

## SYMPOSIUM ON LATIN AMERICAN INTERNATIONAL LAW

### THE PROMISE OF COOPERATION IN LATIN AMERICA: BUILDING DEFORESTATION-FREE SUPPLY CHAINS

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An EU Regulation proposed in 2021 prohibits the trading of deforestation-linked commodities and products on the EU market.<sup>1</sup> The Regulation aims this ban at its own market, but it has unavoidable consequences for commodity producing Latin American countries. The proposed Regulation will affect trade with the European Union, a key trade partner for Latin American countries. If this type of regulation is increasingly adopted by other industrialized countries, which currently represent the largest share of exports for Latin American countries, the trade impact in Latin America will be even broader. We argue that regulatory approaches focused on global supply chains—such as the EU Regulation—represent an opportunity to reinvigorate existing, albeit weak, Latin American environmental cooperation to tackle key drivers of deforestation, notably, agricultural expansion. Despite the global relevance of the region's forests and biodiversity, Latin American cooperation has not been significant in forest conservation.<sup>2</sup>

Traditionally, Latin American countries have been averse to global rules on forests, citing the national sovereignty principle. The international debate on forests has been based on the divide between poor/resource intensive countries versus rich/industrialized nations. This was evident at the 1992 Earth Summit.<sup>3</sup> While developed countries pushed the agenda for a global treaty on forests, developing nations—including Latin American countries—opposed that idea based on claims that forests are a matter of state sovereignty.<sup>4</sup> Developing countries should be free to use natural resources on their own terms and to achieve further economic development, as industrialized nations did with their own natural resources. Since then, forest conservation has only inspired non-legally binding declarations of intent.<sup>5</sup>

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<sup>1</sup> [Proposal for a Regulation of the European Parliament and of the Council on the Making Available on the Union Market as Well as Export from the Union of Certain Commodities and Products Associated with Deforestation and Forest Degradation and Repealing Regulation \(EU\) No 995/2010](#), COM (2021) 706 final (2021) [hereinafter, "EU Regulation"].

<sup>2</sup> Michelle-Ann Williams, [Regional Environmental Agreements, and Initiatives in the Americas](#), 18 Y.B. INT'L L. 74 (2007).

<sup>3</sup> [United Nations Conference on Environment and Development \(Rio de Janeiro, June 3–14, 1992\)](#), UN Doc. A/CONF.151/26/Rev.1 (June 14, 1992).

<sup>4</sup> On the North-South disagreement, see DAVID HUMPHREYS, [FOREST POLITICS: THE EVOLUTION OF INTERNATIONAL COOPERATION](#) (2013).

<sup>5</sup> Such as the [Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests](#), UN Doc A/CONF.151/6 (Apr. 21, 1992), [New York Declaration on Forests Declaration and Action Agenda](#), [Climate Summit](#) (Sept. 23, 2014), and [Glasgow Leaders' Declaration on Forests and Land Use](#) (adopted Nov. 12, 2021).

The proposed EU Regulation does not impose legal obligations on developing countries regarding their forest resources, but instead sets a demand-driven standard. EU countries choose not to consume deforestation-linked products and producing countries may choose whether to abide by the standard—although they have a financial incentive to do so to access the EU market. We show this incentive with industry-level data by highlighting the importance of commodity markets both at home and abroad for a sample of Latin American countries. Other examples of demand-driven measures for tropical forest conservation include certification schemes and consumer campaigns.<sup>6</sup>

Latin American countries might soon need to deal with the EU Regulation and other similar rules introduced by trade partners. Two points are worth noting here. First, Latin American countries face similar problems—forest conversion to agricultural land being one of them—and will face similar challenges accessing export markets as environmental standards become stricter. Second, commodities and products in global supply chains cross national borders. Deforestation-free supply chains imply that the EU Regulation could apply to a Chinese good sold in the EU market because it potentially contains deforestation-free commodity inputs from a Latin American country used in the production of this final good.<sup>7</sup> Therefore, it makes sense for Latin American countries to cooperate in order to navigate the EU Regulation and future international demand-driven standards.

