches in order to formalize it as law. On April 2023, the Parliament adopted the regulation, followed by the Council's adoption on May 16, subsequently published in the EU's Official Journal on June 9, with an expected entry into force 20 days later.²⁹⁹

After numerous rounds of negotiations, the regulation was adopted. The next section will examine it by using the criteria set in the pre-EUDR approach. This will help to understand to what extent EU institutions learnt from the past and to discern shortcomings.

3.2 A COMPARATIVE ANALYSIS AMONG THE EUDR AND PRE-EUDR APPROACHES: THE LIMITS OF THE EU UNILATERAL ACTION

By applying the three criteria of the methodology identified in chapter I, this section analyses how the EU intends to tackle the global deforestation issue through the regulatory instruments provided by the EUDR approach. By comparing the EUDR with the previous regulation, this analysis will assess the potential progress in the promotion of sustainable forest management in third countries.

Beside the variations encountered in the content of EUDR, it is crucial to stress that, while the pre-EUDR approach highly relied on the combination and the complementary support of both unilateral measures and cooperative instruments, the EUDR approach significantly disrupts this

<https://oeil.secure.europarl.europa.eu/oeil/popups/printficheglobal.pdf?id=732394&l=en> and WWF European Policy Office. (2021). *Addressing the EU's Role in the Decostruction and Degradation of Natural Forestos and Ecosystems*. WWF.

²⁹⁶ Durán, G. M., & Scott, J. (2022). Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union. *Journal of Environmental Law*.

²⁹⁷ Halleux, V. (2023). *Toward Deforestation-Free Commodities and Products in the EU*. Retrieved from European Parliament Research Service: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698925/EPRS_BRI\(2022\)698925_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698925/EPRS_BRI(2022)698925_EN.pdf).

²⁹⁸ European Council. (2023). *Council of the EU, Press release: Council adopts new rules to cut deforestation worldwide*. Retrieved from European Council: https://www.consilium.europa.eu/en/press/press-releases/2023/05/16/council-adopts-new-rules-to-cut-deforestation-worldwide/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Council+adopts+new+rules+to+cut+deforestation+worldwide.

²⁹⁹ Ibidem.

equilibrium. In this regard, it seems that the EUDR – a market-driven unilateral measure with a focus on the demand-side of trade – emerges as the primary and prominent regulatory technique upon which the new approach is built, while the other supplementary tools remain less emphasized, or neither mentioned at all. In this regard, while existing VPAs would remain in place, the new EUDR approach does not explicitly mention VPAs in its content.³⁰⁰ This becomes particularly challenging for those countries who have signed VPAs and those that have managed to successfully attained FLEGT licensing for their exportations – as of now, only Indonesia has accomplished the trade of FLEGT-licensed products.³⁰¹ While under the previously implemented pre-EUDR approach, VPAs offered a kind of expedited pathway for products labelled as ‘legal’, ensuring easier access and simplified due diligence controls by EU importers, the ‘legality’ criteria alone do not suffice to meet the requirements of the new EUDR.³⁰² As stated above, the EUDR expands its scope by requiring products placed into the EU market, as well as exported from the EU, to be marketed as ‘deforestation-free’, rather than just produced in accordance with the relevant legislation of the country of production.³⁰³ As a consequence, this new requirement risks to exclude a wide range of products given the non-compliance with the new EU’s definitions of ‘deforestation-free’ or ‘degradation-free timber’ in the case of timber’s trade.³⁰⁴ Additionally, there is a heightened risk of overlooking and neglecting all the other elements and components introduced through the signing of VPAs, further disrupting the equilibrium reached through the combination of regulatory instruments adopted in the previous approach. Hence, not only are countries and their associated producers who have signed VPAs losing the benefits offered by this collaborative tool, but they also frequently encounter more stringent demands, which often lead to significant challenges and conflicts with their own national forest policies.³⁰⁵

Recognizing the substantial impact that the EUDR and the absence of VPAs might have, the Commission has come up with other backup solutions in an attempt to still engage with the countries that would be most heavily affected by this disruption. In its place indeed, the EU strengthened its

³⁰⁰ Durán, G. M., & Scott, J. (2022). Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union. *Journal of Environmental Law*.

³⁰¹ FLEGT Independent Market Monitor. (2022). *EU's deforestation-free regulatory proposal raises concerns about impacts on FLEGT VPAs*. Retrieved from FLEGT Independent Market Monitor: <https://flegtimm.eu/news/eus-deforestation-free-regulatory-proposal-raises-concerns-about-impacts-on-flegt-vpas/>.

³⁰² Ibidem.

³⁰³ European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

³⁰⁴ FLEGT Independent Market Monitor. (2022). *EU's deforestation-free regulatory proposal raises concerns about impacts on FLEGT VPAs*. Retrieved from FLEGT Independent Market Monitor: <https://flegtimm.eu/news/eus-deforestation-free-regulatory-proposal-raises-concerns-about-impacts-on-flegt-vpas/>.

³⁰⁵ Ibidem.

efforts in the promotion of Forest Partnerships, aiming to continue assisting third countries in shifting their agricultural systems to align with the new EUDR.³⁰⁶ While these efforts share certain similarities with VPAs,³⁰⁷ the emphasis put on Forest Partnerships has become an integral component of the broader EU policy landscape, aligning with initiatives like the European Green Deal, which places a priority on achieving zero carbon emissions, poverty alleviation and human rights.³⁰⁸ These Forest Partnerships are established with the aim of promoting the enhancement of forest governance systems in partner nations, ensuring the active engagement of all involved parties, and reinforcing the rights of communities dependent on forests.³⁰⁹ Nonetheless, the actual on-ground support provided has to be assessed and evaluated, alongside the potential of these partnerships to create analogous spill-over effects as those of VPAs.³¹⁰

Therefore, as a result of the absence of cooperative instruments within the EU strategy, the subsequent paragraphs will be organized to concentrate solely on the technical aspects of the new implemented EUDR, notably without the cooperative instrument of the pre-EUDR approach. In other words, given the different mixture of instruments used, the following three sections will exclusively be divided into two subsections, with one examining EUDR's technicalities and the second one focusing on its application on third countries, and specifically to the context of Ghana, while leaving aside the unused VPA's characteristics.

3.2.1 Enforcement and Implementation

Starting from the enforcement and implementation criteria, this overall section proceeds with the analysis of the EUDR's technicalities by comparing it with the pre-existing demand-side regulation of the previous approach, aiming to accentuate any innovative elements. However, as mentioned, as the new EU strategy does not explicitly include a supply-side element, this overall section will just be divided into two main parts. The first subsection 3.2.1.1 attempts to examine the

³⁰⁶ European Commission. (2021). COM/2021/706 final. *Commission Proposal for an EU Regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Reg. 995/2010*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0706>.

³⁰⁷ Ibidem.

³⁰⁸ FLEGT Independent Market Monitor. (2022). *EU's deforestation-free regulatory proposal raises concerns about impacts on FLEGT VPAs*. Retrieved from FLEGT Independent Market Monitor: <https://flegtimm.eu/news/eus-deforestation-free-regulatory-proposal-raises-concerns-about-impacts-on-flegt-vpas/>.

³⁰⁹ European Commission. (2021). COM/2021/706 final. *Commission Proposal for an EU Regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Reg. 995/2010*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0706>.

³¹⁰ Durán, G. M., & Scott, J. (2022). Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union. *Journal of Environmental Law*.

very technicalities enshrined in the EUDR, comparing it with those found in the EUTR, while subsection 3.2.1.2 focuses on how the new unilateral measure and its related characteristics will affect the case of Ghana. Due to its recent adoption, empirics on its actual effects are not available yet. The analysis thus relies on a series of considerations based on the relation among the newly introduced EUDR, the known complexities of Ghana's economic and normative system, together with its forests condition, and the analysis of the pre-EUDR approach's application in Ghana. In other words, the potential impact of the new EUDR approach will be evaluated by exploring the impact of the new stringent EUDR, by applying it to the Ghana's case study and by considering the lack of other supply-side regulatory instruments included in EU strategy. The section will therefore try to draw some preliminary conclusions on the changing EU approach to enforcement and implementation, providing a foundation for further discussions on the EU's stance in combating deforestation.

