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## European Union Timber Regulation – A false promise?

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## Abstract

This thesis offers insights on the question *to what extent the proposed global deforestation instrument solves the implementation and enforcement challenges emerged in the application of the EU Timber Regulation?* As the global importance of protecting forests significantly increases, the European Union has adopted a proposal for a new Regulation to fight global deforestation. This thesis examines the application of the 2010 EU Timber Regulation and identifies major shortcomings in its implementation and enforcement within the European Union. The thesis will use a hermeneutic approach of textual analysis in order to critically evaluate the analysis of the Regulation and situate it into the theoretical debate on Europe's normative power and the external action of the EU. The analysis concludes that although the vast majority of identified shortcomings found in the EU Timber Regulation have been incorporated into the new proposal, a number of significant deficits remain that raise questions about a comprehensive effectiveness of the new instrument and fundamentally challenge the application of the term Normative Power Europe.

**Keywords:** European Union Timber Regulation, Deforestation, Forest Degradation, Climate Change, Biodiversity, European external action, Normative Power Europe, Hermeneutic textual analysis

## List of Abbreviations:

CA	Competent Authority
EEA	European Economic Area
EP	European Parliament
EU	European Union
EUTR	European Union Timber Regulation
FLEGT	Forest Law Enforcement, Governance and Trade
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IPCC	International Panel on Climate Change
MO	Monitoring Organisation
MS	European Union Member State
NPE	Normative Power Europe
SMEs	Small and medium-sized enterprises
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNEP-WCMC	United Nations Environment World Conservation Monitoring Centre
VPA	Voluntary Partnership Agreements

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# Chapter 1

## 1.1 Introduction

“Deforestation and forest degradation are occurring at an alarming rate, aggravating climate change and the loss of biodiversity.” (European Commission, 2021, e). With these words the European Commission introduces a new proposal related to the import and export of commodities and products associated with deforestation and forest degradation. The proposal, published in November 2021, outlines an initiative to curb deforestation with the aim of reducing greenhouse gas emissions and protecting global biodiversity (European Commission, 2021, e). This need to protect climate and biodiversity is addressed and supported by the two leading councils on climate change and biodiversity, the Intergovernmental Panel on Climate Change (IPCC) and the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES). According to the Councils, there is an immediate global need to protect forests which act as a major CO<sub>2</sub> reservoir (IPCC, 2019). The IPCC report on Climate Change and Land further confirms that reducing forest degradation leads to a significant decrease in greenhouse gas emissions (IPCC, 2019). In addition, IPBES (2019) highlights the link between forest degradation and biodiversity loss, and emphasizes the benefits of avoiding and reducing deforestation at the global level. Apart from the two councils, the WWF, the World Bank, and the United Nations have all published reports and statements claiming that global deforestation and forest degradation is a key driver of climate change and has a direct impact on biodiversity loss on a worldwide scale (WWF, 2019; World Bank 2021, FAO, 2020).

At the same time, the global demand for wood, wood products and deforested areas used for the cultivation of soy, coffee, cocoa or palm oil is heavily increasing, putting “additional pressure on forests” (European Commission, 2021, e, p. 1). Following the Commission (2021), around “80% of deforestation is currently driven by the expansion of agricultural land [...]” (European Commission, 2021, b, p. 10). This has a direct impact on greenhouse gas emission, as forest represent the largest terrestrial carbon sink in the world “storing approximately 400 gigatons of carbon [...] that would otherwise be free in the atmosphere and contribute to ongoing climate patterns” (European Commission, 2021, b, p. 11). In light of this, the EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) was adopted in 2003, setting out a series of measures that Member States and the EU can take to address illegal logging on a global scale (EU FLEGT Facility, n.d., a). As part of the EU's FLEGT Action Plan, the EU Timber Regulation entered into force in 2013, setting out obligations for operators to prevent the placing of illegally harvested timber or timber-related products on the internal market (EU FLEGT Facility, n.d., b). As Henn points out, the framework of this Regulation offered “promising regulatory pathways” (Henn, 2021, p. 343).

However, as confirmed by European agencies, even after the Regulation has entered into force, the EU still is a “relevant consumer of commodities associated with deforestation and forest degradation”

responsible for 19% of tropical deforestation in the period of 2008-2017 (European Commission, 2021, e, p. 1; European Commission, 2021, b). A press release from the EU Commission acknowledges this stating that in the period from 1990 to 2020 alone, 420 million hectares of forest have been lost, of which the European Union is responsible for a significant portion (European Commission, 2021, d). Additionally, the British non-profit organization Earthsight published an investigation of Russia's largest deforestation scandal in 2020 in which, according to the organization, more than 100,000 tons of timber were imported into the European Union (Earthsight, 2020). Earthsight (2020) claims that European imports continued after the scandal came to light, blaming poor enforcement of EU law. This assertion of insufficient enforcement is shared by various organizations. For example, as highlighted in a 2019 enforcement review published by WWF, the importation of illegally harvested timber could not be adequately addressed due to remaining implementation issues of the EUTR (WWF, 2019). These examples reflect the ongoing debate questioning the effectiveness of the 2013 EU Timber Regulation and expresses growing concern about the impact of increased illegal logging and associated trade.

The EUTR has been extensively reviewed by a number of authors and organizations. The literature that has identified main shortcomings highlights ineffective and disproportionate sanctions, inconsistent controls, and a lack of comprehensive product coverage (Germanwatch, 2019; WWF, 2019; Leipold, 2016). Consistent problems are also recognized in the Commission's proposal and the accompanying Impact Assessment on a new deforestation instrument, stating that while the EU is one of the main consumers of goods linked to deforestation and forest degradation, it "lacks specific and effective rules to reduce its contribution to these phenomena" (European Commission, 2021, e, p. 1). In response to the increasing impact of deforestation and forest degradation on climate change and biodiversity loss, and recognizing that existing measures continue to be affected by implementation problems, the Commission has decided to envisage a "future-proof dynamic" instrument to combat the aforementioned concerns (European Commission 2021, c, p. 6). The following section will outline the methodological approach of the thesis and derive the main research question.

## 1.2 Methodology

This section provides an overview on the scientific approach of this study. At the beginning the research question is being explained. Following this, the methodological approach is presented and the structure of the thesis is illustrated.

### 1.2.1 Research Question

As several European Commission reports indicate, the existing legal framework of instruments that address the problem of global deforestation is affected by high levels of inconsistent application and enforcement challenges (European Commission, 2021, b; European Commission, 2021, e). Nevertheless, the parties involved are aware of the need to combat the problem of global deforestation immediately. For this reason, the Commission has published a proposal for a new instrument to combat deforestation. The main objective of this thesis is to examine both the EU Timber Regulation adopted in 2010 and the proposal for a new instrument to combat EU-driven deforestation and forest degradation. In light of the fact that a number of deficits have been identified in the existing Timber Regulation, the Commission's new proposal will be examined with regard to the recognized shortcomings.

Given this background, the research question underlying this study is: *To what extent does the proposed global deforestation instrument solve the implementation and enforcement challenges emerged in application of the EU Timber Regulation?*

### 1.2.2 Methodological approach

The thesis at hand will conduct a textual analysis in order to approach the study of selected documents, journal articles, press releases and policy reports. The chosen method of textual analysis will follow a hermeneutic and interpretive research approach of what Given (2008) defines as “[t]he process by which a researcher construes meaning from research findings” (Given, 2008, p. 458). Further, she explains the hermeneutic approach as one that studies “the theory and practice of understanding and interpretation” (Given, 2008, p. 385). Following Given (2008), an interpretive approach is characterized by its inclusion of a variety of contexts related to the texts under study. This dissertation will incorporate the approach of textual analysis in the scope of interpretive hermeneutic research by examining the context of the two main policy documents, namely the 2010 European Union Timber Regulation (EUTR) and the adopted 2021 proposal for a new Regulation.