From a regional perspective, cooperation can assist Latin American countries to prepare for and meet the requirements of the EU Regulation and other similar rules. Regional organizations, in particular the Organization of American States (OAS) can play a role. The OAS should be the focal point to influence and help coordinate regional initiatives regarding commodities and products driving deforestation, for two reasons. First, the OAS—for example, through the Inter-American Institute of Agricultural Sciences—can provide support to its members and businesses to understand and adapt to the EU Regulation with consultations and capacity building. Second, the OAS can coordinate regional agricultural standards for commodities and products driving deforestation. The advantages of consistent agricultural standards across the region include administrative efficiencies, custom cooperation, information exchange, etc. Some common guidelines have already been adopted by the OAS.<sup>8</sup> Due to the interdependence between foreign trade, and economic and social development, the OAS Charter recognizes that member states should make both “individual” and “united” efforts to bring about favorable conditions of access to world markets for the products of the developing countries of the region.<sup>9</sup> While the OAS is not an economic and trade bloc, it can still enhance each country’s bargaining power by conveying to the export market its economic and social constraints related to the implementation of international rules.

### *Trends in Forest Conservation Focusing on Global Supply Chains*

Economic incentives targeting governments, businesses, and individuals are a popular approach to combatting tropical deforestation.<sup>10</sup> This is what the proposed 2021 EU Regulation on certain commodities and products associated with deforestation and forest degradation aims to achieve.<sup>11</sup> The Regulation covers six commodities

<sup>6</sup> Martin Persson, Sabine Henders & Thomas Kastner, *Trading Forests: Quantifying the Contribution of Global Commodity Markets to Emissions from Tropical Deforestation* (Ctr. for Glob. Dev., Working Paper 384, Oct. 2014).

<sup>7</sup> For an extended discussion of deforestation regulations and global supply chains, see Beatriz Garcia & Laurent Pauwels, *Demand-Side Regulations for Deforestation-Free Global Value Chains* (2022).

<sup>8</sup> *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights, Inter-American Commission on Human Rights*, Organization of American States (OAS), OEA/Ser.L/V/II.132 (2008).

<sup>9</sup> *Charter of the Organization of American States*, Art. 39, Apr. 30, 1948, 119 UNTS 3 (entered into force Dec. 13, 1951).

<sup>10</sup> KELLY W. JONES ET AL., *FOREST CONSERVATION INCENTIVES AND DEFORESTATION IN THE ECUADORIAN AMAZON* (2016).

<sup>11</sup> *EU Regulation*, *supra* note 1.

representing the largest share of EU-driven deforestation,<sup>12</sup> and has as its cornerstone a prohibition on trading these commodities on the EU market.<sup>13</sup>

Countries in Latin America and elsewhere are motivated to produce sustainably if they wish to access the EU market. This practice is not new. For example, in the agricultural sector, countries set standards, such as sanitary and phytosanitary measures for reducing the risks of diseases being introduced in their markets.<sup>14</sup> The novelty of the EU Regulation is in proposing *deforestation-free supply chains* for agricultural commodities with the goal of protecting forests.<sup>15</sup>

While the EU Regulation may be used to trickle down positive changes in trade practices more broadly, the regulation can be criticized as Eurocentric. The EU Regulation can be perceived as imposing environmental standards to its trade partners and hence impacting the way producing countries govern their own commodities. In any case, demand-driven regulatory approaches to forest conservation such as this tend to grow as consumers become more wary of environmental degradation. Producer countries might then adapt to higher environmental standards or else lose export markets.

### *Environmental Cooperation in Latin America*

The widespread Amazon fires of 2019 and the outbreak of COVID-19, both of which badly hit populations—including Indigenous peoples—in Latin America,<sup>16</sup> revealed how cooperation is urgently needed and how ill-prepared countries are to face the “new normal” of increased disasters, both natural and human-caused.<sup>17</sup> In response to the unprecedented fires, seven Amazon countries (Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, and Suriname) signed the Leticia Pact in 2019.<sup>18</sup> The Pact is a declaration of intent aimed at improving disaster response coordination. It has yet to define targets, resources, measurable actions, and milestones to tackle deforestation and mitigate fires.<sup>19</sup> Environmental cooperation will be increasingly necessary to face common problems that will only become more acute due to climate change.