3.2.1.1 Enhanced Precision and Evolving Responsibilities in the Implementation and Enforcement Processes of the EUDR

In parallel to what has been done with the analysis of the EUTR in the previous chapter, a pivotal step results to be the study of the actors engaged in the implementation and enforcement processes, that will be used to stress out the main differences encountered among the two approaches in studying this initial criteria. The system of actors, alongside their competences and responsibilities' allocation appear to be more detailed and intricate to what stipulated in the EUTR, surpassing the previously simpler structure foreseen by the repealed regulation.³¹¹

First of all, likewise EUTR, Member States play an initial key role in the process as they are the ones in charge of designating one or more competent authorities to carry out the checks foreseen by the regulation and of ensuring they do possess the adequate powers, functional independence and resources to effectively conduct their checks on operators.³¹² In particular, regarding the earlier identified issue of limited resources, Article 76 of the EUDR emphasizes the significance of MS effectively utilizing adequate resources and capacity,³¹³ by propelling states to make use of the additional resources provided through European funds and capabilities in order to refine their implementation process.³¹⁴

³¹¹ Hedemann-Robinson, M. (2022). Legislative Pioneer on Global Forest Protection? A Commentary on the European Union's Proposed Deforestation-Free Product Regulation. *European Energy and Environmental Law Review*.

³¹² European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

³¹³ Ibidem.

³¹⁴ Ibidem.

Specifically talking about the selected competent authorities, it is noteworthy to stress their increased responsibilities and importance in both the implementation and enforcement processes. As a matter of fact, competent authorities follow more precise and specific operational rules with a more detailed indications on the percentages of operators to be checked and the quantity of the relevant commodities to control.³¹⁵ Consequently, by undertaking their checks, competent authorities find themselves to be more informed and updated about the characteristics of traders and their dynamics, raising the possibility to fulfil their roles more effectively.³¹⁶ Furthermore, the heightened precision of the EUDR in setting rules plays a crucial role in minimizing diverse interpretations that could emerge among different actors. This marks a significant stride toward achieving a more consistent and uniform application of the law, encountered as one of the main challenge of the previous approach.

To further examine the roles of the entities involved and the additional technical expertise needed to maximise the results of the implementation, some other modifications are to be observed. Similar to the EUTR where operators could seek assistance from MOs for their due diligence requirements, the EUDR allows operators and traders to designate an ‘authorised representative’ to prepare their documentation on their behalf.³¹⁷ Thus, despite the removal of the figure of MOs, the new legislation still provides the possibility for operators to rely on other technical figures to help them undertaking their obligations and maximising the outcomes. In addition, if previously custom authorities were responsible solely for conducting checks on FLEGT licenses, now they play an expanded role. They in fact oversee the inspection of relevant commodities entering or leaving the market and ensure a correct declaration of information, while verifying as well the correct status and information of the due diligence statement on the newly introduced exchange information system.³¹⁸

The establishment of an efficient and well-functioning information flow among the entities is another main pillar in the new piece of legislation. The Commission assumes a crucial role in setting up and managing a more centralized system of information, capable of ensuring better coordination

³¹⁵ Massarenti, E., Andrighetto, N., & Masiero, M. (2022). *The Upcoming EU Proposal on 'Deforestation-Free Products': from Theory to Practice through the Lessons Learned from the Eutr Implementation*. Padova.

³¹⁶ Hedemann-Robinson, M. (2022). Legislative Pioneer on Global Forest Protection? A Commentary on the European Union's Proposed Deforestation-Free Product Regulation. *European Energy and Environmental Law Review*.

³¹⁷ Groutel, E., Duhesme, W., & Duhesme, C. (2023). *Publication of a brochure of analysis and comparison of EUDR with the EUTR*. Retrieved from Atibt : <https://www.atibt.org/en/news/13318/publication-of-a-brochure-of-analysis-and-comparison-of-eudr-with-the-eutr>.

³¹⁸ Massarenti, E., Andrighetto, N., & Masiero, M. (2022). *The Upcoming EU Proposal on 'Deforestation-Free Products': from Theory to Practice through the Lessons Learned from the Eutr Implementation*. Padova and Hedemann-Robinson, M. (2022). Legislative Pioneer on Global Forest Protection? A Commentary on the European Union's Proposed Deforestation-Free Product Regulation. *European Energy and Environmental Law Review*.

and aiming at supporting operators and authorities in carrying out their tasks.³¹⁹ The Commission indeed assumes a greater role in the overall process, being the one responsible of setting up an electronic interface based on a central database system, known as the ‘register’, capable of ensuring coordination and cooperation between every actor involved and the harmonious implementation of the law.³²⁰ Once again, competent authorities play an essential role in collaborating with the Commission to refine this structure through the establishment of administrative arrangements appositively thought to perfect the transmission of information on investigations.³²¹ Therefore, the newly implemented system incentivizes a more centralized structure aimed at ensuring a more effective implementation process in which every participant is interconnected with each other and serves as a vital component.

Alongside institutional actors, the civil society and the general public also participate in the implementation process.³²² This is another noteworthy innovative aspect introduced in the EUDR. Drawing insights from the operational experience of the EUTR, the legislation aims to enhance the crucial role played by the public by formally and legally recognizing their contribution to information for monitoring and supervisory purposes.³²³ While the EUTR just made a brief and superficial reference to the possibility of competent authorities to conduct checks based on concerns raised by third-parties, the EUDR explicitly dedicates a section to ‘substantiated concerns’, stating that ‘natural or legal persons may submit substantiated concerns to competent authorities when they consider that one or more operators or traders are not complying with this regulation’.³²⁴

It is equally important to underscore significant advancements in enforcement procedures. Differently from the previous approach, Member States are entrusting competent authorities to take ‘immediate interim measures, including the seizure of the relevant commodities or relevant products, or the suspension of the placing or making available on the market or the export of the relevant commodities or products’ in case of non-compliance.³²⁵ Therefore, competent authorities exercise a much powerful role in the new piece of regulation than the repealed one as well in the enforcement

³¹⁹ European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

³²⁰ Ibidem.

³²¹ Ibidem.

³²² Hedemann-Robinson, M. (2022). Legislative Pioneer on Global Forest Protection? A Commentary on the European Union's Proposed Deforestation-Free Product Regulation. *European Energy and Environmental Law Review*.

³²³ Ibidem.

³²⁴ European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

³²⁵ Ibidem.

phase. While before competent authorities were just in charge of carrying out inspections and informing operators of the corrective measures decided by MS, they have now the power to immediately seize or suspend the placing on the EU market or the export of any products in case of infringements.³²⁶ Additionally, after having identified a high-risk transaction, competent authorities shall register the identified situations in the information system,³²⁷ again underscoring the importance of accessible and central information to improve the efficiency of the system. After that, MS promptly need to notify the Commission and the other foreign authorities about these measures.³²⁸

Beside this increasingly central role of competent authorities' action, the EUDR's content seems to be more rigid and prescriptive than the previous EUTR when it comes to outlay the type of penalties foreseen by the law.³²⁹ In particular, the EUDR envisages that MS should lay down penalties which are 'effective, proportionate and dissuasive',³³⁰ indicating a series of percentages and minimum standards, capable of designating a minimum common ground for the actors in charge of using them. Given the precision of these indications indeed, the discretion and the autonomy left to MS in choosing the type of penalties is dramatically reduced, which again helps to harmonise the different processes of the overall law's application among Member States' interpretations.