In order to create a cohesive body of work, this thesis will answer several sub-questions before providing a final answer to the research question. The first chapter will provide insights to the problem of global deforestation. This part of the thesis will therefore present various reports pointing out the urgent need to combat deforestation as outlined in the reports of IPCC and IPBES. It will additionally comment on the social relevance of this work.

Intending to answer the final research question, the second chapter examines the legal framework of Europe's environmental policies and connects it with the existing body of literature on EU external action. It therefore looks in depth at European Union text documents such as the two treaties, the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), in order



to provide a basis for understanding the foundations of European action, particularly in the area of external environmental measures. In this context, the work of Marin Duran (2020) provides vital insights into the development and current state of EU environmental competencies. Findings of the literature, investigated in this chapter, help to examine how the EU uses its instruments to externalise norms and values. In this context, the theory of Normative Power Europe (NPE) plays an important role. Publications of Ian Manners, a key author on NPE, will be studied and connected to literature focusing on EU external environmental action. In her work, Given (2008) has emphasized the importance to critically reflect the opinion derived from the studied literature. In light of this assertion, the thesis will critically evaluate the concept of Normative Power Europe in relation to the environment and EU foreign policy. For that, articles of Falkner (2007) and Nicolaïdis and Howse (2002) are studied. With the aim of providing an overview on Europe's external environmental action and its reference to the theory of Normative Power Europe, this Chapter is concerned with the descriptive sub-question of *what competencies the EU has in order to engage in external environmental action and how they are envisioned in the EUTR?*

Following the classification of the EUTR in European external action and the theory of Normative Power Europe, Chapter 3 is concerned with the hermeneutic questions *to what extent can the EUTR be considered a success in reducing or curbing deforestation? And what does the new proposal include and how are the identified shortcomings being addressed?* In order to sufficiently answer these questions, chapter 3 first analyses the EUTR to identify main shortcomings emerged in the implementation of the Regulation. This is done by reviewing biennial implementation reports, that the Commission has mandated the Member States (MSs) to submit, as well as reviewing the conducted Fitness Check, which has evaluated the functioning and the effectiveness of the EUTR. An additional Impact Assessment provides insights on specific aspects that need to be reviewed with regard to establishing a new instrument. To provide a comprehensive analysis of the deficits of the Regulation, the reports are contrasted with numerous reports of non-governmental organisations (NGOs) such as WWF, Germanwatch or ClientEarth. The final step is to check whether the main shortcomings of the Regulation have been incorporated into the new proposal. For this purpose, the proposal's content will first be examined followed by an analysis of the incorporated shortcomings. Next to the assessment and evaluation reports, conclusions are drawn concerning the publications of Manners (2002;2021) and Falkner (2007). A critical reflection of the results from the proposal is offered by a report of the European Parliament, which has provided amendments to the proposed Regulation.

The final chapter of this thesis will provide an answer to the main research question. It will begin by outlining the main findings of the previous Chapter. The results will be related to the theoretical debate on normative power in Europe, which will help answering the final research question. Conclusion are also drawn on the limitations of this thesis.

### 1.3 Scientific and societal relevance

In 2022, the International Panel on Climate Change (IPCC) has published its 6<sup>th</sup> assessment report consisting of a variety of sub-reports. The reports highlight not only a pressing need to reduce CO<sub>2</sub> emissions in order to tackle climate change but strongly emphasize the necessity to protect forests and significantly reduce deforestation (IPCC, 2022). Results of analyzing variables that can influence the reduction of net emissions by 2030 indicate that “[r]educed conversion of forests and other ecosystems” and “[i]mproved sustainable forest management” hold great potential (IPCC, 2022, p. 51). Considering these findings, the study of the new proposal for a new European Timber Regulation can provide great insight into how the EU can contribute to combating global deforestation and forest degradation in the future. Studies show that “420 million hectares of forest – an area larger than the European Union – have been lost between 1990 and 2020” (European Commission, 2021, b, p. 6). In light of the fact, that the EU instruments designed to combat global deforestation have been in place for years, these figures are shocking. Assessment reports of the EU, academics and non-governmental organizations from around the world have pointed to existing European measures and instruments being insufficient, ineffective and subject to a wide range of implementation and enforcement challenges (Köthke, 2020; Marin Duran, 2020; WWF, 2019; Germanwatch 2019, ClientEarth, 2018; European Commission, 2021, a; European Commission, 2021, b; European Parliament, 2022).

In a time of warnings from the world's leading councils on climate change and biodiversity concerning the dangers of further deforestation, European instruments should be fully effective in the fight against global deforestation (IPCC, 2019; IPBES; 2019). Against this background, the study and analysis of the European Commission's proposal for a new Regulation to combat global deforestation can shed light on the extent to which a new instrument can sufficiently address this challenge.

## Chapter 2 Europe's environmental presence

In this chapter, the foundations of European competencies in the field of environmental action are explored and linked to a theoretical classification of the existing literature related to Europe's environmental action and the European Union Timber Regulation. Since the objective of this thesis is to review the incorporation of the identified shortcomings of the EUTR of 2010, it is appropriate to first highlight the relevant Treaty provisions and then deal with the current status of the Regulation. Therefore, the following sections will elaborate on the competencies provided by the treaties and how the European Union, in particular the EUTR, uses the provisions to take action in the environmental domain.

### 2.1 Legal framework

#### 2.1.1 External environmental action of the European Union

The EU is characterised by a broad foreign policy engagement in international environmental agreements, argues Marin Duran (2020). However, the EU was not always endowed with far-reaching foreign policy powers. According to Marin Duran (2020) and Falkner (2007), the process of developing external competencies in environmental matters began in the late 1980s. Following Falkner (2007), “[a] key condition for the transformation of the EU's international role was the creation of an explicit EU competence for environment” (p. 509). The Single European Act from 1987 has provided a first legal basis for EU's environmental powers which were strengthened by the Maastricht Treaty in 1993 (Falkner, 2007). Lastly, the Treaty of Amsterdam Treaty of 1999 ensured that the EU makes the promotion of sustainable development an integral part of all EU policies (Falkner, 2007; Marin Duran, 2020). Today, environmental policy plays a major role in European politics. Article 4(2) TFEU lays down that the area of environment falls under a shared competence between the EU and its Member States. Shared competencies are laid down in Article 2 TFEU and specify that MSs “shall exercise their competence to the extent that the Union has not exercised its competence” (European Union, 2012, a). In other words, the task of enacting legally binding instruments and thus exercising competence is left to the Member States until the EU decides to take action and exercises its competence.

In practice, a broad constitutional framework for environmental measures in the EU's external policy can be identified by means of various provisions. Article 3(3) and (5) of the TEU set out the general objectives of environmental protection, i.e. the protection and improvement of the quality of the environment, and Europe's contribution to sustainable development in its relations with the rest of the world (European Union, 2012, b). In addition, Article 11 of the TFEU establishes what is known as the environmental integration requirement stating that “[e]nvironmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities” (European

Union, 2012, a). Following Marin Duran (2020), Article 11 TFEU thereby “imposes a legal obligation upon the EU institutions to integrate environmental protection requirements when defining and implementing all Union policies” (Marin Duran, 2020, p. 388). Marin Duran (2020) comments on Article 11 TFEU by arguing that EU environmental objectives could be hindered or facilitated by developments in other policy areas, necessitating the “requirement for a continuous “greening” of all Union policies and activities” (Marin Duran, 2020, p. 388). According to her, the need to integrate environmental concerns is also reflected within the EU’s external policy, namely in Article 21(2) (f) TEU, which sets out the objectives and principles of the Union's external action and indicates to ensure a “high degree of cooperation in all fields of international relations, in order to: [...] improve the quality of the environment and the sustainable management of global natural resources [and] in order to ensure sustainable development“ (European Union, 2012, b; Marin Duran, 2020). Finally, the TFEU sets out the objectives of the Union's environmental policy in Article 191(1) and (2) stating that the EU's competencies should contribute to a set of environmental objectives and principles, both internally and externally (European Union, 2012, a).

