

**REPLIES OF THE EUROPEAN COMMISSION TO THE EUROPEAN COURT OF
AUDITORS SPECIAL REPORT
“EU SUPPORT FOR BIODIVERSITY AND CLIMATE CHANGE IN EU FORESTS:
POSITIVE BUT LIMITED RESULTS”**

EXECUTIVE SUMMARY

Common Commission reply to paragraphs I. to IV.:

As announced in the European Green Deal Communication, the Commission adopted a New EU Forest Strategy for 2030¹ covering the whole forest cycle and promoting the many services that forests provide. Building on the 2030 EU Biodiversity Strategy, the EU Forest Strategy sets a vision and concrete actions to improve the quality and quantity of EU forests and strengthen their protection, restoration and resilience as well as to boost the contribution of the forest sector to the new growth model in line with the European Green Deal.

The strategy’s key objective is to ensure growing, healthy, diverse and resilient EU forests, which contributes significantly to our strengthened biodiversity and climate ambition, secure livelihoods and support a sustainable forest bioeconomy. The strategy proposes actions to ensure EU forests are preserved and managed sustainably, including through strengthened forest monitoring and strategic planning. It also foresees measures to avoid or correct unsustainable practices, and seeks the right balance and synergies between the need to increase the forest protection, restoration, and adaptation efforts to achieve the EU’s climate and biodiversity objectives on the one hand, and the different socio-economic interests related to forests, on the other.

IV.

a) The Biodiversity Strategy for 2030², adopted in May 2020, addresses already the issue of the biodiversity loss in the EU, including in its forests. Some of the key commitments of the Biodiversity Strategy, which also touch on forests, are: the increase of the legally-protected area to 30% of the EU’s land; the strict protection of 10% of the EU land, including all remaining EU primary and old-growth forests; the effective management of all protected areas; developing guidelines on biodiversity-friendly afforestation and reforestation, and closer-to-nature forestry practices; a proposal for legally-binding EU nature restoration targets in 2021; and stepping up implementation and enforcement of EU environmental legislation.

b) The article on reporting obligations does not cover the quality of checks. On this basis, Member States refused the Commission proposal to include this element in the yearly reporting exercise.

While the use of remote sensing can be cost-effective and useful in specific cases (e.g. cases where there are breaches of nature legislation due to logging in protected areas), it is generally not a sufficient tool to ensure the enforcement of the EU Timber Regulation (EUTR). The fact that a forest is cleared says little about the legality of such operation. Nevertheless, the Commission will promote the extended use of geospatial intelligence, including remote sensing, for Member States competent authorities to ensure better enforcement of applicable national legislation related to forestry and logging activities.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic Committee and the Committee of the Regions: “New EU Forest Strategy for 2030” COM(2021) 572 final

² Communication from the Commission to the European Parliament, the European Council, the European Economic Committee and the Committee of the Regions: “EU Biodiversity Strategy for 2030 Bringing nature back into our lives” COM/2020/380 final

Within the EU, the Timber Regulation is not the only instrument relevant to illegal logging. Illegal logging may contravene rules under the Birds and Habitats Directives, and give rise to liabilities to remediate damage under the Environmental Liability Directive. With regard to use of remote sensing for monitoring, the Commission would make several points.

First, monitoring, including compliance monitoring, falls under Member States' responsibility under the above-mentioned acquis.

Second, when it comes to compliance monitoring, remote sensing should be seen as one source of information for geo-spatial intelligence, and geo-spatial intelligence should be seen as part of a necessary wider set of interventions (collectively compliance assurance) to combat problems like illegal logging.

Third, the EU supports Member States' use of remote sensing and geospatial intelligence through the Copernicus User-Uptake Framework Partnership programme dedicated to piloting national forest information platforms and the use of geospatial intelligence to fight illegal logging in forests (forest crime).