3.2.1.2 Unraveling the Dual Impact: Examining Ghana's Response to the New EUDR's Implementation and Enforcement Techniques

This section focuses on the impact of the EU approach on third countries. If the primary objective is to evaluate the role of territorial extension measures in promoting sustainability in foreign nations, the emphasis should not solely be on the viewpoint of importers but should also include that of exporters. In this regard, while missing the supply-side element and the related analysis, the EUDR approach towards deforestation reduction only relies on the potential influence of its demand-side legislation as a way to extend its global reach. It does not 'make use' of those bilateral or multilateral agreements, more generally referred as cooperative instruments, to reach its regulatory influence on third countries. Therefore, this section evaluates how the novelties introduced by the EUDR might

³²⁶ Ibidem.

³²⁷ Ibidem.

³²⁸ Ibidem.

³²⁹ European Union. (2010). *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance OJ L 295*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995>.

³³⁰ European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

potentially represent a step forward better management of forests and produce more sustainable patterns, specifically when applied to the context of Ghana.

Beginning with the distinctive features of the anticipated implementation and enforcement processes in the new approach, it can be asserted that the heightened precision in the guidelines for actors marks a potential stride toward a more standardized and cohesive representation of EU law in foreign countries. The EU's endeavour to ensure a thorough deployment of highly capable and technical figures and to establish a more centralized and interconnected system, where actors are obliged to align with a more stringent framework of rules, undoubtedly contributes to a perception of a more credible and compact EU regulatory influence. However, the absence of a supply-side component, such as the VPA, an essential tool for the application of EU law and for the assistance to trading partners in meeting EU standards, certainly represents another factor to be taken into consideration when studying the overall impact on third countries.

Taking into account the case of an exporter like Ghana, who sees its primary cocoa exports directly impacted by changes introduced through EU law, the higher strictness and enhanced controls implemented by EU operators in their implementation and enforcement processes have the potential to generate opposite outcomes: it may either serve as an incentive to adapt production processes to ensure continued market access; or it may create a significant obstacle to enter the market.

To understand the impact on Ghana of the EU's new implementation and enforcement processes, two major factors must be considered. Firstly, Ghana's quasi-dependence on its cocoa sector with the EU market plays a pivotal role in motivating the country to enhance and improve forest management in order to continue accessing the EU. In this regard, while in the previous approach, the less stringent enforcement allowed trading partners to exploit the different applications among countries and still export their products to the single market, the robust barriers foreseen by the new EUDR have certainly disrupted trading dynamics in third countries. As a consequence, the country has been forced to find ways to implement systems capable of adhering to these stricter requirements and to rely on its own resources to move towards more acceptable production practices. In the cocoa sector, Ghana has witnessed a growing responsibility placed on its primary agency overseeing industry development, known as the Ghana Cocoa Board (COCOBOD).³³¹ As early as 2019, COCOBOD launched the implementation of a Cocoa Management System (CMS), constituting an integrated database encompassing cocoa farms, farmers and cocoa resources in Ghana, aimed at

³³¹ COCOBOD. (2023). *Cocobod on Course to Achieve Goals of Ghana Cocoa Traceability System (GCTS)*. Retrieved from COCOBOD: <https://cocobod.gh/news/cocobod-on-course-to-achieve-goals-of-ghana-cocoa-traceability-system-gcts>.

assisting the planning, monitoring and evaluation of the cocoa sector.³³² Undoubtedly, the body has recognized the imperative to introduce new tools to aid the country in adhering to the EUDR, considering the greater accuracy in implementation and enforcement measures found at EU level.

Furthermore, the second factor to be considered is the changing support provided by the EU due to the removal of the supply-side element that leaves a country such as Ghana, characterized by limited administrative coordination and governance capacity, alone in its adaptation processes. As a matter of fact, the country found itself to face stricter rules and bear higher costs, without disposing of the collaborative support provided by the VPA. Despite the strong economic ties with the EU market, this risks pushing Ghanaian farmers toward alternative markets with lower standards, leading to a global trend of escalating deforestation. In addition, the new EUDR approach risks to intensify the Ghanaian exporters' perception of EU's action as a mere imposition lacking legitimacy. The absence of a participatory and comprehensive process such as the VPA, capable of involving Ghanaian actors in the implementation, further confirms this perception. In such a country characterized by corruption and poverty, where the primary source for smallholders is cocoa production,³³³ the introduction of a rigid approach that does not foresee the involvement of local actors and does not provide technical and financial assistance to the foreign country, further incentives Ghanaian producers to opt for alternative markets lacking similar deforestation-related trade policies.

Alongside the increased team and more specialized technical expertise at the EU level, overall, the more uniform and consistent methodology, may prompt a country like Ghana to increase its efforts to adhere to the new EUDR' requirements. Yet, other essential factors could prevent the country from doing that. Despite the quasi-dependence of Ghana on EU trade, the withdrawal of VPAs, which had a vital role in providing Ghana the right support to adapt to EU law, has the potential to influence the country's reaction. The absence of a collaborative instrument like VPA reduces the practical possibilities for compliance with EUDR requirements and diminishes the country's willingness to meet EU standards despite its strong economic ties, leading to a preference for other markets with lower standards.

More in general, in comparison to the pre-EUDR approach implementation and enforcement techniques, the new EU approach seems to overlook important considerations. While VPAs have been crucial to drive tangible progress towards sustainability, the EU's new strategy prioritizes the refinement of its demand-side regulation while neglecting the need to increase support to producer

³³² IDH. (2023). *Ghana Cocoa & Forests Initiative 2022 Annual Report*. Retrieved from IDH - The Sustainable Trade Initiative: <https://www.idhsustainabletrade.com/publication/ghana-cocoa-forests-initiative-2022-annual-report/>.

³³³ Norman, M., & Saunders, J. (2020). *Tackling (Illegal) Deforestation in Cocoa Supply Chains: What Impact can Demand-Side Regulations have?* Forest Policy Trade and Finance Initiative.

countries through complementary and collaborative tools. The adoption of an approach that is composed solely by a high demanding unilateral measure shows the EU willingness to refine the loopholes found in the replaced EUTR but it witnesses the lack of support that the EU foresees to provide to foreign territories. This compromises the implementation of EU law measures in third countries due to the challenges that producer countries may face in implementing and enforcing the regulation of the EUDR approach, despite the strong economic interests these countries might have in continued access to the EU market. This element provides evidence that the EUDR is going to reduce the EU's global influence in these third countries.

3.2.2 Traceability Requirements and Transparency Issues

The EUDR introduced new obligations concerning tracking systems to monitor products circulating in the market. The enhancement of traceability requirements aim to create better informed market practices, which may assist the EU in gaining a better understanding of its exporters and finally prompt third countries to undertake more transparent operations. To study this, the first subsection 3.2.2.1 will firstly go through the technicalities of the tools used to undertake checks, by focusing on the important novelties introduced with the EUDR. While not undergoing a complete overhaul, the new elements within the legislation exhibit a higher degree of specificity and distinctiveness. However, it is only in the consequent subsection 3.2.2.2 that their actual impact on producer countries' realities will be evaluated, especially concerning its practical application in the studied context of Ghana.