### 2.1.2 FLEGT Action Plan

As several authors point out, since the EU was given explicit external competence for environmental affairs, it has increasingly used its environmental competencies, developing, e.g., the FLEGT Action Plan in the early 2000s, which is seen as an initial success (Vogler, 2005; Scheipers & Sicurelli, 2007; Marin Duran, 2020). The Plan lays down a package of measures to tackle the problem of illegal logging and related trade (European Commission, 2003). The Commission envisions the Action Plan as an instrument focusing on governance reforms and “demand-side measures designed to reduce the consumption of illegally harvested timber” (European Commission, 2003, p. 3). The Plan consists of two key elements designed to address the problem of illegal logging and associated trade. The first key component of the FLEGT Action Plan are Voluntary Partnership Agreements (VPAs) (EU FLEGT Facility, n.d., a). Each VPA represents a bilateral trade agreement which is negotiated between the EU and a country which engages in exporting timber or timber-related products (EU FLEGT Facility, n.d., a). Based on the 2005 FLEGT Regulation, VPAs set up “a licensing scheme for controlling the legality of timber imported into the EU” (Marin Duran, 2020, p. 379). In order to ensure the legality of timber being placed on the EU market, VPAs consist of clear definitions and mechanisms verifying compliance throughout the supply chain (Marin Duran, 2020). Following information from the EU, these steps directly contribute to improve forest governance in the affected timber-producing countries (EU FLEGT Facility, n.d., a). The second key component of the FLEGT Action Plan is the European Union Timber Regulation. The EUTR was adopted with the Council Regulation 995/2010 and “lays down obligations for operators placing timber on the market” (European Commission, 2021, e, p. 2). The proposal for this Regulation derived its legal basis from Article 175 of the Treaty establishing the European Community

(TEC) (European Commission, 2008). Article 175 of the TEC has been transferred to Article 192 of the TFEU outlining the competence of the Parliament and the Council to decide which action is to be taken in order to achieve objectives laid out in Article 191 (Treaty Establishing the European Community, 2002; European Union, 2012, a). Article 191 stipulates the following objectives: “1. Union policy on the environment shall contribute to pursuit of the following objectives: preserving, protecting and improving the quality of the environment, [...] prudent and rational utilisation of natural resources” (European Union, 2012, a).

### 2.1.3 European Union Timber Regulation

Entering into force in March 2013, the Regulation’s main concern is prohibiting the placement of illegally harvested timber on the EU market (Council Regulation 995/2010). To accomplish this, the Regulation sets out several core requirements. Article 4 specifies obligations of operators and requires them to “exercise due diligence” (Council Regulation 995/2010). The due diligence system obliges operators to conduct risk management. To this end, operators must provide “information about the sources and suppliers of the timber and timber products [...] including relevant information such as compliance with the applicable legislation” (Council Regulation 995/2010). Operators should then conduct risk assessments and possible mitigation measures based on this information in order to minimize the risk of illegally harvested timber being placed on the internal market. Article 7 and 8 of the Regulation require the establishment of monitoring organisations and competent authorities (CAs) (Council Regulation, 995/2010). Monitoring organizations are private entities that must be recognized by the European Commission, responsible for maintaining, evaluating and verifying a proper application of the due diligence system. In addition, Member States “shall designate one or more competent authorities responsible for the application of this Regulation” (Council Regulation, 995/2010, Article 8). Competent authorities can perform checks on both monitoring organisations as well as on operators and are further required to determine penalties for non-compliance with the Regulation in the event of failure or infringement (Council Regulation 995/2010, Article 8). Lastly, Article 19 highlights the responsibility of MSs to lay down rules on penalties applicable to infringements of the provisions of this Regulation and holds MSs responsible for ensuring their implementation (Regulation 995/2010).

The EUTR acknowledges the urgent action and addresses the problem of global deforestation by exercising EU’s competencies in the environmental domain. Following Henn, the EUTR thereby offers “promising regulatory pathways” (Henn, 2021, p. 343).

## 2.2 Theoretical framework

This part of the thesis deals with the revision of available literature on the EUTR as well as European external action in the field of environmental engagement. The review of the existing literature allows to draw conclusions on how the above-mentioned competencies of European environmental policy are to be placed in a theoretical debate on the externalization of European standards. To this end, the theory of Normative Power Europe is examined in detail.

### 2.2.1 Normative Power Europe

The EUTR is mainly concerned with combating deforestation, but is also seen as an instrument through which the EU presents itself internationally and seeks to externalise its values, making the EUTR well suited for consideration through the lens of NPE theory. In his “seminal work” Manners (2002) has examined the notion of Normative Power Europe (Scheipers & Sicurelli, 2007, p. 435). The approach of Normative Power Europe generally describes Europe’s international role in world politics and the incorporation of European values and norms into those politics. Or, as Manners (2002) puts it “a commitment to placing universal norms and principles at the centre of its relations with its Member States [...] and the world” (Manners, 2002, p. 241). In the article, Manners examines the case study of an international pursuit of abolishing the death penalty and concludes that the specific example serves “to illustrate a number of features of the EU increasingly exercising normative power as it seeks to redefine international norms in its own image” (Manners, 2002, p. 252). In a later work, Manners argues that the NPE approach offers important theoretical implications for the study of international relations beyond Europe (Manners, 2021). Further Manners has emphasized how the approach of normative power “predisposes [the EU] to act in a normative way in world politics” (Manners, 2002, p. 252). Thus, the concept of normative power provides a framework through which the external dimension of EU action can be examined.

In a recently published article Manners examined the link between the normative power approach and planetary politics in relation to EU external action underlining an active engagement of the EU in the external environmental dimension (Manners, 2021). This claim is confirmed by Marin Duran (2020). She adds that since it was given explicit external competence over environmental affairs, the “European Union has increasingly sought to assert itself as an ever more influential player in global environmental governance” (Marin Duran, 2020, pp. 371-372). Vogler’s work on global environmental governance shows that the EU can be classified as a global actor in terms of its environmental policy engagement, especially due to its ability to participate in international agreements of relevance to the environment (Vogler, 2005). According to Vogler (2005), practices and policy ideas in the field of environmental policy, alongside environmental requirements that occur within various forms of partnership and association agreements, demonstrate the appearance of the EU as a “disseminator of norms and as a

body that incorporates others in its policies of sustainability” (Vogler, 2005, p. 841). In this regard, Vogler elaborates on Manners' theory of NPE and identifies a set of principles to illustrate the externalization of European values (Vogler, 2005; Manners, 2002). According to Vogler, these include the precautionary principle, the polluter pays principle, the proximity principle, and the idea of integrating environmental protection into other policies, with all of the former found in Article 191 TFEU and the latter one in Article 11 TFEU, which, Vogler argues “have gained wide currency beyond the borders of the single market” (European Union, 2012, a; Vogler, 2005, p. 843). The principles mentioned here, reflected in the EU's environmental competencies mentioned above, illustrate Manners' claim that the EU externalizes universal norms and principles and incorporates a variety of environmental requirements into its policies. This is particularly evident in Articles 21 and 191 TFEU, which highlight key environmental objectives to which the Union's external policies and actions should contribute.