Fourth, the Commission supports Member States' work on compliance assurance, including through development of guidance documentation that explain geospatial intelligence: see Vade Mecum on compliance assurance in rural areas and related summary guide: [Environmental compliance assurance in rural areas - Publications Office of the EU \(europa.eu\)](#); [Environmental compliance assurance in rural areas - Publications Office of the EU \(europa.eu\)](#) (summary) and Guidance on combatting environmental crimes and related infringements. Guidance on combatting environmental crime, [Circabc \(europa.eu\)](#).

Finally, the Commission itself has an enforcement role as guardian of the Treaties to ensure that Member States fulfil relevant obligations, for example under the Habitats Directive, and makes use of different investigative tools in this context, including geospatial intelligence.

c) The Commission would like to highlight that compared to its predecessor from 2013, the new EU Adaptation Strategy³ published in February 2021 includes much stronger actions in support of forest adaptation, including through the creation and distribution of information, knowledge and practical solutions.

d) The European Agricultural Fund for Rural Development (EAFRD) supports the European policy on rural development and contributes to the economic, environmental and social sustainability of rural areas. Support for forestry measures under the EAFRD is an integral part for the achievement of the targets of the policy and acknowledges the multi-functionality of forests.

The new delivery model of the future Common Agricultural Policy (CAP) will give Member States more flexibility and will therefore make it possible for them to better take into account local conditions and needs. Apart from the requirement that investments in afforestation have to be in line with climate and environmental objectives according to the Forest Europe guidelines, support to the forestry sector has to be based on a forest management plan or equivalent instrument.

Under the next Performance Monitoring and Evaluation Framework (PMEF) useful information on forestry measures will be provided annually. However, only the evaluation of the policy will assess the effects of the forestry measures on biodiversity and climate.

V. The Commission accepts these recommendations.

³ Communication from the Commission to the European Parliament, the European Council, the European Economic Committee and the Committee of the Regions: “[Forging a climate-resilient Europe - the new EU Strategy on Adaptation to Climate Change](#)”, COM/2021/82 final

INTRODUCTION

17. While the execution rate for both forestry measures at the end of 2020 of almost 50% seems rather low, it should be noted that this is a typical rate in particular for investment projects, reflecting the biggest share of the support granted. Investments in forest area development and improvement in the viability of forests take time and final payments of the support are paid at the end of the respective project. Therefore, an increase of the financial execution rate is to be expected at the end of the implementation of this programming period. Due to the transitional period of 2 years and the N+3 rule, this will be at the end of 2025.

It should be noted that forestry related expenditures under other rural development measures, such as knowledge transfer, advisory services, infrastructure, basic rural services (including Natura 2000 forest management plans) and cooperation measures are reported in the Annual Implementation Reports (AIR) for each rural development programme, although some of them together with similar activities in the agricultural sector. In any case, separate monitoring and reporting is provided for compensation payments for forest areas in Natura 2000 in the AIRs.

OBSERVATIONS

Box 3 – Examples of non-specific conservation measures

As regards Spain, on 27 February 2015, the Commission launched an infringement procedure, calling on the Spanish authorities to take measures to protect and manage their Natura 2000 sites. An additional Letter of Formal Notice was sent in July 2020.

As regards Poland, on 9 June 2021 the Commission launched an infringement procedure, calling on the Polish authorities to take measures to protect and manage their Natura 2000 sites⁴.

Box 4 - Protecting old forests in Poland

The Commission is following up with **Poland** to implement the judgment of the Court of Justice of the EU regarding the country's failure to fulfil its obligations under the Directives on Habitats ([Directive 92/43/EEC](#)) and Birds ([Directive 2009/147/EC](#)) as regards the protection of the Białowieża Forest⁵.

Poland has still not fully complied with the ruling. Most importantly, Poland has not repealed and replaced the annex to the forest management plan for the Białowieża Forest District, introduced in 2016, with measures, which would preserve the integrity of the site, ensure conservation and protect the species and habitats. Actions envisaged by Poland are not in line with the Directives nor with the Court ruling.