3.2.2.1 Exploring the New Components of the EUDR's Due Diligence Systems: Geolocation and Country Benchmarking system

DDS still do represent the key mechanism utilized to carry out checks and controls to ensure compliance with the content of the legislation.³³⁴ Likewise in the repealed EUTR, DDS represent a tool designed to facilitate the implementation and the enforcement of the new piece of law, providing a specific framework for compliance to be adhered by the addresses of the law. Operators should indeed formally take responsibility for what they place on the market or export by delivering DDS

³³⁴ ForWood, G., Connellan, C., Killick, J., & Nordin, S. (2023). *White & Case*. Retrieved from 10 Key Things to know about the new EU Deforestation Regulation: <https://www.whitecase.com/insight-alert/10-key-things-know-about-new-eu-deforestation-regulation#:~:text=The%20EUDR%20sets%20out%20how,non%2Dcompliance%20with%20the%20EUDR.>

proving compliance with the content of the law.³³⁵ Specifically, Article 8 of the EUDR foresees that ‘prior to placing relevant products on the market or exporting them, operators shall exercise due diligence with regard to all relevant products supplied by each particular supplier’.³³⁶

Some initial considerations are needed to identify distinctions from the previously repealed legislation. One crucial aspect is the timing whereby operators need to carry out due diligence: while there is no specific mention in the EUTR, the new EUDR stresses on the obligations of operators to deliver such DDS ‘prior’ to the relevant products’ placement on the market or to its export.³³⁷ Moreover, the EUDR brought another important novelty in terms of the recipients of its obligations. As a matter of fact, while operators continue to be the key addressees, a notable shift concerns the definition of the term ‘operator’ and the range of actors encompassed by this term. While in the EUTR, the operator is defined as ‘any natural or legal person that places timber or timber products on the Union market’,³³⁸ the EUDR extends its definition to as ‘any natural or legal person who, in the course of a commercial activity, places relevant products on the market or exports them’.³³⁹ In addition, the regulation not only aims to provide a more precise definition of what is meant for ‘operator’, but also broadens its scope to traders, which are defined as ‘any person in the supply chain other than the operator who, in the course of a commercial activity, makes relevant products available on the market’.³⁴⁰ Therefore, the EUDR extends the range of its addressees by involving both operators and traders under its obligations, imposing them to take the appropriate steps in order to ensure that what it is placed on the market complies with the deforestation-free and legality requirements.³⁴¹ In this framework, while large-traders are now treated as ‘operators’, it is important to stress that those traders considered to fall under the category of Small and Medium Enterprises (SMEs) are on the contrary considered not to exercise such influence on supply chains. Therefore, likewise SMEs’ operators that ‘shall not be required to exercise due diligence for relevant products contained in or made from relevant products that have been already subject to due diligence (...) for which a due

³³⁵ European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

³³⁶ Ibidem.

³³⁷ Massarenti, E., Andrighetto, N., & Masiero, M. (2022). *The Upcoming EU Proposal on 'Deforestation-Free Products': from Theory to Practice through the Lessons Learned from the Eutr Implementation*. Padova

³³⁸ European Union. (2010). *Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance OJ L 295*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995>.

³³⁹ European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

³⁴⁰ Ibidem.

³⁴¹ Ibidem.

diligence statement has already been submitted', SMEs traders are exempt from the detailed due diligence.³⁴² SMEs traders are however required to gather and retain information from their supplier or client regarding the relevant product and specify the reference number of the previously conducted DDS.³⁴³

Going now through the details of the regulation, likewise the repealed EUTR, due diligence includes three main components: a) the collection of information, data and documents needed; b) risk assessment measures and c) risk mitigation measures.³⁴⁴ However, the content of each section results to be highly more detailed and rigorous than the one outlined in the previous DDS.

Starting from the list of information needed, the main difference with the EUTR lies on the addition of a new criterion on the geo-localisation of all plots of land where the relevant products were produced, as well as the date or time range of production.³⁴⁵ This stresses the need to check whether the land have been truly produced in deforestation-free areas, going further than just looking at the legality condition as foreseen in the pre-EUDR approach. Requiring for such accurate details on the specific locations of harvest rather than just at the whole country plays a key role in allowing European actors to better know the context with which they are trading, ensuring compliance with the deforestation-free objective and facilitating a comprehensive awareness of the dynamics unfolding in foreign regions. As soon as any deforestation or forest degradation on the relative lands is acknowledged, the products will be automatically disqualified and not allowed to be placed on the market or exported.³⁴⁶

The main innovation introduced in risk assessment instead is the new three-tier country benchmarking system, whereby countries are categorized into groups based on the level of risk they pose in terms of producing commodities that may not comply with the requirements outlined in the legislation.³⁴⁷ The Commission is in charge of classifying countries into 'high', 'low' or 'standard' risk according to the scientific evidence and reliable sources it has gathered.³⁴⁸ This system enables

³⁴² Ibidem.

³⁴³ Groutel, E., Duhesme, W., & Duhesme, C. (2023). *Publication of a brochure of analysis and comparison of EUDR with the EUTR*. Retrieved from Atibt : <https://www.atibt.org/en/news/13318/publication-of-a-brochure-of-analysis-and-comparison-of-eudr-with-the-eutr>.

³⁴⁴ European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

³⁴⁵ Ibidem.

³⁴⁶ Ibidem.

³⁴⁷ Durán, G. M., & Scott, J. (2022). Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union. *Journal of Environmental Law*.

³⁴⁸ European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

operators to conduct different forms of due diligence according to the level of risk such as simplified due diligence for ‘low risk’ countries and heightened controls for those designated as ‘high risk’.³⁴⁹ Regarding the factors determining the basis for risk assessment, EUDR results to encompass various aspects that were not formerly addressed in the EUTR. While previously mainly focused on risks related to the problem of illegality and the complexity of the supply chains of timber and timber products, the new regulation widens its range of considered risks from the presence of forests and their conditions on the area of reference to the supply chain complexity and the risk of mixing with relevant products of unknown origin.³⁵⁰ Additionally, it is noteworthy to observe an enhanced emphasis on the reliance on information collected from diverse sources, together with considerations regarding the presence of indigenous people in the area and the related conflicts over land rights, alongside associated concerns.³⁵¹

Finally, risk mitigation introduced additional details, not only by mandating operators to identify potential risks before introducing a product into circulation but also by requiring them to implement mitigating measures to achieve minimal or no risk, encompassing actions such as the possibility to conduct ‘independent survey or audits’.³⁵² Furthermore, operators have now at their disposal a broader array of practices, such as adopting model risk management practices, implementing reporting and record-keeping procedures, and employing internal control measures.³⁵³

Overall, the intensification of the DDS provides the EU the possibility to gain a better knowledge of the studied commodities and to strengthen control on their trading dynamics. Furthermore, such level of information, if successfully gathered, enables the EU to gain a deeper understanding of its trading partners and ensures a more transparent trade with them. Certainly, compared to the EUTR, the increased specificity in the regulatory control system undeniably reduces the discretion that operators may have had in adhering to more general obligations. In other words, the interpretation of the required information converges more towards a singular possibility, promoting a more standardized approach within the EU territory, discouraging external trading

³⁴⁹ Massarenti, E., Andrighetto, N., & Masiero, M. (2022). *The Upcoming EU Proposal on 'Deforestation-Free Products': from Theory to Practice through the Lessons Learned from the Eutr Implementation*. Padova.

³⁵⁰ European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

³⁵¹ Groutel, E., Duhesme, W., & Duhesme, C. (2023). *Publication of a brochure of analysis and comparison of EUDR with the EUTR*. Retrieved from Atibt : <https://www.atibt.org/en/news/13318/publication-of-a-brochure-of-analysis-and-comparison-of-eudr-with-the-eutr>.

³⁵² European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

³⁵³ Ibidem.

partners from exploiting variations among Member States. Nevertheless, while it might be thought that this detailed framework compels exporters that continue to seek access to the single market to adjust and furnish all the necessary information as mandated by the due diligence requirements, the actual behaviour of producer countries has to be attentively analysed. Once again, producer countries may face two alternative outcomes: they may be prompted to change their behaviours and adopt transparent and sustainable practices to access the EU market, or they may be overwhelmed by the abundant level of obligations and may reconsider their export strategies and explore alternative solutions.

3.2.2.2 The complex Impact of EUDR' Traceability Requirements: the Ghana's Intensified Tracking Efforts and the Advocacy for a Collaborative Benchmarking System

Undoubtedly, when examining the second criterion of the analysis, the EUDR approach stands out for its highly precise and much more rigid tracking systems, capable of creating a more uniform approach among MS such as analysed for the first criterion. Moreover, the DDS introduce new elements that have the potential to move towards a more transparent system of information and a better EU knowledge of the territories of the respective trading partners.