### 2.2.2 An “EUtopia”?

This portrayal of the EU is strongly criticized by Nicolaïdis and Howse (2002). They emphasize that the image the EU presents of itself is not what it actually is, but rather “an EUtopia” (Nicolaïdis and Howse, 2002, p. 767). Scheipers and Sicurelli (2007) address Nicolaïdis and Howse's argument and suggest that instead of exporting what the EU is, it tries to export what the EU would like to be. This idea is picked up by Falkner (2007) reflecting on the conception of Normative Power Europe with regards to its environmental dimension. He emphasizes the importance of critically examining the understanding of Europe as a normative power, especially with regards to Europe's external environmental policies (Falkner, 2007, p. 507). Falkner finds that “a considerable gap persists between the EU's support for universal norms and the reality of European international action” which “is often explained by reference to implementation problems but is in fact symptomatic of deeper tensions between competing normative aspirations and between different domestic interests” (Falkner, 2007, p. 522). Cited in Marin Duran (2020), Montini (2016) points to the argument put forward by various scholars that the integration principle, set out in Article 11 TFEU, is designed to assure that environmental protection is at least taken into consideration, yet not to prioritise environmental matters over other concerns (Montini, 2016; Marin Duran, 2020). Similarly, Marin Duran (2020) expresses criticism of the external competencies she previously presented. She finds that “[i]n sum, Article 11 TFEU does not entail a strictly enforceable obligation for the EU legislator to effectively integrate, or give precedence to, environmental considerations within the Union's external policy making [...] whether and how this is done is largely a matter of political appreciation” (Marin Duran, 2020, p. 389).

In this context, Mogera's (2012) conclusion holds up well to the current state of the debate. In her text, Morgera explains that the EU “has certainly taken action as a norm generator and exporter” using a

variety of external policy instruments (Morgera, 2012, p. 14). Nevertheless, Morgera's conclusion also indicates a questionable “effectiveness, coherence and credibility” of European external environmental action, since developing countries fear environmental standards to be imposed on them (Morgera, 2012). She points to a self-representation of the EU that, as Falkner (2007), Marin Duran (2020), and Montini (2016) have made clear, should be questioned profoundly. Ultimately, the existing literature in the field of EU environmental policy and the European Timber Regulation is not concerned with the question of whether the EU incorporates certain standards and norms into its foreign policy, as Manners (2002), Vogler (2005), and Marin Duran (2020) have adequately demonstrated. Rather, the existing criticism centers on the fact that a considerable gap persists between the standards that the EU externalizes and appears to advocate to the outside world on the one hand, and the reality of European international action on the other (Nicolaidis & Howse, 2002; Falkner, 2007; Scheipers & Sicurelli, 2007; Marin Duran, 2020; Morgera, 2012). Current literature and assessment reports on the EUTR argue that the EU is significantly responsible for this gap due to weak enforcement of its instruments (Köthke, 2020; Marin Duran, 2020; WWF, 2019; Germanwatch 2019).

This assertion will be studied in the next chapter. It will be seen whether the European Timber Regulation can be assigned to the theory of Normative Power Europe as elaborated above. Then, it will be examined in detail how the implementation and enforcement of the Regulation has been functioning within the EU, which major shortcomings could be identified and to what extent these have been incorporated into the new proposal for a deforestation instrument.

## 2.3 Conclusion

Marin Duran (2020) and Falkner (2007) have adequately shown how exercising competence in the field of environment is relatively new for the EU. Environmental responsibilities developed in the late 1980s, but today possess a number of requirements that must be taken into account in shaping EU policies. Both the FLEGT Action Plan and the EUTR utilize expanding environmental abilities and exercise the competencies that have been delegated to the EU to take a leading position in the international community. To answer the sub-question which competencies the EU has in order to engage in external environmental action, this chapter has provided various treaty provisions, for instance the environmental integration requirement under Article 11 TFEU, that present the Union's ability to take action in the environmental domain. To then further examine how environmental competencies are envisioned in the Regulation, the EUTR was shortly introduced and it was shown how it integrates multiple environmental standards, externalizing European norms and values, and placing these “universal norms and principles at the centre of its relations [with] the world” (Manners, 2002, p. 241). The EUTR thus builds on a variety of environmental competencies and standards and envisions the concept of NPE. In this context, the EU acts internationally as a disseminator of standards and as an entity that involves



others in its sustainability policy (Vogler, 2005). Criticism of Marin Duran (2020), Nicolaïdis and Howse (2002), and Falkner (2007) was brought forward to substantially present a gap between the standards that the EU advocates and the reality of the functioning of EU instruments, particularly in the environmental domain. This critique is essential to criticize the EU's self-promotion as an exporter and advocate of progressive environmental norms and values and will be addressed again at a later point in the thesis.

## Chapter 3 Success or Failure?

This chapter will look at the analysis of the EUTR as well as the new proposal for a global deforestation instrument. For this purpose, the first part of the chapter asks to what extent the EUTR can be considered a success in reducing or mitigating deforestation, whereby attention is also devoted to whether and how the European Union has realized the above-mentioned approach of Normative Power Europe in the Regulation. Subsequently, the second part reveals how identified shortcomings have been incorporated in the proposal for a new instrument.

### 3.1 Relevant achievements

In the chapter above, it was argued that the EU is using its external competencies in the environmental field to emerge as a global actor (Vogler, 2005; Manners, 2002; Marin Duran, 2020). In doing so, Vogler (2005) emphasized the principles of Articles 11 and 191 TFEU to illustrate the way in which the European Union externalizes its norms and values packaged in external policies. Marin Durn (2020) finds this externalization to be present also in other instruments, she emphasizes that the EU's external environmental policy uses VPAs as a way of encouraging partner-countries to upgrade "their legal and administrative frameworks on forest management" (p. 381). By doing so, the EU acts as a co-creator of environmental standards (Marin Duran, 2020). She further refers to the EUTR and states: "[t]he Regulation creates an additional incentive for third countries to enter into VPA negotiations with the Union" (Marin Duran, 2020, p. 382). Acknowledging the fact that the EU uses its external environmental policy instruments to disseminate its ideas and standards, the question arises whether the EUTR, as an instrument of the EU that has integrated many of the above principles as fixed components, could achieve success in reducing or mitigating global deforestation.

A number of documents issued by the EU in relation to the EUTR confirm accomplishments achieved by the Regulation. By referring to the Fitness Check, the proposal argues that the EUTR has led to an improved situation in third countries, even those that have not engaged into VPAs (European Commission, 2021, e). The Fitness Check was issued by the Commission and assesses the functioning and effectiveness of both the EUTR and the FLEGT Action Plan in light of the instruments' task to halt illegal logging and related trade and to prevent illegally harvested timber and timber products from being placed on the EU market (European Commission, 2021, a). The improved situation in third countries mentioned in the proposal is corroborated by the results of a stakeholder analysis carried out, which states that 60% of respondents from various stakeholder groups consider the EUTR to have a moderate to very significant impact on "increased reforms in timber-producing countries aiming to achieve a higher level of transparency" (European Commission, 2021, a, pp. 20-21). Even more respondents have confirmed that the EUTR has encouraged investments in clean and transparent supply chains (European Commission, 2021, a). Moreover, a total 93% have confirmed the EUTR to show at least a slight impact

on “reducing the amount of illegally harvested and traded timber products placed on the EU market” (European Commission, 2021, a, p. 21). This is confirmed by the findings of Hoare (2015) and Gan (2016), which indicate that imports of illegally harvested timber have greatly reduced since the introduction of the FLEGT Action Plan. Next to an improved situation in third countries and a reduction of illegally harvested timber on the EU market, the “EUTR legislation has also inspired the development of demand-side legislation in other non-EU countries (e.g. Australia, South Korea and Japan)” (European Commission, 2021, a, p. 39). This is supported by a 2015 evaluation report of the European Court of Auditors on the FLEGT Action Plan, in which it identified the FLEGT Action Plan and its instruments as the most effective tool for promoting policy dialogue with other countries (European Court of Auditors, 2015).

However, it is worth mentioning that while Gan (2016) and Hoare (2015) confirm that less illegally harvested timber was imported into the EU market, this does not indicate that less timber was illegally harvested globally. Rather, as the authors emphasize, the destination of illegally harvested timber has changed. Hoare (2015) shows that in 2013 the amount of illegally imported timber increased by 50% in China, India and Vietnam. Within their work they also point to European instruments that are designed to address the issue of illegal logging. If the introduction of European measures to prevent illegal logging only leads to a shift in the place to which illegally logged timber is exported, the question arises as to whether the portrayal of Europe as a promoter of advanced environmental standards, according to the NPE concept, is really adequate. Perhaps we really are in more of an "EUtopia", as Nicolaïdis and Howse said (2002, p. 767). Taking this into account, the following section will take an in-depth look on the major shortcomings of the EUTR.