Environmental cooperation in Latin America has taken different forms, from early bilateral treaties to multilateral treaties, and cooperation efforts led by regional organizations—notably, regarding transboundary natural resources, such as river basins, fisheries, and migratory species.<sup>20</sup> In contrast to the more robust freshwater and marine legal frameworks, the only notable “forest agreement” in the region is the 1978 Amazon Cooperation Treaty,<sup>21</sup> which

<sup>12</sup> *Id.*, Art. 1.

<sup>13</sup> *Id.*, Art. 3.

<sup>14</sup> Other examples include logging laws adopted by consumer countries and common markets (for example, the European Union, the United States, and Australia) and international guidelines (for example, the Conflict-Free Gold Standard). See Beatriz Garcia & Jonathan Verschuuren, *Complying with Australia's Illegal Logging Laws: Tough Reality After a Soft Start? Lessons from the United States and the European Union*, 22 ASIA PAC. J. ENVTL. L. 7 (2019).

<sup>15</sup> *EU Regulation*, *supra* note 1, pmb., rec. 15.

<sup>16</sup> See *The Amazon in Brazil Is on Fire — How Bad Is It?*, BBC NEWS (Aug. 30, 2019); *Bolivian Wildfires Destroy Two Million Hectares of Forest*, BBC NEWS (Sept. 30, 2019); see also INPE, *Programas Instituto Nacional de Pesquisas Espaciais*.

<sup>17</sup> Craig Martin, *Climate Change and Global Security: Framing an Existential Threat*, 116 AJIL UNBOUND 248 (2022).

<sup>18</sup> *Pacto de Leticia por la Amazonía* (Sept. 6, 2019).

<sup>19</sup> Maria Antonia Tigre, *COVID-19 and Amazonia: Rights-Based Approaches for the Pandemic Response*, 30 RECIEL 162, 166 (2021).

<sup>20</sup> BEATRIZ GARCIA, *THE AMAZON FROM AN INTERNATIONAL LAW PERSPECTIVE*, ch. 6 (2011).

<sup>21</sup> *Amazon Cooperation Treaty*, July 3, 1978, 1202 UNTS 51.

has significant limitations.<sup>22</sup> In view of their status as domestic resources and part of the national heritage, forests in Latin America have been regulated mostly by national law.<sup>23</sup> There are significant examples of forest conservation efforts at the domestic level, such as Brazil's soy moratorium by which the industry agreed not to purchase soy produced on cleared forest lands.<sup>24</sup>

### *Global Regulatory Measures Focused on Global Commodity Markets*

Internationally, laws and regulations introduced by export markets have targeted certain drivers of deforestation in tropical forest countries by regulating global supply chains of commodities linked to forest degradation. In particular, the EU Regulation applies to the six commodities and related products with the highest EU-embodied deforestation: beef, palm oil, soy, wood, cocoa, and coffee.<sup>25</sup> Its main regulatory technique is a three-step due diligence process: data collection, risk assessment, and risk mitigation.<sup>26</sup> Businesses are required to conduct due diligence before placing commodities and products on the EU market.<sup>27</sup>

Previous policies and regulations have used similar legal techniques to protect forests. These include the EU Forest Law Enforcement Governance and Trade (FLEGT) Action Plan,<sup>28</sup> and the EU Timber Regulation (EUTR),<sup>29</sup> which prohibits imports of illegally harvested timber into the European Union. However, these instruments do not address deforestation as such.<sup>30</sup> Subsequently, other countries have adopted similar legislative approaches,<sup>31</sup> which shows that the European Union—even with a decreasing market share—can lead the way globally.<sup>32</sup>

As demonstrated in the charts below, the relevant commodities are important financially for Latin American countries both domestically, but also for exports. The data we use to construct the charts is from the Inter-Country Input-Output (ICIO) database provided by the Organization for Economic Co-operation and Development (OECD).<sup>33</sup> [Chart 1](#) displays the domestic and foreign consumption for two industries: (1) agriculture, hunting, and forestry; and (2) the manufacturing of food, wood, and paper products. Products in both industries are consumed mostly domestically in all the Latin American economies considered. This is not uniform across commodities: for example, nearly 64 percent of Brazil's soy production is exported, while only 33 percent of its cattle production is directly exported.<sup>34</sup> As these countries are industrializing, there is greater monetary value in

<sup>22</sup> GARCIA, *supra* note 20; MARIA ANTONIA TIGRE, [REGIONAL COOPERATION IN AMAZONIA: A COMPARATIVE ENVIRONMENTAL ANALYSIS](#) (2017).