33. According to the EU Timber Regulation (EUTR) ‘illegally harvested’ timber and timber products means ‘harvested in contravention of the applicable legislation in the country of harvest in regard to: rights to harvest timber within legally gazetted boundaries; payments for harvest rights and timber including duties related to timber harvesting; timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting, third parties’ legal rights concerning use and tenure that are affected by timber harvesting; and trade and customs, in so far as the forest sector is concerned’.

34. Due Diligence as laid out by the EUTR consists of taking measures and procedures providing access to all relevant information (step 1), procedures to collect and analyse all relevant information

⁴ 2021 June infringements package: key decisions.

⁵ 2021 February infringements package: key decisions.

and documents (step 2) and foreseeing adequate and proportionate measures and procedures to mitigate the risk to negligible (step 3).

36. The information the Commission request is based on the article on reporting (Article 20) in the Regulation. Member States have insisted on not including obligatory reporting on additional issues (such as the quality of checks).

Based on the available information, as defined in the article on reporting, the Commission seeks, to assess the compliance of Member States' monitoring activity, including the national rules defining illegal logging or the procedures used for checks. A number of infringement cases have been built in the past based on this information. When necessary, the Commission does require Member States to substantiate their replies with supporting documents that allow to verify the accuracy or completeness of the information (as in the infringement cases mentioned).

39. The Commission would like to point out that there are limitation in the use of remote-sensing data for compliance assurance with the EUTR at EU level. The use of geospatial intelligence by the Commission for assessing potential breaches with the Habitats or Birds Directives is currently being developed, building on Copernicus data and other sources. The Commission will also intensify efforts to raise the awareness of Member States competent authorities and to support them in improving their use of geospatial intelligence for ensuring compliance with the relevant nature protection legislation. The Copernicus User-Uptake Framework Partnership programme already supports pilot national forest information platforms and the use of geospatial intelligence to fight illegal logging in forests (forest crime).

43. The Renewable Energy Directive II (RED II), together with the Land Use, Land Use Change and Forestry Regulation (LULUCF), have reinforced the EU sustainability framework for bioenergy post-2020. In particular, RED II has extended the EU sustainability and greenhouse gas saving criteria to cover also biomass in heat and power (in addition to liquid biofuels for transport) and it has included dedicated criteria for forest biomass. In addition, the RED II requires Member States to design their support schemes to aim to avoid undue distortions of the raw material market. The new Commission's legislative proposals amending the LULUCF directive⁶ and RED II⁷ enhance further the EU sustainability framework for the use of biomass for energy. In particular, the RED II amendment proposes to further strengthen sustainability criteria for biomass and to reinforce the use of the cascading principle. The proposal applies the EU sustainability criteria to smaller heat and power installations and extends the no-go areas for forest biomass sourcing. It also proposes to require Member States to grant no support, albeit with some exceptions, to electricity-only production from forest biomass from 31 December 2026.

⁶ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) 2018/841 as regards the scope, simplifying the compliance rules, setting out the targets of the Member States for 2030 and committing to the collective achievement of climate neutrality by 2035 in the land use, forestry and agriculture sector, and (EU) 2018/1999 as regards improvement in monitoring, reporting, tracking of progress and review, COM(2021) 554 final

⁷ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2018/2001 of the European Parliament and of the Council, Regulation (EU) 2018/1999 of the European Parliament and of the Council and Directive 98/70/EC of the European Parliament and of the Council as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, COM(2021) 557 final

45. The updated (2018) Bioeconomy Strategy⁸ indeed includes actions to further enhance our understanding and measuring of the effects and impacts of the bioeconomy on the ecological boundaries. These actions build upon previous work done by the Commission and its advisory bodies as well as by the general research community since the previous Strategy (2012) e.g. a Bioeconomy Observatory was set up in 2013 by the Joint Research Centre with the aim to provide data and information on the current bioeconomy. In 2017 it was integrated into the Commission's Knowledge Centre for Bioeconomy, coordinated by the Joint Research Centre.