### 3.2 Identification of shortcomings

Article 20 of the EUTR contains a reporting scheme that requires Member States to submit a report on the implementation of this Regulation biennially, which has become an annual obligation in 2019 (Council Regulation 995/2010). The Commission has summarized and published these findings in evaluation reports. The evaluation report of 2016, concludes that the Regulation has the potential to achieve its goals, however, further consistent efforts are needed, without which effective application cannot be achieved (European Commission, 2016). Three years later, the Commission has issued a Communication on stepping up EU Action to Protect and Restore the World's Forests. The paper notes that “[t]he EU has put in place a variety of regulatory and non-regulatory actions to deal with the challenges of deforestation and forest degradation”, however “the rate of deforestation in other regions, namely in tropical areas, continues at alarming levels” (European Commission, 2019, p. 1). With that, six years after the EUTR has come into force, European authorities recognize that the Regulation does not meet its overall objective. The communication further concludes a consistent need for strengthening

the implementation of EUTR, implying that various aspects of the Regulation require improvements in order to be fully effective. These are examined in the following.

### 3.2.1 Difficulties for SMEs

The United Nations Environment World Conservation Monitoring Centre has published the results of the Member States' biennial implementation reports from 2015 to 2017, stressing that small and medium-sized enterprises experienced problems in implementing the due diligence system (UNEP-WCMC, 2018). Similarly, the 2017-2019 report stresses to consider "the situation and support needs of micro, small and medium sized enterprises" (UNEP-WCMC, 2020, p. 64). The Fitness Check acknowledges issues faced by smaller market participants in relation to the due diligence system, speaking of "limited awareness and understanding of the obligation" but also of "requirements that are too complex and resource-intensive for SMEs", which subsequently lead to poor enforcement (European Commission 2021, a, p. 22). This is consistent with the findings of Köthke, highlighting that predominantly smaller operators were found to be unaware of the Regulation and consequently less often compliant mainly due to "[t]heir low information status" (Köthke, 2020, p. 1). Both Köthke and the 2021 Fitness Check conclude that this results in the due diligence carried out by SMEs not having a positive impact on the legality of the timber placed on the market. Consequently, different requirements are needed depending on the size of an operator. Similarly, a report previously published by Jonsson et al. (2015) argues that otherwise the risk arises that large, export-oriented companies are given advantages over smaller companies in both exporting and importing countries.

In summary, due to their size and limited capabilities, SMEs do not have the same opportunities to obtain information on all the necessary requirements and mechanisms and to adequately implement them, and are consequently disadvantaged compared to larger market participants. Solely in the case of Germany, more than 2000 companies fall under the scope of the EUTR, the vast majority of it are SMEs, necessitating a reconsideration of their concerns (Köthke, 2020).

### 3.2.2 Implementation and enforcement challenges

While the Commission recognizes some successes in its evaluation reports, the majority of all reports referred to in this thesis speak of one recurring salient problem: implementation and enforcement challenges (European Commission, 2021, a; WWF, 2019). In their reports on the EUTR, WWF and the NGO ClientEarth point to significant shortcomings in the implementation and enforcement of the Regulation. They call for Member States to "now (re)affirm their commitment to properly control the implementation of the EUTR" (WWF, 2019, p. 5). Similarly, the Fitness Check observes that "[w]hile all MS have established legislative frameworks to implement the EUTR, the level to which the national

provisions provide for enforcement differs” (European Commission, 2021, a, p. 22). According to WWF (2019) and Germanwatch (2019), shortcomings amount to significant differences in the number of inspections market participants have to undergo, widely differing penalties, and differently resourced CAs in MSs. This is acknowledged by the Fitness Check which finds that above all varying numbers of checks on market participants and large variations in penalties are the reason for significant differences in the stringency of enforcement (European Commission, 2021, a). This leads to a fundamental problem. The Fitness Check declares “[e]vidence exists that operators clearly see a variation in the stringency with which the EUTR is enforced across MS (e.g. number of checks, level of penalties), which leads to attempts observed to import riskier timber via specific MS” (European Commission, 2021, a, p. 39). Following the EUTR evaluation report published by WWF, this ultimately resulted in the EUTR failing to fulfil its function to “stop imports of illegal timber products” (WWF, 2019, p. 5). Section 2.2 of this thesis presented the argument made by several authors that the EU is largely responsible for the gap that exists between the environmental standards externalized by the EU and the reality of European international action. The described inadequacy of the EUTR clearly shows that the instruments the EU uses for external environmental policy do not achieve their objectives due to weak implementation and enforcement mechanisms. Thus, in this regard, the EU is largely responsible for maintaining this gap.

### 3.2.3 Insufficient sanctions and penalties

The issue of varying sanctions across the Member States has already been addressed in the previous section. However, a separate consideration of sanctions as a shortcoming provides the possibility to clarify the problems arising from inconsistent implementation of the EUTR. As outlined above, Article 19 of the Regulation obligates Member States to “lay down rules on penalties applicable to infringements of the provisions of this Regulation” (Council Regulation 995/2010). Further it is noted that “[t]he penalties provided for must be effective, proportionate and dissuasive” (Council Regulation 995/2010). However, the latest background analysis summarizing the findings of all implementation reports of the Member States finds that “[t]he level of penalties differs considerably between countries, as does the approach taken to ensure effectiveness, proportionality and dissuasiveness of penalties actually applied” (UNEP-WCMC, 2020, p. 1). The Fitness Check explains the occurring differences in enforcement by the fact that the determination and definition of sanctions is left to the MSs alone (European Commission, 2021, a). However, the problem is not only that operators attempt to import illegally harvested timber through certain member states, as mentioned above, but also that many sanctions are insufficiently designed (WWF, 2019). In their assessment report, the WWF finds imposed fines to be often times significantly lower than the maximum possible penalties as specified in national laws as well as sanctions to be imposed only for repeated violations (WWF, 2019). Furthermore, specific cases show that “[n]otifications of non-compliance are sent to operators without application of penalties or sanctions” (WWF, 2019, p. 9). This is consistent with the findings of Germanwatch (2019), which

examined the sanctions specifically for the case of Germany and found that a lack of enforcement significantly reduces the impact of the EUTR. Additionally, they note that the law, implementing the EUTR into national legislation, only considers the import of illegally harvested timber as a criminal act under certain conditions, namely when the operator acts intentionally and with a purpose of personal gain, which presents, according to both scholars and legal experts, penalties that are too modest to actually provide a dissuasive effect (Germanwatch, 2019; ClieEarth, 2018).

A 2019 report on key obligations and practical aspects of the application of the EUTR analysed the legal frameworks designed to enforce the EUTR for each Member States (UNEP-WCMC, 2019). The report highlights the wide variation in applicable sanctions (UNEP-WCMC, 2019). It is apparent that many countries have only implemented certain aspects into national law. While almost all countries have imposed administrative fines for violations of obligations related to prohibitions, due diligence, traceability, and reporting requirements, criminal fines are rarely listed by member states. While for example Denmark and France can also impose criminal fines for violations of any requirement, national law most other EU countries does not provide for criminal fines at all (UNEP-WCMC, 2019). The amount of possible penalties also varies greatly. While in Belgium administrative penalties up to €1,600,000 and criminal fines up to €32,000,000 can be imposed, other states do not provide for any possible criminal fines in their national legislation (UNEP-WCMC, 2019).