Firstly, the identification of the 'geographical location' of a specific traded commodity and the related lifecycle' stages requires an extremely precise and attentive process of acknowledging the whole supply chains' peculiarities and complexities. Achieving this necessitates a collective effort from all the entities within the relevant supply chains to enhance their geolocation information and data management capabilities, thereby ensuring the precision of data.³⁵⁴ This may not always be an easy task, specifically for those countries that have difficulties in implementing proper and functioning data management systems and digital basis which effectively captures the overall product's cycle. Likewise, gathering precise information on the exact time of cultivation presents several challenges, risking to exclude producers from the exportation of commodities when the respective countries lack of a robust traceability system.

This could be seen in the case of Ghana, in where the majority of its market, and specifically the cocoa industry, is marked by the presence of small-scale farmers who often lack the necessary resources and capabilities to fulfil the data collection requirements mandated by the EUDR.³⁵⁵ Notably, the difficulties encountered at farm level are accompanied by the presence of a unidirectional

³⁵⁴ PreferredbyNature. (2023). *Approaching the EU Deforestation Regulation and traceability for the products in scope*. Retrieved from PreferredbyNature: <https://preferredbynature.org/newsroom/approaching-eu-deforestation-regulation-and-traceability-products-scope>.

³⁵⁵ Riblet, M. (2023). *EUDR webinar: Key takeaways*. Retrieved from Farrelly & Mitchell; Food & AgriBusiness Specialists: <https://farrellymitchell.com/our-thinking/latest-agribusiness-blog/eudr-key-takeaways>.

flow of information and restricted cooperation or information sharing among private sector traceability system.³⁵⁶ However, despite the technical difficulties faced by the country in disseminating reliable and transparent information that engages the entire supply chain, Ghana has committed to progress along its journey toward more sustainable practices, an effort that may guarantee the country its access to the single market.³⁵⁷ To assert its role as the leading producer of traceable cocoa, the COCOBOD – which is the main governmental body that supports the production processes of cocoa in Ghana³⁵⁸ – has assured its effort to refine its established national traceability system, named Ghana Cocoa Traceability System (GCTS), to tackle the existing limitations as a way to ensure better coverage for cocoa farmers and reducing inaccuracies.³⁵⁹ Specifically, the COCOBOD’s Deputy Chief Executive Dr. Emmanuel Opoku claimed that ‘the operationalization of the GCTS will help to address the phenomenon of cocoa-driven deforestation, prevent farmers from producing cocoa from protected forests, and improve the visibility of the cocoa supply chain to ensure that the consumer is assured of the best production practices’.³⁶⁰ This certainly represents a noteworthy effort by the Ghanaian government that, pushed by its economic ties with the EU, tries to enforce a better tracing system for mapping cocoa farms and for identifying the nature of production processes, which may result fundamental in confirming its ascertained role of primary export of cocoa to the EU.

DDSs have also brought the introduction of the three-tier country benchmarking system, a mechanism that enables the Commission to categorize countries, or parts thereof, into three groups based on their risk level of producing non-deforestation-free commodities.³⁶¹ The system foresees that low-risk categories are subject to less strict controls and this may serve as a strong economic incentive for producer countries to improve their forest governance to reduce their deforestation-risk levels.³⁶² Also in the specific case of Ghana, this approach represents a beneficial strategy, motivating the country to modify its practices to reduce risks and encouraging EU operators to more readily

³⁵⁶ Stoop, P., Ramanan, N., Geens, H., Lambrecht, A., & Dekeister, S. (2021). *Technical Brief on Cocoa Traceability in West and Central Africa*. Retrieved from IDH - the Sustainable Trade Initiative: https://www.idhsustainabletrade.com/uploaded/2021/04/Cocoa-Traceability-Study_Highres.pdf.

³⁵⁷ ClientEarth & TaylorCrabbe. (2023). *Cocoa Research*. ClientEarth & TaylorCrabbe.

³⁵⁸ International Cocoa Initiative. (n.d.). *Ghana Cocoa Board - COCOBOD*. Retrieved from International Cocoa Initiative: <https://www.cocoainitiative.org/about-us/our-members/ghana-cocoa-board-cocobod>.

³⁵⁹ Riblet, M. (2023). *EUDR webinar: Key takeaways*. Retrieved from Farrelly & Mitchell; Food & AgriBusiness Specialists: <https://farrellymitchell.com/our-thinking/latest-agribusiness-blog/eudr-key-takeaways>.

³⁶⁰ COCOBOD. (2023). *Cocobod on Course to Achieve Goals of Ghana Cocoa Traceability System (GCTS)*. Retrieved from COCOBOD: <https://cocobod.gh/news/cocobod-on-course-to-achieve-goals-of-ghana-cocoa-traceability-system-gcts>.

³⁶¹ European Commission. (s.d.). *Benchmarking and partnerships: What is Country Benchmarking?*. Retrieved from European Commission: https://green-business.ec.europa.eu/implementation-eu-deforestation-regulation/benchmarking-partnerships_en#:~:text=EU%20ensure%20transparency%3F-.What%20is%20country%20benchmarking%3F,that%20are%20not%20deforestation%2Dfree.

³⁶² ClientEarth & TaylorCrabbe. (2023). *Cocoa Research*. ClientEarth & TaylorCrabbe.

choose Ghanaian products due to the simplified process of gathering delicate information. Again, capitalizing on its strong relation with the EU market, Ghana's economic incentives could play a crucial role in encouraging efforts to comply with EU law.

Nevertheless, despite the potential advantages that such a system may offer, it is important to make observations about the nature of this three-tier mechanism and the challenges faced by third countries when attempting to align with specific categories. First of all, the EU builds unilaterally this system mainly based on three sets of criteria: a) rate of deforestation and forest degradation; b) rate of expansion of agriculture land for relevant commodities; c) production trends of relevant commodities and of relevant products,³⁶³ while also taking into account other previously mentioned associated risks. However, due to the transparency issues highlighted earlier and the restricted availability of sensitive data, the overall mechanism may encounter certain pitfalls and assign countries to the wrong category. It is therefore of no surprise if producer countries have described this categorization as a one-sided benchmarking system that is 'inherently unfair and punitive'.³⁶⁴ Environmental studies argue that effectively safeguarding forests necessitates a coordinated approach spanning international to local levels.³⁶⁵ This must involve local communities on the ground, recognizing their crucial role in monitoring the real conditions of their territories which result vital for enhancing the reliability of data on which the EU is basing its benchmarking system.³⁶⁶ In other words, it would result essential to involve producer governments and local stakeholders in the development of this system, as their engagement is critical for building trust and ensuring the accuracy and appropriateness of the data used.³⁶⁷ Hence, despite the incentives brought by this new three-tier classification, if the system is not collaboratively developed and based on a multiple datasets, there is a risk of building an inaccurate system and enhancing the producer countries' perception of facing the umpteenth imposition by the EU. Reasonably, this could potentially discourage them from making efforts to align with lower risk categories and embrace more sustainable practices, finally leading them to opt for other markets. Another important consideration

³⁶³ European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

³⁶⁴ Patel, V. (2023). *EU Commission responds to backlash from 17 countries on 'discriminatory' deforestation regulation*. Retrieved from PersonalCareInsights: <https://www.personalcareinsights.com/news/eu-commission-responds-to-backlash-from-17-countries-on-discriminatory-deforestation-regulation.html>.

³⁶⁵ Ibidem.

³⁶⁶ Ibidem.

³⁶⁷ Global Canopy. (2023). *Risk benchmarking for the EU deforestation regulation: Key principles and recommendations*. Retrieved from Global Canopy: <https://globalcanopy.org/insights/publication/risk-benchmarking-for-the-eu-deforestation-regulation-key-principles-and-recommendations/>.

is that, being risk benchmarking classifications conducted on a country basis and on ‘parts thereof’, as indicated by Article 29 of the regulation,³⁶⁸ the system risks to overlook and neglect the different levels of risk existing among the diverse commodities present in a country.³⁶⁹ Consequently, as the DDS operate on an individual producer level, this system may lead to discrimination among farmers by inaccurately classifying them within a specific categorization.