46. The Commission would like to highlight that the recently adopted EU Climate Law⁹ requires the EU and its Member States to ensure continuous progress in enhancing adaptive capacity, strengthening resilience and reducing vulnerability. In addition, Member States shall ensure that their adaptation policies are coherent with and mutually supportive for sectoral policies. Already today, all Member States have national adaptation strategies and/or plans, and most of them include assessments of climate change impacts, vulnerabilities and risks for forestry. At the EU level, the Commission has published in February 2021 its new EU Adaptation Strategy, which puts significantly more emphasis on forests and includes more and stronger forest actions compared to the 2013 strategy.

50. According to the EU Forest Strategy adopted in 2013, Forest Management Plans (FMPs) or equivalent instruments based on the principles of sustainable forest management are key instruments in delivering multiple goods and services in a balanced way. FMPs are at the core of both the EU 2020 Biodiversity Strategy and EU rural development funding. The strategy encompasses them and promotes and supports their use.

Common Commission reply to paragraphs 51-52:

The working group concluded that sustainable forest management (SFM) criteria and indicators are valuable tools for monitoring trends, reporting at regional, national and international level and for assessing the overall progress towards sustainable forest management, but they are not in themselves enough to ensure sustainable forest management. For that aim, Member States have systems to ensure practical implementation of sustainable forest management, including: domestic legislation and requirements, participatory processes, soft-law mechanisms (standards, guidelines, etc.) incentives and best practices, and market-based voluntary mechanisms (certification). Criteria and indicators are thus useful and intended for assessing SFM at certain scales, not at the management unit level. The New EU Forest Strategy for 2030 aims at identifying additional indicators and thresholds or ranges, building on the Forest Europe sustainable forest management criteria, on certain climate and biodiversity aspects concerning forest ecosystem conditions, such as health, biodiversity and climate objectives, and foresees a legal proposal to ensure a coordinated forest monitoring data collection and reporting system in the EU.

54. The Evaluation study of the forestry measures under Rural Development¹⁰ states that: 'Forest Management Plans can play an important role in developing SFM at the landscape level, especially if it is included in territorial planning to ensure all the domains of SFM are properly covered'.

55. The New EU Forest Strategy acknowledges the multifunctionality of forests, including their socio-economic, environmental and climate adaptation/mitigation functions.

⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: "A sustainable Bioeconomy for Europe: Strengthening the connection between economy, society and the environment", COM(2018) 673 final.

⁹ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

¹⁰ The Evaluation study of the forestry measures under Rural Development Final report, p. 85. Available at <https://op.europa.eu/s/pkOE>

Forestry forms an integral part of the EU rural development policy contributing to the achievement of some of the most crucial environmental, societal and economic targets of the policy. The rural development programmes support the economic, climate and environmental functions of forests, albeit the three aspects might not have the same weight in individual measures under these programmes.

58. The future CAP will give Member States more flexibility to design their support, including to forests. The Commission proposed a new delivery model, where the Union sets the basic policy parameters (objectives of the CAP, broad types of intervention, basic requirements), while Member States bear greater responsibility and are more accountable as to how they meet the objectives and achieve agreed targets. Greater subsidiarity will make it possible to better take into account local conditions and needs, against such objectives and targets. Member States will be in charge of tailoring CAP interventions to maximise their contribution to EU objectives.

Support for the forestry sector should contribute to the specific climate and environmental related objectives of the CAP as well as to the strengthening of the economic and social development of rural areas.

When designing their interventions, Member States will have to take into account the European Green Deal targets and the Member States specific recommendations. During the approval process of the CAP Strategic Plans, the Commission will assess if the Plans are in line with the European Green Deal and its strategies and objectives.

As for all future interventions programmed under the CAP Strategic Plans, some general provisions are included in the future legal framework for the support of forestry interventions. Apart from the requirement that investments in afforestation have to be in line with climate and environmental objectives according to the Forest Europe guidelines, support to the forestry sector has to be based on a forest management plan or equivalent instrument.