Such a fundamentally different application of penalties and sanctions undermines the ability of the Regulation to be effective in achieving its objectives. As a measure to address this issue, WWF proposes to bring together key stakeholders "including the CAs and civil society" at both Member State and European level and to define effective, proportionate and dissuasive penalties in a transparent manner (WWF, 2019, p. 10). Furthermore, WWF (2019) demands that the practice of applying penalties and sanctions only after repeated violations of the Regulation must be halted. "Six years after the entry into force of the EUTR, penalties and sanctions should be applied immediately" (WWF, 2019, p. 10).

### 3.2.4 Inadequate product scope & definitions

While the objective of the EUTR was to tackle deforestation concerned with the trade of timber and timber products, various studies today point to the fact that agricultural expansion is now responsible for almost 80% of total deforestation, with European demand for products directly related to deforestation contributing significantly to the problem (European Commission, n.d. b; European Commission, 2021, b; European Commission, 2021, c). This is in line with findings of the Fitness Check, stating that "agricultural expansion is now regarded as the main driver of deforestation" (European Commission, 2021, a, p. 6). Therefore, the product scope urgently needs to be reviewed and amended. The Impact Assessment accompanying the proposal for a new instrument to combat deforestation

accordingly assessed what needs to be considered and integrated in the review of the product scope (European Commission, 2021, b). As the Impact Assessment notes, studies show consensus on which commodities the EU's embodied deforestation is mainly concentrated on, namely "beef, wood, palm oil, soya, coffee, cocoa, rubber and maize" (European Commission, 2021, b, p. 32). In addition, it has been argued that some stakeholders have also pointed to the need to expand the list to also cover sugar or meat other than beef (European Commission, 2021, b).

Other critics centres on the issue of insufficient definitions. A report issued by ClientEarth (2021), examining possible changes under the EUTR and the proposal for a new deforestation instrument, points to several changes regarding the inclusion of new definitions. The Fitness Check addresses this concern by noting that "a lack of clarity regarding key definitions and concepts and their interpretation and implementation in national legislation have posed critical challenges for implementation" (European Commission, 2021, a, p. 43). The issue of insufficient definitions will be addressed below in detail.

Numerous reports referred to above highlight a European demand of commodities that significantly contribute to deforestation. Critical voices as well as reports issued by the Commission have sufficiently shown an urgent need to reconsider the scope of products and include deforestation-relevant commodities into the Regulation (ClientEarth, 2021; European Commission, b).

### 3.2.5 The EUTR – a success?

Council Regulation 995/2010 represents an instrument to combat global deforestation and forest degradation, which has had some impact on the occurrence of global deforestation since its entry into force in 2013. The answer to the first sub-question of this chapter, to what extent the EUTR can be considered a success in reducing or mitigating deforestation, must take into account the fact that it is difficult to provide actual and specifically detailed data on a declining trend in the import of illegally harvested timber into the EU. The results of Hoare (2015) and Gan (2016), presented above, do suggest that the EU has imported less illegal timber since the introduction of the FLEGT Action Plan. However, it is emphasized that the measures have rather shifted the problem of importing illegal timber, the underlying question can consequently be answered with: only partially. At the same time the Fitness Check stress "continuing reports of significant illegal activity in some of EU's key sources of imports such as Brazil, Russia, Ukraine, Myanmar [...]", acknowledging the fact that the issue has not been solved accordingly (European Commission, 2021, a, p. 24). Recent developments of the EU as well as international partners have reaffirmed the importance of addressing global deforestation and forest degradation in order to decrease greenhouse gas emission and biodiversity loss. The leading Councils of climate change and biodiversity have again emphasized the urgency for taking action in their latest reports (IPCC, 2019; IPBES 2019). Against this background, a European Regulation cannot be characterized by profound implementation and enforcement challenges. The following section will

therefore examine the extent to which the identified deficits of the EUTR are addressed in the proposal for a new deforestation instrument in order to provide an effective tool to sufficiently combat global deforestation.

### 3.3 Proposal for a new deforestation instrument

#### 3.3.1 Introduction of the proposal

The proposal for a Regulation of the European Parliament and of the Council on prohibiting products related to deforestation to be placed on the EU market, published in November 2021, outlines an initiative designed to “minimise consumption of products coming from supply chains associated with deforestation or forest degradation” (European Commission, 2021, e, p. 1). It aims to guarantee that products on the EU market being bought, used and consumed do not contribute to global deforestation, reduce carbon emission due to European consumption of relevant commodities and “address any deforestation – not just illegal – driven by agricultural expansion” (European Commission, n.d., c). This part of the chapter aims to determine whether the identified deficits occurred in the application of the EUTR, have been incorporated by the new proposal.

#### 3.3.2 Small and medium-sized enterprises

Section three of the proposal, highlighting results of various evaluation reports, acknowledges difficulties that have emerged for SMEs (European Commission, 2021, e). Further, the proposal emphasises that a distinction is to be made between obligations for larger companies and SMEs. Accordingly, paragraphs 2 and 3 of Article 6 of the proposal, laying down obligations of traders, highlight the requirements on which SMEs must provide information, mentioning a record of their suppliers and customers and the obligation to keep relevant information and submit it on request to a CA (European Commission, 2021, e). Following the Commission, these requirements for SMEs are “estimated to involve only negligible costs, as such information can be expected to be part of normal business operation” (European Commission, 2021, e, p. 13). Additionally, paragraph 4 requires SMEs to inform the competent authorities immediately in case of information being revealed indicating that the commodities concerned do not comply with the requirements of the Regulation (European Commission, 2021, e). Paragraph 5 notes that “[t]raders which are not SMEs shall be considered operators” (European Commission, 2021, e, p. 38). This implies that companies who do not qualify as SMEs must comply with the normal requirements for entrepreneurs. The requirements that consequently apply to SMEs are more cost-effective and easier to fulfil (European Commission, 2021, e).

The proposal hereby responds to the need for simpler regulations for SMEs, highlighting that large traders in particular have a significant impact on supply chains and play the most important role in



ensuring that the commodities and products concerned are deforestation-free and thus have to meet stricter requirements (European Commission, 2021, e). However, Köthke (2020) emphasizes the continuing need for broad information channels, especially for SMEs, that can counteract the existing information asymmetry between different market participants. It is therefore questionable whether the proposed measures will sufficiently improve the uneven conditions for SMEs.

### 3.3.3 Implementation and enforcement of the Regulation

According to the Commission's choice of instrument, a Regulation is needed "to ensure the highest level of harmonization to avoid the coexistence of different standards between Member States" (European Commission, 2021, e, p. 6). In this regard, changes in implementation and enforcement requirements of the Regulation are to be expected. While Article 10 of the EUTR requires the competent authorities of the Member States to carry out mandatory checks, whereas paragraph 3 of Article 10 only suggests what these checks may contain, the proposal describes in Article 15(1) a number of requirements that inspections must fulfil (Council Regulation 995/2010; European Commission, 2021, e). Accordingly, besides an "examination of the due diligence system" and an "examination of documentation and records that demonstrate the proper functioning of the due diligence system", the list requires inspections to include an "examination of documentation and records that demonstrate the compliance of a specific product or commodity that the operator has placed, intends to place on or export from the Union market with the requirements of this Regulation" (European Commission, 2021, e, p. 45). This represents a noticeably detailed shift in requirements that can enable competent authorities to detect violations more effectively.

The EP Committee on the Environment, Public Health and Food Safety published a draft report in May 2022, which contains requested amendments for the proposal (European Parliament, 2022). One requested amendment is concerned with Article 14, prescribing the obligations to perform checks. Article 14 paragraph 9 of the proposal specifies that annual checks by competent authorities must control at least 5% of operators and 5% of the quantity of each of the products concerned, whereas the Committee of the European Parliament requires at least 10% of the operators and also at least 10% of the products concerned to be checked (European Commission, 2021, e; European Parliament, 2022). With the introduction of a minimum percentage of market participants that must be checked, the proposal incorporates the complaint of an insufficient quantity of checks (European Commission, 2021, e). Whether the figures proposed by the Commission are adequate, remains to be seen.

