



Forest Policy Report

SFI/2024

# Mapping of harmonization obligations in the field of forestry in Ukraine: preparation for joining the EU

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## **About the Project “Sustainable Forestry Implementation” (SFI)**

The project “Technical Support to Forest Policy Development and National Forest Inventory Implementation” (SFI) is a project established in the framework of the Bilateral Cooperation Program (BCP) of the Federal Ministry of Food and Agriculture of Germany (BMEL) with the Ministry of Environment and Natural Resources of Ukraine (MENR). It is a continuation of activities started in the forest sector within the German-Ukrainian Agriculture Policy Dialogue (APD) forestry component.

The Project is implemented based on an agreement between GFA Group, the general authorized executor of BMEL, and the State Forest Resources Agency of Ukraine (SFRA) since October 2021. On behalf of GFA Group, the executing agencies - Unique land use GmbH and IAK Agrar Consulting GmbH - are in charge of the implementation jointly with SFRA.

The project aims to support sustainable forest management planning in Ukraine and has a working focus on the results in the Forest Policy and National Forest Inventory.

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### **Disclaimer**

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# Content

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1. Normative forest related documents in force .....	3
2. Other documents that have guiding provisions relevant to forestry: .....	8
3. Proposals for normative forest related documents.....	10

# 1. Normative forest related documents in force

Ukraine's declared course towards EU membership requires steps to adapt national legislation to EU requirements.

As of August 2024, the following aspects require adaptation:

## **1.1. Forest reproductive material in accordance with Council Directive 1999/105/EC of 22 December 1999. Currently, the draft Law on Forest Reproductive Resources No. 9116 has been developed and approved by Ukrainian Parliament in the first reading on 23.04.2024.**

At the same time, on 24 April 2024, the EU Parliament voted to adopt in the first reading the proposal for a Regulation of the European Parliament and of the Council on the production and marketing of forest reproductive material (FRM), amending Regulations (EU) 2016/2031 and 2017/625 of the European Parliament and of the Council and repealing Council Directive 1999/105/EC (Regulation on forest reproductive material).

The proposed draft is intended to replace the current EU Council Directive and several implementing regulations on forest reproductive material with a new regulation and widen its scope to include not only forest reproductive material (FRM) for forestry purposes, but also FRM intended for biodiversity conservation, restoration of forest ecosystems and climate adaptation and mitigation. However at the moment scope of the Regulation is covered only FRM of the tree species and artificial hybrids listed in the Annex 1 but the Commission is entitled to amend the list in a separate implementing document.

The proposed legislation would specify the rules for the production and marketing of FRM intended for conserving forest genetic resources and would, for the first time, require that potential buyers be provided with information on the suitability of FRM for current and future climatic and ecological conditions. This, in turn, would allow speeding up climate change adaptation of forests and ensure their continued productivity in the future.

The proposal also maintains the principles of approval of parent trees (basic material) and certification of harvested FRM before placing it on the market (by issuing a master certificate). Those trees are checked for characteristics that contribute to more resilient forests, e.g. tolerance to diseases, better adaptation to the local climatic and ecological conditions. Professional operators may be authorised by the competent authority to print, under official supervision, the official label for certain species and categories of FRM. Rules are set out withdrawing or modifying that authorisation, to make sure the system functions effectively.

Member States enter the basic material approved on their territory in their national registers, based on which the Commission publishes a Community list of approved

basic material. National registers, national lists and the EU list would be kept in electronic form. Master certificates, issued after harvesting the FRM, and the official label, issued for every lot of the FRM, could also be in electronic form.

It would be possible to register basic material intended for conserving forest genetic resources without an approval by the competent authorities; instead, professional operators would be able to only notify the basic material to the competent authorities.

Member States would be required to establish contingency plans to help ensure sufficient supply of FRM to reforest areas affected by extreme weather events, fires, pest outbreaks and other disasters.

The proposed Regulation will apply 3 years after its entry into force, to offer the appropriate time for the competent authorities and professional operators to adapt to the new rules. It will also give the Commission time to adopt the necessary delegated and implementing acts.

EU Parliament's first reading position proposes to improve the traceability of FRM and make the information for end users more easily accessible via a QR code. In the Council, the proposal is being examined by the working party on genetic resources and innovation in agriculture.

In view of the mentioned above, even after the approval of the Ukrainian draft law, it will need to be amended as soon as possible in accordance with the requirements of the regulation currently under consideration by the EU Council.