On the whole, the EUDR requires the collection of more detailed information, potentially offering the EU greater transparency regarding the foreign trade and facilitating the establishment of higher-quality tracking systems, yet the actual impact of this intensified DDS on third countries is not straightforward. In the pre-EUDR approach, where traceability requirements demanded less information, there were challenges for countries to establish effective tracking systems capable of meeting the requirements of DDS. The current incorporation of additional elements increases the challenges for producer countries. The case of Ghana and its reaction to these innovations cannot be generalised. With regard to geolocation information, Ghana has demonstrated heightened efforts to enhance its tracking systems, aiming to maintain access to the EU market and secure its prominent position as a cocoa exporter. Pushed by its economic interests, Ghana seems to respond positively to the changes brought by the EUDR through the establishment of more precise tracking systems, marking positive strides in Ghana’s sustainability journey. However, the positive advancements provoked by the EUDR are strongly supported by the peculiar economies ties that the Ghana cocoa sector has with the EU.

The three-tier country benchmarking points to distinct risks. The EU’s unilateral mechanism, which relies on unilateral gathered information, risks to classify countries in the wrong category of deforestation-risk, diminishing the motivation for producer countries to strive for lower categories and to obtain lessened controls. Reasonably, Ghana’s case aligns with these general conclusions: despite its strong reliance on the EU market, the unilateral EU mechanism may discourage the country from making its best efforts to adhere to EUDR requirements, potentially prompting it to explore alternative markets. This suggests that EU action has the potential to drive positive advancements in third countries’ behaviours just if producer countries perceive EU strategy as a collaborative effort rather than just a unilateral imposition.

³⁶⁸ European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

³⁶⁹ Bellfield, H., Pereira, O., Gardner, T., & Lino, J. S. (2023). *Risk benchmarking for the EU deforestation regulation: Key principles and recommendations*. Retrieved from Proforest: <https://www.proforest.net/fileadmin/uploads/proforest/Documents/Publications/EU-deforestation-regulation-Key-principles-and-recommendations.pdf>.

Therefore, the change from the pre-EUDR approach and the absence of a supply-side element conveying the idea of a cooperative system is crucial: producer countries can be hindered from making positive advancements and implementing tracing systems capable of addressing transparency issues and complying with EUDR traceability requirements. In conclusion, this reduces the effectiveness of the EU's approach in positively influencing the behaviours of producer countries, and may encourage the search of alternative, less regulated markets, thereby diminishing the opportunity to foster sustainable progress in those territories.

3.2.3 Level of Territorial Extension

This section analyses how the new EUDR approach relates to the theory of territorial extension and the ways in which the overall resulting approach can potentially foster greater sustainable practices in trading countries. The first subsection 3.2.3.1 will analyse how the EUDR exemplifies the regulatory practice of territorial extension and how the new EUDR approach can reach different realms of regulatory influence in the territory of its trading country. Subsection 3.2.3.2 applies the EUDR approach to deforestation to the case of Ghana with the goal of understanding how this country may be potentially affected by the implementation of the new approach. Considering the lack of relevant and consolidated empirics, the analysis will be conducted on the basis of the previously identified criteria to study the pre-EUDR approach and will assess the distinct use of regulatory instruments in the current EUDR framework.

3.2.3.1 The Evolution of the New EUDR Approach's Territorial Extension: Shifting from Broad Regulatory Intervention to Individual Transactions Sphere

The new EU approach to deforestation stands out from its predecessor due to a diverse array of regulatory instruments through which the EU exercises its 'power through trade'.³⁷⁰ The shift in the EU's strategy highlights a reliance on unilateral measures to extend its standards globally and encourage trading partners to adopt more sustainable practices. The EUDR represents the central component of the new EU approach towards deforestation, functioning as a market-driven measure that employs unilateralism to leverage the power of its single market for achieving its objectives. The EUDR, replacing the existing EUTR, concentrates again on the demand-side of its trading actors, using the territorial connection – product importation into the EU single market – as the pivotal trigger

³⁷⁰ Nicolaidis, K., & Meunier, S. (2005). The European Union as a Conflicted Trade Power. *Journal of European Public Policy*.

for applying its regulations and related standards to foreign trading partners. Therefore, this criterion allows to move way beyond a mere examination of alternations within the EU territory and among EU operators, but it rather presents an attentive analysis of how this trading instrument truly affects the domains of third countries.

Like the EUTR, the EUDR works at the individual transaction level. As outlined in the methodology, this implies that the EU is obliged to take into account behaviours or situations happening beyond its borders, insofar as they are connected to a specific transaction.³⁷¹ As stated in Article 3 of the EUDR, ‘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 in the relevant legislation of the country of production; and c) they are covered by a due diligence statement’.³⁷² Hence, it can be seen that, despite the measure broadens its scope to include a wider range of products and the associated conditions to be met, the regulation continues to allow for trade, and specifically the importation or exportation of a product, by focusing on one single individual transaction.

The new composition of the current approach towards deforestation, however, does not allow for engagement at elevated levels of compliance, as seen in mechanisms like country-compliance facilitated by supply-side cooperative instruments such as the VPAs. The increased accuracy and expanded coverage of products addressed by EUDR are counterbalanced by a more limited scope and limitations concerning the countries potentially affected by the EU territorial reach.

Furthermore, the absence of bilateral trade agreements and the possibility to engage into higher level of compliance risk to diminish the EU’s role as a ‘norm catalyst’ and to limit its influence on a country level. As the impact is confined to individual transactions, the foreign country may have less motivation to develop national frameworks capable of meeting EU requirements, given that only a few traders will be engaged in adapting to EU law. In essence, considering divergence of exports to lower-standards countries as a valuable option for producers, national governments of these latters might lack sufficient incentives to transition toward legal and normative reforms promoting improved and sustainable forest management.

Having highlighted the distinctions observed in the territorial reach of this new approach, the study transitions to the practical assessment of how this evolving equilibrium could impact a context

³⁷¹ Scott, J. (2014). Extraterritoriality and Territorial Extension in EU Law. *The American Journal of Comparative Law*.

³⁷² European Union. (2023). *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 OJ L 150*. Retrieved from EUR-Lex: <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

such as that of Ghana. This is necessary to understand how these new features can be pragmatically implemented in a country such as Ghana.

3.2.3.2 Examining EU's Territorial Reach in Ghana: the Focus on Individual Transactions and the Prospects for a National Normative Transformation

Although Article 68 of the EUDR suggests that this detailed framework incentivizes producer countries to enhance the sustainability of their agricultural production systems and reduce their deforestation impact,³⁷³ the actual influence on third countries of the EU new deforestation approach is not that straightforward. Having acknowledged the peculiarities of an approach involving a unilateral demand-side regulation primarily operating at the individual transaction level, it is essential to practically apply the research to the specific country under examination.

Firstly, since the EUDR designates cocoa as one of the seven elements categorized as forest risk commodities, Ghana's situation certainly represents a case study on which the new EU strategy has a significant impact. Being the West-African country the second-largest cocoa producer³⁷⁴ and the EU the largest importer of cocoa beans globally,³⁷⁵ the strong ties between the EU-Ghana trade deserve particular attention when considering the potential consequences of EU law on Ghana's economy and its cocoa sector, given that a significant portion of Ghanaian producers will be subject to EUDR restrictions. As the new demand-side regulation applies to every trader seeking to export its commodity to the EU market, it is clear that Ghanaian cocoa exporter must comply with the new EUDR's requirements, indicating the existence of a first level of territorial extension. Hence, whenever a Ghana's cocoa producer decides to trade with the EU market, it is encountered with a first sphere of EU regulatory intervention on the trading country. Similarly to the EUTR, it is reasonable to assume that the EU aims to capitalize on Ghana's quasi-dependence on the revenues derived from the trade with the EU market to push exporters to align with the new EUDR's requirements.

However, operating at transaction level without disposing of other regulatory techniques capable of exercising higher spheres of regulatory intervention, requires the EU to take into account other important elements. As shifting towards alternative markets was already a valuable option under the previous approach, the high complexity and the limited realm of regulatory influence of this

³⁷³ Ibidem.

