

GLOBAL REACH OF THE EUDR: A LEGITIMACY PERSPECTIVE

Ioanna Hadjiyianni
Assistant Professor



University of Cyprus
Department of Law



THE LEGAL CHARACTERISATION OF THE EUDR AS AN IEMEI

Internal **E**nvironmental **M**easures with **E**xtraterritorial **I**mplications (IEMEIs)

- Unilateral domestic measures regulating trade on the basis of conduct that takes place partly abroad
- ‘territorial extension’ (Joanne Scott)
- ‘regulating’ conduct abroad through market access conditions
- ‘Brussels effect’ (Anu Bradford)

FROM GLOBAL ENFORCER TO GLOBAL STANDARD-SETTER

- Greater extent of unilateralism and extraterritoriality
- Previous approach in the EUTR: enforcing third country law through trade restrictions
- EUDR: legality and sustainability standards
 - Sustainability standard: deforestation and forest degradation defined by the EU, drawing on FAO internationally accepted definitions
 - Legality: broader in material scope, covering social issues, but deferring to relevant third country legislation
- Ratcheting up standards and moving beyond ensuring compliance with third country law.

THE EU AS A GREEN HERO?



Legitimacy: ‘justification of authority’ supplemented by ‘acceptance of authority’ (Bodansky)

JUSTIFICATIONS FOR EU ACTION

- Legal bases:
 - Environmental competence (Article 192 TFEU) interpreted broadly (Case C-366/10)
 - Charter of Fundamental Rights (Article 37):
 - The EU is committed to promoting and implementing ambitious environment and climate policies across the world (recital 19 EUDR)
- Moral justifications:
 - EU as significant consumer of forest-risk commodities
 - Complicit and partly responsible for global deforestation and forest degradation
 - Responsibility to lead by example and drive regulation globally

LEGITIMACY GAPS

Accountability gap

- ‘external accountability gap’
(Robert Keohane)

Participation and Representation Gap

Justice Gap

CONTINGENCY AND FLEXIBILITY

- **‘Contingent unilateralism’** (Joanne Scott): different forms and degrees.
- **Third country law:** compliance no longer sufficient but country benchmarking
 - Assessment criteria for classification and review in light of new evidence.
 - Open-ended and vague criteria?
- **Bilateral arrangements**
 - Taken into account for benchmarking
 - VPAs limited to legality standard
- **Multilateral cooperation**
 - Article 30 EUDR
 - No explicit provision for revising unilateral approach in light of international developments.

TRANSPARENCY AND ACCOUNTABILITY IN A TRANSNATIONAL CONTEXT

- **Procedural safeguards** and input by third country actors in the country benchmarking process.
- **Transparency:** information system (article 33) and benchmarking process
- **Substantiated concerns** (article 31)
- **Judicial review:** access to justice (article 32) and intensity of review.

CONCLUSIONS

- Cooperative extent of the EUDR remains to be seen – affects legitimacy and ultimate acceptance.
- Effectiveness: Achieving regulatory objectives & ensuring compliance
- Other countries imposing similar regimes?
- Circumventing stricter due diligence obligations by diverting products to low-risk countries before entering the EU market?

THANK YOU

Stay in touch!



hadjiyianni.ioanna@ucy.ac.cy



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