## **1.2. Forest law enforcement and governance in the scope of implementation of Article 294 of the EU-Ukraine Association Agreement and implementation of the Regulation EU/995/2010116**

This law lays down the obligations of operators placing timber and timber products on the market. It is currently adopted a new Regulation 2023/1115 of the European Parliament and the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010.

Comparing the new Regulation to the Regulation EU/995/2010, the following items can be highlighted:

- Scope of the Regulation is not only timber, but also other commodities that can be obtained as a result of deforestation and forest degradation, including also cattle and soy that can be relevant for Ukraine.
- Besides imported and domestically produced commodities, it also applies to exported commodities.

- Operators and large traders must not only exercise due diligence but also to enter the required information into the relevant Information System.
- There is a difference in the procedure for large and small operators and traders to run due diligence and traceability exercises, and to use the Information System in this regard.
- Geolocation of production sites is required, among other documents that must be submitted. In addition, it is necessary to prove that neither deforestation nor forest degradation occur after timber harvesting.

All requirements of the above-mentioned new regulation will be entered into force on 30 December 2024 (30 June 2025 for micro and small enterprises). Regulation (EU) No 995/2010 is repealed with effect from 30 December 2024. However, Regulation (EU) No 995/2010 shall continue to apply until 31 December 2027 to timber and timber products that were produced before 29 June 2023 and placed on the market from 30 December 2024.

### **1.3. Nature protection and climate neutrality including:**

#### **1.3.1. Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds; Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as of 01.07.2013( LULUCF Regulation)**

Implementation of the above-mentioned legislative acts is the responsibility of the Ministry of Environmental Protection and Natural Resources and might have further consequences for forestry when decision on establishing NATURA 2000 sites will be taken (i.e. allocation NATURA 2000 sites in forests).

#### **1.3.2. Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869, entered into force 18.08.2024.**

A new regulation 2024/1991 aimed at putting measures in place to restore at least 20% of the EU's land and sea by 2030. In the case of habitat types that are in "poor condition", the restoration requirement is at least 30% by 2030, which is set to increase incrementally to 60% by 2040 and 90% by 2050.

The regulation leaves it up to each Member State to decide on the specific restoration measures it will apply within its own territory. To demonstrate how they will deliver on the targets, member states will be required to submit regular national restoration plans, which outline the restoration needs and measures, taking into account the local context alongside timelines for implementation.

### **Special requirements in relation of forest and forestry**

Restoration measures need to be put in place to enhance the biodiversity of forest ecosystems across the Union, including in the areas not covered by habitat types falling within the scope of Directive 92/43/EEC.

In the absence of a common method for assessing the condition of forest ecosystems it was set a general obligation to improve biodiversity in forest ecosystems and measure the fulfilment of that obligation on the basis of following indicators:

1. the common forest bird index;
2. standing deadwood;
3. lying deadwood;
4. share of forests with uneven-aged structure;
5. forest connectivity;
6. stock of organic carbon;
7. share of forests dominated by native tree species;
8. tree species diversity.

For indicator 5 should be applied FAO methodology, for indicator 6 methodology is set out in Annex V to Regulation (EU) 2018/1999 in accordance with the 2006 IPCC Guidelines for National Greenhouse Gas Inventories, for other indicators should be used methodology set out by FORST EUROPE.

Besides of this when planning and putting in place the restoration measures Member States should take into account the risks of forest fire, based on local circumstances. Member States should make use of best practices to reduce such risks, particularly as described in the Commission's Guidelines on land-based wildfire prevention issued in 2021 .

There should be positive trend in the common forest bird index. For indicators 2-8 Member States shall achieve an increasing trend at national level of at least six out of 7 indicators. The trend shall be measured in the period from 18 August 2024 until 31 December 2030, and every six years thereafter, until the satisfactory levels are reached. Member States shall ensure that the indicators are monitored in a manner consistent with the monitoring required under Regulations (EU) 2018/841 and (EU) 2018/1999.

The non-fulfilment of the above mentioned obligations is justified if caused by: (a) large-scale force majeure, including natural disasters, in particular unplanned and uncontrolled wildfire; or (b) unavoidable habitat transformations which are directly caused by climate change.

When identifying and implementing the restoration measures Member States shall aim to contribute to the commitment of planting at least three billion additional trees by 2030 at Union level in a full respect of ecological principles, including by ensuring species diversity and age-structure diversity, prioritizing native tree species except for, in very specific cases and conditions, non-native species adapted to the local soil, climatic and ecological context and habitat conditions that play a role in fostering increased resilience to climate change. The measures to achieve that commitment shall aim to increase ecological connectivity and be based on sustainable afforestation, reforestation and tree planting and the increase of urban green space.