³⁷⁴ UNEP. (2023). *Mapping the potential for cocoa agroforestry in Ghana for climate change adaptation and mitigation*. Retrieved from United Nations Environment Programme: <https://www.unep-wcmc.org/en/news/mapping-the-potential-for-cocoa-agroforestry-in-ghana-for-climate-change-adaptation-and-mitigation>.

³⁷⁵ CBI. (2022). *What is the demand for cocoa on the European market?* Retrieved from CBI - Ministry of Foreign Affairs: <https://www.cbi.eu/market-information/cocoa/what-demand>.

unilateral measure might even increase the attractiveness of this alternative. This requires the EU to acknowledge that, by operating at individual level, several transactions may be subtracted from the EU regulatory influence, massively reducing the overall EU law's reach on foreign territories. Indeed, while the previous approach allowed the EU to engage into higher levels of compliance, by encompassing transactions that would otherwise escape EU influence, the new EUDR approach misses this opportunity.

Specifically in a country like Ghana, whereby the VPA has always represented a fundamental cooperative mechanism allowing for higher spheres of regulatory intervention, Ghanaian cocoa producers may now encounter substantive obstacles and resistance in adhering to the new approach. By eliminating the option for exporters to engage in a country compliance mechanism, the EU misses the chance to extend its influence on those producers who may struggle to meet the stringent requirements of the EUDR and finally opt for other markets. This marks a significant change from the previous approach, where Ghanaian producers could bypass the stringent EU requirements by simply adhering to nationally agreed timber legality, thereby mitigating the severity of demand-side regulations.

Furthermore, the elimination of the VPAs means the loss of a collaborative and multi-sided created mechanism that was more tailored to the specific needs of the single nation. In contrast, the new EU strategy, which looks more like as a demand-side approach, lacks the flexibility to provide customized solutions addressing specific national forest concerns, but it rather uniformly provides a form of compliance for all products entering the EU market without making any differences.³⁷⁶ Moreover, balancing production efficiency, social safeguards, and environmental conservation, crucial for the long-term sustainability of cocoa sector and its interconnected relationship with the preservation of forests, seems to be largely neglected by this one-sided approach.³⁷⁷ All of these factors contribute to reinforce the producers' perception of the EUDR approach as an unjust imposition and dissuade them from complying with it.

Finally, adopting a one-sided approach could also have crucial implications for the EU's role as a norm catalyst. Based on the discussion so far, it might be deduced that in the absence of a bilateral agreement directly involving the government and with exporters and operators dealing with EUDR requirements at transaction level, national governments might be less engaged in these compliance processes. Nonetheless, it is crucial to make specific considerations tailored to the unique context of each country. In the case of Ghana, whose cocoa production is deemed the lifeblood of the country's

³⁷⁶ ClientEarth & TaylorCrabbe. (2023). *Cocoa Research*. ClientEarth & TaylorCrabbe.

³⁷⁷ *Ibidem*.

economy accounting for the 60% of the income of Ghana's agricultural force,³⁷⁸ some variables are indeed to be considered. Although the absence of a country-compliance mechanism, Ghana's interest in gaining a competitive advantage in the trade of its cocoa beans over other countries represents an element that could potentially steer the Ghana government's involvement into deforestation strategies.³⁷⁹ In other words, given the substantial revenue gained from trading with the EU market, Ghana might be incentivized to revise its legal national framework to facilitate the due diligence of EU operators and streamline trade.³⁸⁰

Nevertheless, revising the overall Ghana's system of laws and regulations, characterised by several overlaps and excesses within the legal framework governing forest conversion and land tenure, might not sound that easy for the country.³⁸¹ Its uncoordinated and decentralized legal framework has been shaped by a system of multi-source system of law, marked by prolonged and bureaucratic procedures, limited legal literacy and significant gaps in responsibilities and rights concerning forests.³⁸² Therefore, attempting to overhaul the entire system poses a challenging task to the government, requiring a comprehensive set of legal and institutional reforms to provide clarity and coherence.³⁸³ To this end, a multi-stakeholder process of national stakeholders is necessary to facilitate the reforms required to improve forest governance and produce locally suited solutions to the identified gaps and constraints in the legal framework.³⁸⁴ In this context, the EUDR approach can represent a valuable opportunity and a strong economic incentive to rebuild from scratch the overall system and institute the necessary changes that could both benefit the country itself and ensure its economic ties among its cocoa sector and the EU market.

Coherently with what has been just said, the introduction of this demanding regulation might further incentive the country to accelerate the process of already existing initiatives and proposals towards better management of cocoa sector and forests condition. The Cocoa Forest Initiative (CFI), a public-private partnership launched in 2017 aimed at eliminating illegal deforestation from Ghana's cocoa supply chain and forests' restoration,³⁸⁵ has the potential to represent a crucial foundation that

³⁷⁸ Amankwaah, B. A., Asomaning, G., Atuguba, R. A., Ayifah, E., Brudney, A., Citro, B., . . . Tarkizhan, S. K. (2021, June). COCOBOD's Unrealised Potential: Promoting Human Rights, and the Environment in Ghana's Cocoa-Growing Communities. Northwestern Pritzker School of Law Center for International Human Rights, University of Ghana School of Law, Corporate Accountability Lab & SEND Ghana.

³⁷⁹ ClientEarth & TaylorCrabbe. (2023). *Cocoa Research*. ClientEarth & TaylorCrabbe.

³⁸⁰ *Ibidem*.

³⁸¹ *Ibidem*.

³⁸² ClientEarth & TaylorCrabbe. (2023). *Cocoa Research*. ClientEarth & TaylorCrabbe and Akapame, C. K. (2020). The Chase for Legal Timber: Developments in the Commercial Trade of Timber in Ghana. *Environmental Law Review*.

³⁸³ ClientEarth & TaylorCrabbe. (2023). *Cocoa Research*. ClientEarth & TaylorCrabbe.

³⁸⁴ *Ibidem*.

³⁸⁵ World Cocoa Foundation. (2022). *Cocoa & Forests Initiative*. Retrieved from World Cocoa Foundation: <https://www.worldcocoafoundation.org/initiative/cocoa-forests-initiative/#:~:text=At%20the%20November%202017%20UN,Forests%20Initiative%20Frameworks%20for%20Action.>

further assists the country in moving into this evolutionary process. Furthermore, the launched National Deforestation Risk initiative by COCOBOD, alongside some recorded recent improvements in the government and private sector collaborations on these matters, might further lead the country into the EUDR's compliance and finally promote a better management of forests.³⁸⁶

That being said, it can be concluded that the unilateral approach undertaken by the new EU deforestation strategy seems to restrain the scope of the regulatory intervention, focusing primarily on individual transactions. While missing the supply-side element, the EUDR approach does not combine many regulatory techniques requiring higher level of compliance, as instead found in the pre-EUDR approach. Considered the context of Ghana, the removal of country-level compliance such as the one facilitated through VPA, not only increases the practical difficulties of Ghanaian producers in the rigorous EUDR requirements, but also reinforces the perception among exporters of facing an unfair imposition by the EU. This makes the EUDR approach a rather unilateral strategy.

However, different conclusions have been drawn regarding the EU's role as a norm catalyst: the strong economic interplays among EU-Ghana trade and the quasi-necessity of Ghana to keep accessing the EU may prompt Ghana's national government to engage in such compliance processes, further confirming the EU role as a 'norm catalyst'. Driven by a strong economic interest, the government may try to rebuild its national legal systems and promote policies aimed at changing the sustainability level of its cocoa sector. The decision of the government to embark on such transition has the potential to influence single cocoa producers who, operating within a clearer and more coherent national legal framework, may be more inclined to adopt more sustainable production practices and engage in smoother trade with the EU. In essence, a collaborative framework at national level based on a more collective process may have the potential to gather and bring together those actors who might otherwise divert their exports to alternative markets. Hence, although the EUDR approach does not provide for higher-level compliance, the economic ties can again play a crucial role in guaranteeing higher spheres of regulatory intervention of EU law.