61. According to the EAFRD Regulation¹¹ and Commission guidance to Member States, selection criteria should be applied in a compulsory manner (with some exceptions) even in cases when the budget available for the measure/call for proposals is higher than the demand for funding. Member States have to set up such effective selection procedures in order to choose the most appropriate operations that will contribute to the objectives of the measure.

It should be emphasized that also in cases of insufficient application of selection criteria due to moderate interest, all eligibility conditions of the respective measures have to be fulfilled as requirement of a compliant grant provided.

64. The future CAP will give Member States more flexibility and subsidiarity to simplify the rules for the support. Furthermore, Member States will have the possibility to determine the payments for forest environmental and climate commitments based on costs incurred and income foregone, taking into account the area targeted according to the needs identified and objectives.

65. Monitoring system is not aimed at measuring the effect(s) of measures but to track the progress of Member States in implementing the measures against targets set.

66. **Table 1** correctly reports the output and result indicators relevant for monitoring the contribution to biodiversity and climate change. However, **Table 1** does not include the relevant context indicators, namely: **C.29** (Forest and other wooded land) which provides information on the area of forest and other wooded land (total and share); **C.31** (Land Cover), which provides the actual distribution of different land categories, including forest area; **C.34** (Natura 2000 areas), which provides information on the area protected under Natura 2000 that is used for agriculture and/or forestry; and, **C.38**

¹¹ Article 49 of Regulation (EU) No 1305/2013 (OJ L 347, 20.12.2013, p. 487-548).

(Protected forest), which provides the share of forest and other wooded land protected to conserve biodiversity, landscapes and specific natural elements.

67. In the current and future monitoring and evaluation system of the CAP, the role of result indicators is to assess the coverage of relevant measures and to check if the implementation of these measures by Member States goes according to plan.

Although there are no impact indicators related to forest, the monitoring and evaluation system includes context indicators which provide a comprehensive picture of the area under forest (included in Natura 2000).

Together with the output indicators, these indicators are used in the evaluation, which ultimately assesses the effects of the policy.

CONCLUSIONS AND RECOMMENDATIONS

72. The definitions of legally and illegally harvested in Article 2 of EUTR refers to applicable national legislation related to logging on which the Commission has no competence to act (except where the legislation relates to EU legislation such as the Habitats Directive, in respect of which the Commission can act, as the example in Box 4 shows). Moreover, the control of the enforcement of the EUTR obligations for operators and traders is a competence of Member States.

As regards the control of Member States obligations, the Commission assesses the compliance based on the information reported under Article 20 of the EUTR. A number of infringement cases have been built in the past based on this information. When necessary, the Commission does require Member States to substantiate their replies with supporting documents that allow to verify the accuracy or completeness of the information (as in the infringement cases mentioned).

73. Compared to the previous RED I, the RED II reinforced the EU sustainability criteria for bioenergy, including additional safeguards for ensuring that forest biomass for energy is sourced in a sustainable way. The Commission legislative proposal for an amended RED II further strengthens sustainability criteria for biomass, includes no-go areas for forest biomass sourcing, proposes a wider application of the EU sustainability criteria to smaller heat and power installations, and limits national support for electricity-only generation from forest biomass.

The adaptation of forests to climate change are addressed in the New EU Adaptation Strategy and in the New EU Forest Strategy for 2030.

74. Forest Management Plans (FMPs) or equivalent instruments based on the principles of sustainable forest management are key in delivering multiple goods and services in a balanced way and are at the core of EU rural development funding. The Commission considers that Natura 2000 payments in forests, investments improving the resilience and environmental value of forest ecosystems as well as forest-environmental and climate services and forest conservation under rural development contribute to biodiversity and resilience to climate change. However, the Commission acknowledges that some of the forestry measures could have been better designed.

While the future CAP will provide Member States more flexibility to design their support, all interventions have to be based on a clear intervention logic, addressing the identified needs along the nine specific objectives and the cross cutting objective of the CAP. When designing their interventions, Member States will have to take into account the European Green Deal objectives and the Commission's specific recommendations to individual Member States.