The European Environment Agency should support Member States in preparing their national restoration plans, as well as in monitoring progress and research needed to identify the restoration measures that are necessary to meet the restoration targets and fulfilling the obligations.

In order to ensure an effective implementation of this Regulation, the Commission should support Member States upon request through the Technical Support Instrument, established under Regulation (EU) 2021/240 of the European Parliament and of the Council, which provides for tailor-made technical support to design and implement reforms. The technical support provided under that instrument involves, for example, strengthening the administrative capacity, harmonizing the legislative frameworks and sharing relevant best practices.

Each Member State may, by 19 August 2025, develop a methodology in order to monitor high-diversity landscape features not covered by the common method referred to in the description of high-diversity landscape features. The Commission shall provide guidance on the framework for developing such methodologies by 19 September 2024. The Commission may, by means of implementing acts specify the methods for monitoring the indicators for forest ecosystems.

By 30 June 2031, for the period up to 2030, and at least every six years thereafter, Member States shall report electronically the progress in implementing the national restoration plan, in putting in place the restoration measures and progress in meeting the targets and fulfilling the obligations.

By 31 December 2028 and every three years thereafter, the EEA shall provide to the Commission a technical overview of the progress towards the achievement of the targets and fulfillment of the obligations

By 19 August 2025, the Commission shall, in consultation with Member States, submit a report to the European Parliament and the Council containing an overview of financial resources available at Union level for the purpose of implementing this Regulation and an assessment of the funding needs.



Annex to the regulation contains list of ecosystems that requires restoration and among others there are forest ecosystems listed.

Among suitable restoration methods there are mentioned:

- Removing unwanted scrub encroachment or non-native plantations.
- Establishment riparian buffers, such as riparian forests, buffer strips
- Increasing ecological features in forests, such as large, old and dying trees (habitat trees) and amounts of lying and standing deadwood.
- Work towards a diversified forest structure in terms of, for example, species composition and age, enable natural regeneration and succession of tree species.
- Assisting migration of provenances and species where it may be needed due to climate change.
- Enhancing forest diversity by restoring mosaics of non-forest habitats such as open patches of grassland or heathland, ponds or rocky areas.
- Making use of 'close-to-nature' or 'continuous cover' forestry approaches; introduce native tree species.
- Enhancing the development of old-growth native forests and mature stands, for example, by abandonment of harvesting or by active management which favors development of auto regulatory functions and appropriate resilience.
- Introducing high-diversity landscape features in arable land and intensively used grassland, such as buffer strips, field margins with native flowers, hedge-rows, trees, small forests, terrace walls, ponds, habitat corridors and stepping stones, etc.

## **2. Other documents that have guiding provisions relevant to forestry:**

2.1 Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU . Regulation is setting requirements for accounting emissions and removals resulting from afforested land, deforested land and managed forests.

2.2 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable

- investment, and amending Regulation (EU) 2019/2088 define sustainable forest management as an important element of mitigation measures.
- 2.3 Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 define cases where support for forest owner/managers are possible.
- 2.4 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 . The Directive said about prohibition of causing any measurable environmental degradation, such as harmful soil change, water or air pollution, harmful emissions, excessive water consumption, degradation of land, or other impact on natural resources, such as deforestation.
- 2.5 Commission Implementing Regulation (EU) 2022/2448 of 13 December 2022 on establishing operational guidance on the evidence for demonstrating compliance with the sustainability criteria for forest biomass laid down in Article 29 of Directive (EU) 2018/2001 of the European Parliament and of the Council defining assessment of compliance with the harvesting criteria as well as assessment of compliance with the LULUCF criteria.
- 2.6 Directive (EU) 2024/1203 of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC. The aim of the directive is to combat environmental threats more effectively by extending scope of the criminal offences to the environment on EU level. EU Member States have two years to transpose the directive into national law after its entry into force on May 20, 2024. To this end, it introduces (i) new list environment-related criminal offenses, (ii) detailed requirements regarding sanctioning levels for both natural and legal persons and (iii) measures that Member States must take in order to either prevent or effectively prosecute offenses. The Directive provides for 20 basic criminal offenses, among them trade with timber in violation of the EU Regulation on Deforestation-free products.
- 2.7 Commission Implementing Regulation (EU) 2024/1281 of 7 May 2024 amending Implementing Regulation (EU) 2020/1208 on structure, format, submission processes and review of information reported by Member States pursuant to Regulation (EU) 2018/1999 of the European Parliament and of the Council contains requirements to forest related reporting as a part of reporting on greenhouse gas inventory data.