WWF (2019) has pointed to visible lack of communication between CAs. In the proposal, more requirements for cooperation and the exchange of information are made apparent. For example, according to the proposal, CAs should immediately notify authorities in other countries when violations are detected and should provide necessary information to other CAs if requested (European

Commission, 2021, e). The report of the European Parliament emphasises that this cooperation and exchange should not only refer to the respective competent authorities, but should also include other participants, such as “civil society organisations and trade unions” that come together (European Parliament, 2022, p. 59).

In summary, the vast majority of the identified deficiencies related to implementation and enforcement have been addressed in the proposal. In most cases, such as communication between competent authorities and the significantly expanded requirements for carrying out checks, identifiable changes have been made that may prove effective enforcement of the Regulation.

### 3.3.4 Sanctions

The fact that the penalties and sanctions applied are inadequately designed and incorporated with fundamental differences in the respective member states is one of the most recognised shortcomings of the 2010 EU Timber Regulation. In addition to WWF (2019), Germanwatch (2019) and ClientEarth (2018), the Special Report of the European Court of Auditors, which examines EU funding for biodiversity and climate change, also comes to the conclusion that missing sanctions or insufficient penalties massively limit the enforcement of the Regulation (European Court of Auditors, 2021). For this reason, the proposal has once more stressed “[t]he existence and the application of effective proportionate and dissuasive penalties in the national systems is a critical element to element the effective and uniform implementation of this Regulation across the Union” (European Commission, 2021, e, p. 17).

In fact, there is a noticeable change with regard to sanctions applied in the 2010 Timber Regulation. While Article 19(2) of the EUTR on sanctions only provides suggestions that Member States may include in their list of sanctions, Article 23(2) of the new proposal speaks of penalties that have to meet minimum requirements (Council Regulation No 995/2010; European Commission, 2021, e). These include a number of important elements. Article 23 (2) section (a) lays down fines that have to be “proportionate to the environmental damage and the value of the relevant commodities [...] calculating the level of such fines in such way as to make sure that they effectively deprive those responsible of the economic benefits derived from their infringements, and gradually increasing the level of such fines for repeated infringements” (European Commission, 2021, e, p. 47). The important difference to the EUTR is that these requirements must now be incorporated into the sanctions and penalties, meaning that the calculation of the penalties can be linked more effectively to the amount of damage caused or the revenue generated by market participants as a result of the infringement. Additionally, “the maximum amount of such fines shall be at least 4% of the operators or trader’s annual turnover” (European Commission, 2021, e, pp. 47-48). This addition ensures that a minimum level of penalties is provided for in all EU Member States. Along with the other requirements that Member States must now introduce, it should

no longer be possible for market participants to choose the Member State with the lowest penalties for importing illegal timber.

It seems that the proposal has taken the fundamental problem into account. The European Parliament's amendment report notes that cases of "serious or repeated infringements" shall be sanctioned with the suspension of the right to place the goods and products concerned on the Union market (European Parliament, 2022, p. 67). In summary, a change can be noted in the prescribed enforcement of sanctions and penalties. Minimum requirements for sanctions and a percentage calculated of the annual turnover of operators provide clear opportunities for stricter enforcement of the Regulation. The proposal argues that the new measures serve the purpose of ensuring the effectiveness, proportionality and dissuasiveness of penalties (European Commission, 2021, e). It remains to be seen whether the urgency of the IPCC and IPBES will be recognised and effective implementation of the Regulation will be realised immediately.

### 3.3.5 Product scope and definitions

Today, agricultural expansion is considered the main driver of deforestation and forest degradation. This is due to a growing global demand for goods such as palm oil, soy, coffee, cocoa, beef, rubber and maize, of which the EU continues to be a "relevant consumer" (European Commission, 2021, e, p. 1). Various studies urgently request a reconsideration and amendment of the product scope covered by this Regulation (European Commission, 2021, a; European Commission, 2021, b).

Previously, results of the Impact Assessment were presented, showing that embodied deforestation in the EU is mainly concentrated on the commodities beef, wood, palm oil, soya, coffee, cocoa, rubber, and maize (European Commission, 2021, b). The Impact Assessment also shows that there is a high level of support for the inclusion of all these commodities into the product scope of the new proposal (European Commission, 2021, b). Nevertheless, according to the current status of the proposal, so far only "relevant commodities" are included, which contain cattle, cocoa, coffee, oil palm, soya, and wood, and "relevant products" that result from the utilisation of the aforementioned products (European Commission, 2021, e, p. 34). It must be noted that expanding the product scope is an important step in addressing the overall objective of reducing global deforestation, but it remains questionable why, although several EU reports have identified a wider range of products as directly responsible for global deforestation, not all of the identified commodities have been included into the scope of the proposal. The Impact Assessment justifies the current choice of commodities by arguing that a "large effort and considerable financial and administrative burden" would be required to include more products (European Commission, 2021, b, p. 33). However, it is emphasised that the consideration of all relevant products is fundamentally essential in order to avoid leakage problems (European Commission, 2021, b). Leakage problems, according to the Impact Assessment, are situations in which deforestation

associated with EU consumption is reduced, “but at the same time unsustainable production activities would either be transferred to other commodities not in scope of the Regulation or by switching to less discerning markets [...], potentially reducing the overall impact of the EU intervention” (European Commission, 2021, b, p. 65). One of the examples given is the “[e]xpansion of agricultural production into natural non-forest ecosystem with high nature values, like natural savannah, grassland or wetland ecosystems” (European Commission, 2021, b, p. 66).

In this context, the European Parliament demands that the deforestation-related products rubber and maize are added to the product scope as well as that the proposal does not exclusively refer to deforestation and forest degradation (European Parliament, 2022). Instead of solely highlighting the fight against deforestation and forest degradation, the European Parliament calls for the description of the overall objective of this Regulation to be changed to “fighting against deforestation, natural ecosystem conversion and natural ecosystem and forest degradation by reducing the contribution of consumption in the Union” (European Parliament, 2022, p. 26). Both the integration of rubber and maize into the list of relevant products as well as the consideration of other ecosystems, such as “natural savanna, grassland, or wetland ecosystems”, could significantly reduce the risk of market participants evading Regulation and burdening other ecosystems with the cultivation of the aforementioned commodities (European Commission, 2021, b, p. 66).

Similarly, a request is made to complement the outlined definitions in the proposal. Article 2 of the proposal lays down definitions that apply to the Regulation (European Commission, 2021, e). In comparison to the EUTR, several new definitions can be observed of which two need to be considered in detail (European Commission, 2021, e). Deforestation, according to Article 2(1), “means the conversion of forest to agricultural use, whether human-induced or not” (European Commission, 2021, e, p. 34). With regard to this definition, the EP demands a broader focus that also applies to “the conversion of forests that are not plantation forests into plantation forests” (European Parliament, 2022, p. 29). Comparable criticism was brought forward by ClientEarth (2021), arguing that definitions are provided in an insufficient manner, referring primarily to the term “deforestation-free”. According to the proposal, it means “(a) that the relevant commodities and products, including those used for or contained in relevant products, were produced on land that has not been subject to deforestation after December 31, 2020, and (b) that the wood has been harvested from the forest without inducing forest degradation after December 31, 2020” (European Commission, 2021, e, p. 35). The European Parliament takes a similar view to ClientEarth and amends Article 2(8)(a) as follows “[...] were produced on land that has not been subject to deforestation or natural ecosystem conversion after December 31, 2007” and paragraph 8(b) as “relevant commodities have been produced without inducing or contributing to forest or ecosystem degradation after December 31, 2007”. The proposed definition of “deforestation-free” in the proposal would legalise all deforestation, legal or illegal, carried out before 31 December 2020. This is fundamentally contradictory to both the EU's ambitions as a promoter of

progressive environmental standards and the claims made by the IPPC and IPBES on how to address deforestation. This again calls into question whether the EU should be perceived as its normative power in the field of the environment.