The role of the common EU monitoring system is not to measure the effects of CAP forestry measures. There are too many factors, besides the CAP, affecting forest biodiversity and climate change. Only evaluations can assess the net-effects of CAP measures.

Recommendation 1 – Improving the contribution to biodiversity and tackling climate change in forests

a) The Commission accepts this recommendation.

The New EU Forest Strategy for 2030, adopted on 16 July 2021, proposes a comprehensive set of actions with a view to improve quality and quantity of EU forests as well as their restoration and resilience. It puts emphasis on the need to identify additional indicators and thresholds or ranges for sustainable forest management; provide advice and guidance on the development of ecosystem service payment schemes; provide guidance and promote knowledge exchanges on good practices on climate adaptation and resilience; put forward a legislative proposal on EU Forest Observation, reporting and Data Collection, including requirements for Strategic Plans for Forests at national/regional level.

It builds on the Biodiversity Strategy for 2030, adopted in May 2020, which included a detailed plan of actions, together with their indicative timetable, aimed at improving the application of forest conservation measures, and thus provided a significant step towards implementing this recommendation. The Commission will make available a dashboard reflecting the implementation status of the various actions before the end of 2021¹².

In the development of the two above-mentioned strategies, the Commission has reviewed the current policy framework based on previous evaluations, as well as public feedback received during the open public consultations. The EU Biodiversity Strategy for 2030 foresees the following actions relevant for implementing this recommendation, by the Commission:

- Commission proposal on criteria and guidance for identifying and designating additional protected areas and ecological corridors, including a definition of strict protection, and on how other effective area-based conservation measures and urban greening can contribute to the EU 2030 nature protection targets;
- Proposal for binding EU nature restoration targets, including assessment of a possible EU-wide methodology to map, assess and achieve good condition of ecosystems so that they can deliver benefits;
- Guidance on the selection and prioritisation of species and habitats for priority actions to ensure that at least 30% of species and habitats not currently in favourable status are in that category by 2030, or at least show a strong positive trend;
- Methodological guidance on the mapping and monitoring of restoration and ecosystem condition and services;
- Guidelines on biodiversity-friendly afforestation and reforestation and closer-to-nature forestry practices;
- Roadmap for planting at least 3 billion additional trees in the EU by 2030 in full respect of ecological principles – published on 16 July 2021.

b) The Commission accepts this recommendation.

Recommendation 2 – Strengthening the fight against illegal logging

a) The Commission accepts the recommendation. It will consider this in the context of the forthcoming legislative initiative on measures to minimise the risk of deforestation and forest degradation associated with products placed on the EU market.

¹² The monitoring dashboard will become available on the website of the [Knowledge Centre for Biodiversity](#).

In accepting this recommendation, the Commission points out that it is not in a position to make specific commitments in relation to possible legislative proposals or to the outcome of the legislative negotiations with the co-legislators.

b) The Commission accepts this recommendation. The New EU Forest Strategy for 2030 includes a number of actions aimed at stepping up implementation and enforcement of existing EU acquis.

Recommendation 3 – Better focusing rural development forestry measures on biodiversity and climate change

a) The Commission accepts this recommendation.

When approving the CAP Strategic Plans, the Commission will assess if the requirements at EU level are fulfilled and the designed interventions are based on the SWOT and needs assessment, taking into account the European Green Deal objectives and the Commission's specific recommendations to individual Member States.

Forestry measures supported under the EAFRD should be in line with the principles of sustainable forest management, taking into account the multi-functionality of forests.

Under the future CAP only investments in afforestation, which are consistent with climate and environmental objectives in line with sustainable forest management principles, as developed in the Pan-European Guidelines for Afforestation and Reforestation, will be eligible.

Moreover, support for the forestry sector has to be based on a forest management plan or an equivalent instrument.

b) The Commission accepts this recommendation.

It notes that assessment of the impacts of forestry measures on biodiversity and climate action can only be addressed through evaluation.