### 3. Proposals for normative forest related documents

There is going work on preparation and consideration of following normative documents that will have an influence on forestry and will require adaptation:

#### 3.1 Proposal for a Regulation of the European Parliament and of the Council on a monitoring framework for resilient European forests

The general objective is to develop an EU-wide forest monitoring framework, aiming to help achieve the objective of having healthy and resilient forests, which is essential to the EU's commitment to combat climate change, preserve and restore biodiversity, and improve the level of preservation, protection and quality of the environment. To this end, the proposed action aims to ensure common digitalised, consistent, comparable, timely and accessible data, and to set up a coherent framework for developing integrated long-term forest planning. This is expected to support the adaptation of forests to climate change, strengthen disaster prevention and preparedness, and ensure consistency of different forest-related policy objectives. This initiative is about better data and knowledge and does not affect Member States' forest management policy choices and objectives.

The forest monitoring system would consist of three elements:

- geographically explicit identification system for the mapping and localization of forest units
- forest data collection framework, specifying timing and data collection requirements, and
- forest data sharing framework that would enable the sharing of the data between Member States, with some data available publicly.

The forest monitoring system shall consist of electronic databases and geographic information systems and shall enable the exchange and integration of forest data with other electronic databases and geographic information systems. The forest monitoring system shall ensure the regular and systematic collection of: (a) forest data on the basis of aerial or space-borne ortho-imagery, by Copernicus Sentinel satellites or other equivalent systems; (b) in situ data through a network of monitoring sites. The Commission shall share the Earth Observation data it produces free of charge with the Member States' authorities competent for the forest monitoring system or with suppliers of services authorised by those authorities to represent them.

Member States would also be encouraged to designate national focal point and develop integrated long-term forest plans or adapt their existing integrated long-term forest plans or strategies, taking into account a medium to long-term perspective including but not limited to 2040 and 2050.

The Commission shall set up the geographically explicit identification system for the mapping and localisation of forest units that shall be operational by 12 months after the date of entry into force of the Regulation. The forest data collection framework shall be operational by 12 months after the entry into force of this Regulation, with regard to the collection of following indicators:

- forest area;
- tree cover density;
- forest type;
- forest connectivity;
- defoliation;
- forest fires;
- wildfire risk assessment;
- tree cover disturbances;

and by 30 months after the date of entry into force of this Regulation, with regard to the following data:

- forest available for wood supply and forest not available for wood supply;
- growing stock volume;
- net annual increment;
- stand structure;
- tree species composition and richness;
- European forest type;
- removals;
- deadwood;
- location of forest habitats in Natura 2000 sites;
- abundance of common forest birds;
- location of primary and old-growth forests;
- protected forest areas;
- production and trade of wood products;
- forest biomass for bioenergy.

The Commission and the Member States will be collecting additional forest data based on appropriate methodologies and additional implementing acts. List of additional indicators mentioned in Annex III to the Regulation.

In the first half of 2024, the draft document underwent various approval procedures. Opinion of the European Economic and Social Committee on the respected document is dated 20.03.2024, which was officially published 31.05.2024.

### **3.2 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 691/2011 as regards introducing new environmental economic accounts modules**

The proposed Regulation aimed to broaden the scope of the European environmental economic accounts to improve statistical information for the European Green Deal, aligned with international statistical standards. The proposal adds three new modules to the European environmental economic accounts:

- forest accounts;
- ecosystem accounts;
- environmental subsidies and similar transfers accounts.

Forest accounts measure forest area and the available share for timber extraction and track their changes over time. Ecosystem accounts integrate biodiversity and natural capital considerations with mainstream economic questions on resource allocation and sustainability. Environmental subsidies and similar transfers accounts identify and quantify domestic fiscal policy measures and non-EU resources that support the Green Deal through economic activities and products, protecting the environment and safeguarding natural resources.

In the first half of 2024, the draft document underwent various approval procedures. The Parliament approved the text in a first reading during the plenary session at 10 April 2024.

### **3.3 Proposal for a Directive of the European Parliament and of the Council on Soil Monitoring and Resilience.**

On 17 November 2021, the European Commission adopted, as part of the EU biodiversity strategy for 2030, a new EU soil strategy, encompassing non-legislative and legislative actions. The strategy, which aims to bring all EU soil ecosystems in good condition by 2050, announced that the Commission would table a proposal for a new soil health law to address transboundary impacts of soil degradation and achieve policy coherence at EU and national level.