<sup>23</sup> For example, [Brazil's Forest Code, Law 12.651](#) (May 25, 2012).

<sup>24</sup> Maria-Augusta Paim, [Zero Deforestation in the Amazon: The Soy Moratorium and Global Forest Governance](#), 30 *RECIEL* 220 (2021).

<sup>25</sup> [EU Regulation](#), *supra* note 1, Art. 1(1).

<sup>26</sup> *Id.*, Art. 8.

<sup>27</sup> *Id.*, Art. 1(12)–(13).

<sup>28</sup> [Council Regulation 2173/2005/EC of Dec. 20, 2005 on the Establishment of a FLEGT Licensing Scheme for Imports of Timber into the European Community](#), Art. 4.1, 2005 OJ L 347/1.

<sup>29</sup> [Regulation 995/2010 of the European Parliament and of the Council Laying Down the Obligations of Operators Who Place Timber and Timber Products on the Market](#), 2010 OJ L 295/23.

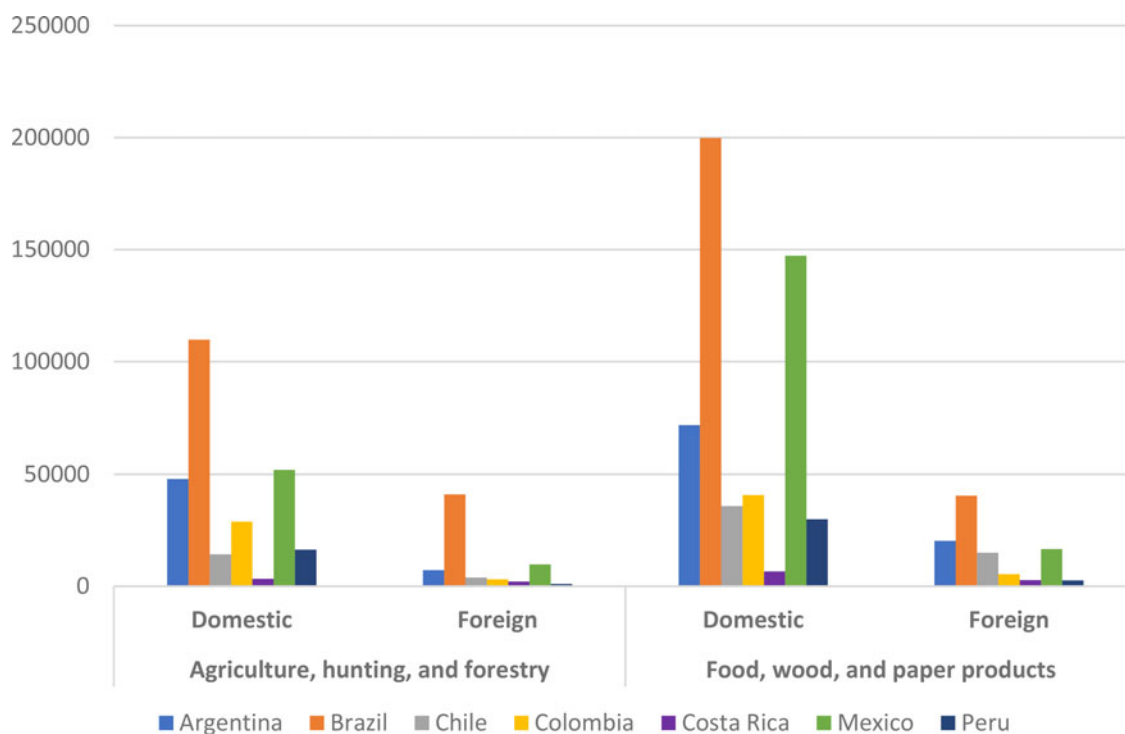
<sup>30</sup> [Garcia & Verschuuren](#), *supra* note 14, at 2.

<sup>31</sup> Such is the case of Australia, South Korea, Japan, and China, which amended its Forest Law in 2019 to impose a ban on buying, processing, and transporting illegal timber. [EU Regulation](#), *supra* note 1, prop. 6.