In conclusion, the analysis of the EUDR approach through the three criteria reveals a significant shift in the EU's strategy, now prioritizing effectiveness at the EU level rather than addressing the drawbacks identified in the previous approach in considering the specific needs and local circumstances of producer countries. The increased attention posed on the demand-side and the absence of cooperative tools have proven to be significant limitations for the potential positive impact of the EUDR approach, as initially identified in the first two criteria and then underscored by the

³⁸⁶ IDH. (2023). *Ghana Cocoa & Forests Initiative 2022 Annual Report*. Retrieved from IDH - The Sustainable Trade Initiative: <https://www.idhsustainabletrade.com/publication/ghana-cocoa-forests-initiative-2022-annual-report/>.

restricted sphere of global extension that the EU manages to reach. Although the EU can still exert influence on third countries by leveraging on its economic ties and its single market power, the actual impact is constrained and varies case by case. The Ghanaian case shows that, despite the strong interests in keeping its access to the EU single market, additional EU support and a more country-tailored approach would be crucial in prompting the adoption of more sustainable practices, ultimately safeguarding global forested areas.

CONCLUSIONS

In the midst of the critical climate crisis faced by our planet, with deforestation representing a prominent global concern, the thesis aimed to investigate the EU's position in addressing this urgent issue. As timber logging and agricultural expansion have emerged as the two main drivers of deforestation, the EU adopted different combinations of regulatory tools to mitigate its contribution and regulate the global trade of forest-risk commodities, with the purpose of spreading its high environmental standards and prompting better forests management on a global scale.

The research showed that the EU's dedication to this issue dates back to 2003, marked by the adoption of the FLEGT Action Plan: this plan aimed to tackle timber illegal logging from both the demand and supply side, employing a mix of regulatory instruments provided by the EUTR and bilateral cooperative agreements (VPAs). Nevertheless, with growing recognition of industrial agriculture's role in forest destruction, the EU steered its strategy and updated its plan to address this pressing urgency of agricultural expansion. Substituting the EUTR, the new EUDR represents the sole component of the new mixture of regulatory instruments employed by the EU, referred in thesis as the EUDR approach.

This pivotal shift prompted the central research question, delving into whether the new EUDR approach facilitates a more effective strategy for fostering more sustainable practices and positive advancements in third countries. Through the lens of territorial extension's theory, a comparative analysis among the two approaches and its practical application to Ghana has revealed key differences in the EU's evolving approach. By evaluating these changes through the three criteria, valuable insights were gained into how the new EU strategy could potentially contribute to positive advancements in the global fight against deforestation.

Starting from the first criterion focusing on enforcement and implementation, the challenges encountered in applying EU law abroad stand out as an initial indicator of the limitations in the global applicability of the EUDR approach. The EU concentrates on refining its demand-side regulation, through enhanced implementing figures and enforcement techniques, to bolster law implementation within its territorial boundaries and elevate the coherence and uniformity among Member States. However, the new approach seems to neglect the essential role of supply-side elements in facilitating the implementation and enforcement of EU law in third countries. In the case of Ghana, the absence of vital support formerly provided by VPAs leaves the country isolated in adapting to EUDR requirements. Despite its strong economic ties, inadequate implementation and enforcement jeopardize the potential for positive advancements in forest management, eventually forcing the country to seek alternative markets with lower standards and less costly requirements. Hence,

compared to the pre-EUDR approach, the new EUDR reduces its potential to stimulate desired positive progress unless additional local support is provided, signing a critical drawback in extending the effectiveness of the EUDR approach to a global scale.

By evaluating the traceability requirements and transparency issues of the two approaches as the second criterion, the constrained impact of EU current approach on a global scale is further confirmed. The EU proposes a regulation that foresees extremely detailed traceability requirements to standardize the approach among EU operators. However, the heightened stringency in the due diligence carried out by EU actors does not necessarily translate into the development of more effective tracking systems in foreign countries and consequent increased transparency. Indeed, the incorporation of two key elements in the DDS has proven challenging for producer countries. Firstly, the demand for the ‘geographical location’ of traded commodities poses difficulties for countries and producers lacking adequate systems for ensuring data precision. Secondly, the three-tier benchmarking system, heavily reliant on unilateral information, creates an impression of an unfair EU imposition, reducing producer countries’ willingness to embrace the new EUDR. Ghana’s case showed that efforts to establish precise tracking systems to meet the ‘geographical location’ requirements, pushed by its strong economic interests of exporting cocoa to the EU, are hindered by the perceived imposition of EU unilateral mechanisms. This suggests that the combination of heightened requirements and unilateral mechanisms makes the EUDR approach less resonant with producer countries compared to the previous one, representing another crucial obstacle to the EU law’s desired impact.

The third criterion completes the research by examining how the EUDR approach extends its influence to foreign territories through the lens of territorial extension. While the EUDR, as the replaced EUTR, operates at the individual transaction level, the EUDR approach lacks alternative pathways for higher levels of regulatory intervention compared to the pre-EUDR approach. Previously, Ghanaian producers could escape the high costs of EU regulations using country-compliance mechanisms provided through VPAs. Now, the EUDR approach removes this option, and by operating at individual level, forces them to adhere to a unilateral standardized regulation that does not provide for country-tailored approach, finally increasing their costs and leading them to consider alternative markets. Moreover, the ‘norm catalyst’ role of the EU is also challenged: with no direct agreement involving the government and with operators and exporters handling EUDR requirements at the transaction level, national governments are less incentivized to adjust their legal frameworks. However, Ghana’s case illustrates that strong economic ties can motivate the government to revise the country’s law and promote policies to enhance the sustainability of its cocoa sector, prompting producers to opt for better production processes.

The work shows that all the three criteria indicate a clear response to research question: the prospects for significant global impact with the new unilateral regulatory EUDR approach appear low. Despite undoubtedly enhancing the EU's deforestation framework within its territory, the combination of regulatory instruments foreseen by the new EUDR approach does not align with its objective of extending its influence abroad. The EU has not enough effectively built upon the previous approach, which had already emphasized the need for additional on-site and local support to achieve positive results. In addressing global deforestation indeed, the EU's current approach seems to omit a considerable segment of countries from its outreach that specifically would necessitate a more collaborative regulatory framework rather than the existing unilateral strategy. In contrast to the earlier EUDR approach, the EU now advocates for an approach that, instead of increasing necessary support, removes regulatory instruments intended to provide such support like the previously implemented VPAs.

The case of Ghana indeed served as a representative example within the category of developing countries that the thesis sought to study. In this regard, the country, in contrast with the positive advancements achieved in the previous approach, now finds itself isolated in its endeavours to comply with EU law and in its transition towards more sustainable practices. As findings are gathered, it becomes clear that this unilateral approach does not yield positive outcomes within Ghana. This implies that these limitations may be encountered too in other similar countries sharing alike characteristics, thereby limiting the global reach of EU positive impact on several territories.

In conclusion, the thesis proposes that EU strategies should prioritize on-site assistance by employing regulatory approaches capable of addressing complex challenges in remote areas. While the effectiveness of this new approach and its actual impact still requires time to be studied, the EU's current approach appears to be heading in an unfavourable direction, thereby necessitating the restructuring and revisions of EU approach to effectively combat global deforestation. The reintroduction of cooperative regulatory instruments such as bilateral agreements allowing for a joint collaboration among the EU and its trading partners would assist producer countries in more smoothly adhering to the higher environmental standards outlined in EU regulations. Opting for treaty-driven measures would further enable the EU to gain a deeper understanding of its trading countries' contexts and adopt more tailored and flexible approaches that would facilitate producer countries to keep accessing the EU market rather than seeking alternative markets. Hence, while maintaining high demanding regulations aimed at combatting deforestation, the EU should reassess the significance of integrating cooperative instruments into its package of regulatory tools to achieve tangible worldwide positive results.

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