In its work programme for 2023, published on 18 October 2022, the Commission confirmed its intention to put forward a legislative initiative on protecting, sustainably managing and restoring EU soils.

In its April 2021 resolution on soil protection, the European Parliament had called on the Commission to design an EU-wide common legal framework, with full respect for the subsidiarity principle, for the protection and sustainable use of soil, addressing all major soil threats. It asked for the proposal to be accompanied by an in-depth impact assessment based on scientific data, analysing both the costs of action and non-action in terms of immediate and long-term impacts on the environment, human health, the internal market and general sustainability.

On 5 July 2023, the Commission tabled a proposal for a directive on soil monitoring and resilience ('soil monitoring law'). The long-term objective of the proposed directive is to have all soils across the EU in healthy condition by 2050, as outlined in the soil strategy. To achieve this ambition, the proposal provides a common definition of what constitutes a healthy soil, and lays down measures on monitoring and assessment of soil health, sustainable soil management, and remediation of contaminated sites. Under the proposed directive, Member States would be required to regularly monitor soil health and land take within 'soils districts' to be established throughout their territory. Based on the monitoring data collected, they would have to perform soil health assessments at least every 5 years, enabling them to decide on the regeneration measures needed. The proposal also requests Member States to identify, investigate, assess and remediate contaminated sites. Contaminated sites, and potentially contaminated sites, should be recorded in a national register, publicly accessible online.

On 10 April 2024, Parliament adopted its first reading position. A number of new amendments were adopted in plenary. In particular, Parliament voted to exclude raw material deposits from the definition of soil. It added flexibility for monitoring and assessing soil health, allowing Member States to apply the soil descriptors that best illustrate the soil characteristics of each soil type at national level. Parliament decided not to retain the mandatory timeline for upgrading soil status. It voted to remove Member States' obligations to define sustainable soil management practices, regularly assess the effectiveness of the measures taken, and review and revise them if necessary. It therefore also deleted the proposed list of sustainable soil management principles. Parliament deleted the proposed provisions on penalties.

The draft envisages measures to monitor and assess soil health, standardisation of relevant definitions, defining requirements for sustainable soil management and the restoration of contaminated sites.

The Council adopted its position on 17 June 2024. It clarifies the administrative structure relevant for the soil health monitoring framework, adds flexibilities for soil measurements and sets out minimum quality requirements for laboratories analysing soil samples. It proposes a double value system for assessing soil health, with non-binding sustainable target values to reflect the long-term objective of the

proposal, and operational trigger values set at Member State level for each soil descriptor. While keeping the aspirational goal of achieving no net land take by 2050, the Council suggests tackling as a first step soil sealing and soil destruction as the most visible, impactful and easiest to monitor aspects of land take. It clarifies the guiding nature of the sustainable soil management principles listed in the proposed directive. It introduces a risk-based and stepwise approach on contaminated sites, to allow Member States to prioritise measures. Provisions on penalties are deleted.

### **3.4 Proposal for a Regulation of the European Parliament and of the Council establishing a Union certification framework for carbon removals**

The stated aim of the initiative is to ensure high-quality EU certified carbon removals, through a transparent and credible governance framework. This would open up the possibility for further investments towards carbon removal activities and increased deployment. A carbon removal activity itself shall be additional. To that end, the carbon removal activity shall meet both of the following criteria:

- (a) it goes beyond Union and national statutory requirements;
- (b) it takes place due to the incentive effect of the certification.

Certification schemes should be used by operators to demonstrate compliance with this Regulation. Therefore, certification schemes should operate on the basis of reliable and transparent rules and procedures and should ensure accuracy, reliability, integrity and non-repudiation of origin, and protection against fraud of information and of data submitted by operators. They should also ensure the correct accounting of the verified carbon removal units, notably by avoiding double counting. To this end, the Commission should be empowered to adopt implementing acts, including adequate standards of reliability, transparency, accounting and of independent auditing to be applied by certification schemes, so as to ensure the necessary legal certainty as regards the rules applicable to operators and to certification schemes. To ensure a cost-effective certification process, those technical harmonized rules on certification should also have the objective of reducing unnecessary administrative burden for operators, or group of operators, in particular for Small and Medium Enterprises (SMEs), including small farmers and foresters.

Certification is voluntary.

A review of the regulation was proposed three years after the entry into force and no later than 2028, and subsequently after each stocktaking exercise under the Paris agreement.

The text was adopted by the Parliament on 10 April 2024 and awaits the final sign-off from Council before its signature ceremony leading to publication in the Official Journal and entering into force.