In conclusion, the proposal for a new Regulation does cover a remarkably wider range of products, compared to the EUTR. Arguably, this is due to a shift in the drivers of global deforestation and forest degradation. Evidence was provided that the scope of products should be amended by rubber and maize (European Commission, 2021, b; European Parliament, 2022). Considering that the proposal is intended to address "any deforestation", the justification for not including these goods in the product scope remains questionable (European Commission, n.d., c). Furthermore, the acceptance of deforestation that occurred before December 2020 seems to massively conflict with the goal of protecting forests. Various new definitions were added to the scope of the proposed Regulation, mainly due to a wider range of aspects it is responsible for now. The definitions of "deforestation" and "deforestation-free" have been frequently criticised for being deficient (ClientEarth, 2021; European Parliament, 2022).

### 3.3.6 Summary of findings

The second part of this Chapter has outlined the proposal for a new Regulation aiming to address the issue of global deforestation. The sections above provide an overview of the main aspects of the proposal. As the examples of the change of regulations for SMEs, the introduction of new conditions for carrying out checks, or the minimum requirements for sanctions and fines show, obligations for implementation and enforcement have changed significantly compared to the EUTR (European Commission, 2021, e). As argued in the sections above, several aspects exist which are strongly criticised and should be reconsidered (WWF, 2019; ClientEarth, 2018; ClientEarth, 2021; European Parliament, 2022; Germanwatch, 2019; European Court of Auditors, 2021). Respectively, the proposal does provide several sections in which the conduction of reviewing certain aspects is highlighted. For instance, the product range will be reviewed and updated regularly, and the reporting framework is set to be reviewed after three years in order to identify any issues and potential improvements (European Commission, 2021, e).

Having this in mind, and providing an answer to the sub-question, it can be argued that the vast majority of identified shortcomings have been addressed within the Proposal. Visible improvements could be achieved regarding the requirements for SMEs, as well as in certain aspects of implementation and enforcement possibilities of the Regulation, namely requirements for the conduction of checks and an improved communication between CAs. Similarly, achievements can be seen with regard to sanctions and the product scope of the Regulation with a view to a significantly expanded product range and the application of stricter sanctions. However, the latter two shortcomings are subject to a wide range of criticism highlighting that improvements are necessary to ensure full effectiveness of the instrument.

A following conclusion will place the key results of this Chapter into the overall objective of the thesis. The final fourth Chapter will connect the findings of the respective findings and provide an answer to the main research question.

### 3.4 Conclusion

This Chapter has provided insights on both the EUTR as well as the new proposal for a Regulation to combat global deforestation. It was shown that the proposal has undergone some remarkable changes that were demanded by various organizations as well as a variety of assessment reports published by the European Union (European Commission, 2021, a; European Commission, 2021, b; European Commission, 2021, c; WWF, 2019; ClientEarth, 2018; Germanwatch, 2019).

Section 2.2.1 examined the arguments of several authors who emphasize that the EU can be seen as disseminating and promoting its norms and values, especially in the environmental field, by incorporating third parties in its policies (Vogler, 2005; Marin Duran, 2020; Manners, 2002; Morgera, 2012). This assertion finds two different practical applications in this chapter, which need to be considered separately. As outlined at the beginning of the chapter, the introduction of the EUTR in the European Union (and the EEA) has inspired other non-EU countries to introduce similar legislative processes. In the light of the Normative Power Europe approach, this can be considered a positive development, as the instruments developed by the EU and implemented internationally generate impulses and effects for the goal of combating global deforestation beyond the EU's sphere of influence. On the other hand, however, many authors emphasise that the EU is promoting its standards and values internationally on a large scale, although the enforcement of its policy instruments within the EU is marked by substantial challenges in terms of implementation and enforcement (Nicolaidis & Howse, 2002; Falkner, 2007; Scheipers & Sicurelli, 2007; Marin Duran, 2020; Morgera, 2012; Köthke, 2020). The identified “considerable gap [that] persists between the EU’s support for universal norms and the reality of European international action” is a consequence of disparate application of instruments within the EU (Falkner, 2007, p. 522). This inconsistent assessment, outlined in detail in Part 3.2 on the shortcomings of the EUTR, confirms the authors' claim that the EU is fundamentally responsible for the differences in the externalisation of values and norms and the reality of its environmental governance.

## Chapter 4 What next?

### 4.1 Conclusion

This thesis has examined the application of the 2010 EU Timber Regulation and analysed the proposal for a new deforestation Regulation published by the European Commission in November 2021 (Council Regulation 995/2010). In order to provide an adequate answer to the main research question, *to what extent does the proposed global deforestation instrument solves the implementation and enforcement challenges emerged in the application of the EU Timber Regulation*, a number of elements need to be taken into account.

First, the analysis of the EU Timber Regulation has revealed substantial shortcomings that have emerged in the application of the instrument since 2013. A Regulation which is marked by fundamental problems in implementation and enforcement, is prevented from achieving its overarching goal of halting global deforestation. Against this background, and in line with the pressing demand for action by the two leading Councils, the IPCC and the IPBES, the Commission has published the proposal for a new instrument to address the problem of deforestation in a sufficient manner. Second, as the examples, elaborated on in section 3.3, show, the proposal addresses the vast majority of identified shortcomings from the EUTR. However, the analysis of section 3.3 also reveals substantial shortcoming potentially limiting the effectiveness of the new Regulation to be persistent. At this point, a reference must be drawn to the limitations of this work. The analysis has examined the proposal, which means that the final instrument has not yet been finalized. Additionally, the Regulations impact cannot be observed immediately after its entry into force, but requires time to become visible. Therefore, further research is encouraged to examine both the implementation and enforcement of the regulation and, in particular, the impact the regulation might generate.

In terms of the theoretical application of the Normative Power Europe approach, the results of the analysis presented in section 3.4 were able to contrast two widely differing opinions. On the one hand, a view that sees definite advantages in the EU's international presence as a disseminator of important environmental standards and the application of the EUTR. The evidence presented at the beginning of Chapter 3 supports this claim, as the EUTR has encouraged the development of similar legislation in other non-EU countries (European Commission, 2021, a). This substantiates the assertion that the EU has become an influential player in global environmental governance through the externalisation of its standards and values, which in this particular example can be seen as a positive development. On the other hand, several authors mentioned above criticise the European Union for acting as a promoter of environmental standards, even though its instruments are characterised by substantial implementation problems. The findings of Gan (2016) and Hoare (2015) have provided shocking evidence of the effectiveness of the EUTR in combating the global trade in illegal timber, which fundamentally questions the existence of the EU as a normative force in terms of its impact on the environment.

Moreover, the fact that significant shortcomings persist in the proposal confirms what Nicolaïdis and Howse (2002) and Falkner (2007) have criticised, namely that there is a fundamental gap between the externalisation of norms and standards by the EU and the functioning of its environmental instruments.

In light of these findings the main research question can be answered as follows. The proposal for a new Regulation to combat EU driven deforestation globally does not sufficiently solve the identified implementation and enforcement related problems that have emerged since the EUTR entered into force in 2013. Persistent shortcomings that remain in the Regulation tend to limit the impact as well as the effectiveness of the instrument in combating global deforestation. However, drawing attention to the proposal in its current form, a broad majority of the identified deficits of the EUTR has been incorporated showing clear improvements. Against this background, and given that the EU intends to further develop a leading role in global environmental governance, it is worth emphasising that this proposal offers the opportunity to create a broad-based and sufficiently effective instrument, in particular assuming that it uses its review mechanism to assess the need to further modify the scope of the products or the need to include additional ecosystems into its definitions, thus using its full competence to adequately address global deforestation and forest degradation in any matter. Because this is how the EU should exercise its normative power, and what other states in the world should take inspiration from, so that the new EUTR does not become a false promise.



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