<sup>32</sup> *Id.*

<sup>33</sup> OECD, [OECD Inter-Country Input-Output \(ICIO\) Tables](#) (Nov. 2021).

<sup>34</sup> MINISTÉRIO DA AGRICULTURA, PECUÁRIA E ABASTECIMENTO, [PROJEÇÕES DO AGRONEGÓCIO: BRASIL 2020/21 A 2030/31](#) (2021).



**Chart 1:** Domestic v. foreign consumption in 2018 (US\$ million).

Source: OECD ICIO.

Note: Consumption data is the gross intermediate and final output per country for the aggregated industries featured in the chart.

exporting manufactured goods derived from commodities rather than the commodities themselves. This tendency suggests that countries will increase their participation in complex global supply chains.

**Chart 2** explores the destination of these products. Traditionally, the United States and the European Union are strong export markets for Latin American countries. However, China is rising in importance as a trade partner—especially for Argentina, Brazil, Chile, and Peru.

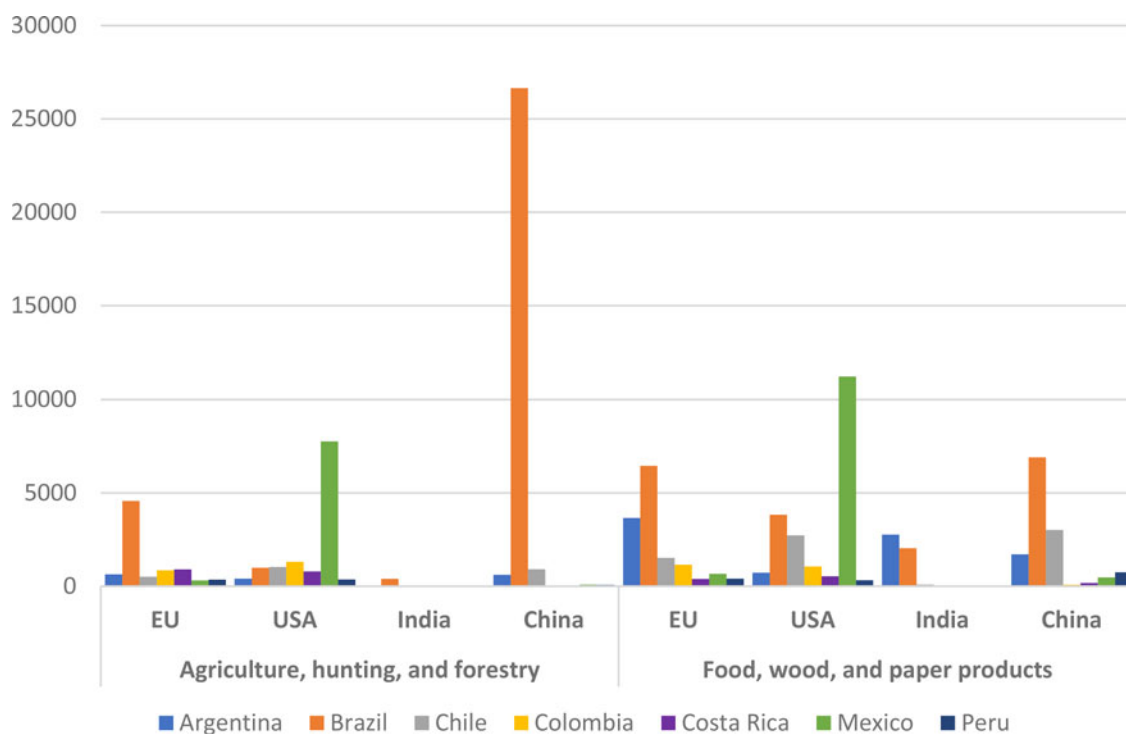
Currently, domestic consumption of resources and manufactured products from commodities in Latin America is greater than the export of those commodities. However, a proportion of this domestic consumption is used in supply chains to produce goods which are eventually exported. This is not directly observable in the data.<sup>35</sup> Over time, with increased consumption from the growing population and industrialization of Latin American countries, as well as large economies, such as China and India, the demand for Latin American commodities will continue to grow both domestically and abroad. We now discuss whether and how regional cooperation can support demand-side interventions to reduce tropical deforestation in global commodity markets.

#### *What Role for Regional Cooperation in Building Deforestation-Free Supply Chains?*

Forests cover approximately 47 percent of Latin America's land area, and the region is home to the world's largest rainforest.<sup>36</sup> Latin American countries all face similar environmental problems, many of which require

<sup>35</sup> See Garcia & Pauwels, *supra* note 7.

<sup>36</sup> Williams, *supra* note 2.



**Chart 2:** Foreign consumption by selected destinations in 2018 (US\$ million).

Sources: OECD ICIO.

Note: Consumption data is the gross intermediate and final output per country for the aggregated industries featured in the chart.

cooperation, but cooperation has not been a strong feature in Latin America, particularly in forest conservation. What follows are some examples of how regional cooperation could be used to tackle deforestation.

Effective implementation of the EU Regulation will require reliable information about the relevant commodities and products. EU operators must conduct due diligence to *gather* relevant information and to *identify* and *assess* the risks of possible noncompliance. This may, however, be problematic, as EU regulators and businesses have limited visibility into downstream supply chains.

An evaluation (called a “fitness check”) of timber regulations—in particular, FLEGT and EUTR—was conducted in preparation for the EU Regulation. It revealed that one critical issue for operators under the EUTR is the ability to verify the robustness of information on timber and derived products entering the EU, and to assess risks effectively, as required under the EUTR’s due diligence process.<sup>37</sup> Due diligence obligations are often hindered in practice by endemic corruption and low governance in the forest sector of timber-producing countries. Here, regional cooperation can play a role: it could help producer countries and businesses ensure transparency in their commercial operations, in terms of both the availability and quality of information required under due diligence processes.

<sup>37</sup> [Commission Staff Working Document Fitness Check on Regulation No. 995/2010 of the European Parliament and of the Council of Oct. 20, 2010](#), at 22 [hereinafter, “Fitness Check”].

Moreover, regional cooperation may help setting common standards for forest risk commodities—i.e., commodities and derived products associated with forest degradation—traded in the region and exported from Latin America. Regional organizations, such as the OAS, the Andean Community, and common markets, may assist countries to create standards or guidelines, for instance, on how businesses should manage and make information available regarding certain commodities and products, how to track them throughout the supply chain, how to facilitate customs cooperation, exchange of information, etc.<sup>38</sup> Ultimately, these common standards may have trickle down effects into Latin American countries' national jurisdictions, by being incorporated into domestic law. This is what happened with some international law principles, such as that of prior and informed consent, established by the 1989 Indigenous and Tribal Peoples Convention,<sup>39</sup> which is now reflected in national laws and policies of many Latin American countries.<sup>40</sup>

The success of international regulations tackling tropical deforestation depends significantly on cooperation. The European Commission recognizes the need to engage with producer countries to support their transition to sustainable agricultural practices,<sup>41</sup> and commitment to support them in addressing the root causes of deforestation, including weak governance.<sup>42</sup>

### *Conclusion*

International regulations focused on global commodities associated with forest destruction, such as the proposed EU Regulation, represent an opportunity for the international community and businesses to rethink agricultural production and trade practices. They may also work as an incentive for producer countries in Latin America to direct cooperation into building deforestation-free supply chains as a regional practice. Regional organizations, notably the Organization of American States, could play a role in assisting individual countries and businesses to navigate the EU regulation, and in setting regional standards to control the environmental footprint of certain global commodities. In the future, other consumer countries might join the European Union in setting higher environmental standards for global value chains. Latin American countries can only benefit and become more competitive by preparing for this likely trend.

<sup>38</sup> Regional organizations elsewhere have set standards for certain industries, such as the [ASEAN Tourism Standards](#) (2012).

<sup>39</sup> [Indigenous and Tribal Peoples Convention \(No. 169\)](#), Art. 6, June 27, 1989, 1650 UNTS 383 (*entered into force* Sept. 5, 1991).

<sup>40</sup> For example, [Decree 10.088/2019](#) (Nov. 5, 2019), [Decree 7.747](#), Art. 3(11) (July 5, 2012) in Brazil; [Constitution of Bolivia](#), Art. 30(II); and [Constitution of Ecuador](#), Art. 57(7).

<sup>41</sup> [EU Regulation](#), *supra* note 1, Art. 28.

<sup>42</sup> *Id.*, pmb., rec. 2.