

The EU's deforestation regulation and its impact on international trade

The obligations laid down in the European Union's new deforestation regulation, with an impact on the import and export to and from the EU of products such as meat, leather or bovine hides, coffee, cocoa, soya, rubber and rubber tyres, wood or palm oil, will be enforceable as of 30 December 2024. Save for exceptions, traders of said products will have to carry out appropriate risk assessments.

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With the exception of small and medium-sized enterprises (SMEs), to which, in general terms, a simpler scheme will apply at a later date, companies or individuals who, as of 30 December 2024, market the above-mentioned products will have to carry out risk assessments to ensure that the commodi-

ties used do not affect deforestation and have not been obtained in violation of local laws on environmental, urban planning, employment, tax and customs aspects, among others.

1. Relevant products

Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, lays down rules regarding the placing and making available

on the Union market as well as the export from the Union of relevant products, as listed in Annex I thereto, that contain, have been fed with or have been made using relevant commodities, namely: 1) cattle, 2) cocoa, 3) coffee, 4) oil palm, 5) rubber, 6) soya and 7) wood.

The following, for example, are relevant products:

- a) Meat of cattle, fresh, chilled or frozen, or tanned or crust hides and skins of cattle.
- b) Cocoa in various forms (beans, paste, powder or butter) and chocolate containing cocoa.
- c) Coffee and coffee substitutes.
- d) Palm oil and other acids and oils which have palm oil as their raw material.
- e) Rubber, natural, compounded unvulcanised rubber, vulcanised rubber thread and cord, new rubber tyres, re-treaded or used rubber tyres, tyre treads and flaps, and articles of apparel such as gloves, mittens, mitts and other accessories of vulcanised rubber other than hard rubber.
- f) Soya beans, soya bean flour or soya-bean oil.
- g) Wood, which includes firewood, charcoal, wood in the rough, wood wool, wood fibre-board, plywood and other wood-based products (including boxes, tableware, kitchenware, caskets and cases, and certain seats).

Products produced before 29 June 2023 will not be subject to the obligations under the new regulation.

2. Obligors

The regulation places its obligations mainly on the following:

- a) the person who places relevant products on the EU market or exports them (the operator); and
- b) the next person in the supply chain who, in the course of a commercial activity, makes relevant products available on the market (the trader).

Where a natural or legal person established outside the Union places relevant products on the market, the first natural or legal person established in the Union who makes such relevant products available on the market shall be deemed to be an operator.

The operator and the trader may appoint an authorised representative for the fulfilment of certain obligations.

3. The operator's main obligations

3.1. *Exercise due diligence* with regard to products placed on or exported from the EU market. This translates into the following:

- 1) *The collection of certain information* on the relevant product placed on or exported from the EU market: name, description, quantity, place of production (specific part of the country), geolocation coordinates of all plots of land from which the relevant commodities are sourced, contact details of the person supplying the products and of the person to whom the operator supplies them,

and adequately conclusive and verifiable information that the relevant products are deforestation-free¹ and the relevant commodities have been produced in accordance with the relevant legislation of the country of production², including any arrangement conferring the right to use the respective area for the production of the relevant commodity.

2) *Conducting a risk assessment* on whether or not the products are compliant with the regulation; it must be documented and reviewed at least annually, and the authorities may request supporting documentation. The risk assessment requires consideration of certain pre-defined criteria, for example:

- a) The level of risk assigned to the country of production as a whole. By 30 December 2024 at the latest, the European Commission must assign a high, low or standard risk to each country.
- b) The presence of forests in the country of production or parts thereof, as well as the prevalence of deforestation or forest degradation.
- c) The presence of indigenous peoples in the country of production

or parts thereof, as well as cooperation in good faith with these indigenous peoples and the existence of duly reasoned claims by indigenous peoples on the use or ownership of the area used for the purpose of producing the relevant commodity.

d) The reliability of the information obtained, concerns about the level of corruption, the complexity of the supply chain or the risk of circumvention of the regulation.

3) *Adopting risk mitigation measures*, unless the risk assessment confirms that the risk is non-existent or negligible. Risk mitigation measures, which should also be reviewed annually and documented and made available to the authorities if required, may include requesting additional information, data or documents or conducting independent surveys or audits.

3.2. *Establish a “due diligence system”*, which, if they are not SMEs, they should inform the wider public about via the internet.

3.3. *Submit a ‘due diligence statement’* in line with the template provided in Annex II of the regulation, which requires information on the person carrying out the transaction, the country of origin and the

¹ It should be noted that the concept of forest is defined in the regulation to be limited to “land spanning more than 0,5 hectares with trees higher than 5 metres and a canopy cover of more than 10 %, or trees able to reach those thresholds in situ, excluding land that is predominantly under agricultural or urban land use”.

² Including applicable laws on land use rights, environmental protection, forest-related legislation, third party rights, human rights protected by international law, the principle of free, prior and informed consent as contained in the UN Declaration on the Rights of Indigenous Peoples and tax, anti-corruption, trade and customs legislation.

geolocation of the plots of land, as well as sign a commitment to comply with the regulation.

Submitted by the operators through an information system, these statements will be made available by the European Commission by 30 December 2024.

- 3.4. **Communicate to operators and traders** further down the supply chain all information necessary (including reference numbers of due diligence statements) to demonstrate that all requirements of the regulation have been met.

4. The trader's main obligations

The trader who is not an SME shall, like the operator, communicate all necessary information along the supply chain.

5. Monitoring fulfilment of the obligations

The competent authorities of each Member State will be required to carry out checks at regular intervals, for which they in turn will be required to draw up *plans of checks*. Member States shall make available to the public and to the Commission information on the application of this Regulation during the previous calendar year.

Products placed under the customs procedure 'release for free circulation' or 'export' will be subject to customs controls.

The operator must confirm that the commodities are obtained in accordance with the legislation of the country of origin

In addition, any person will be able to submit to the authorities a *substantiated concern* regarding potential non-compliance with the regulation, giving said person standing to access administrative or judicial procedures to review the legality of the decisions, acts or failure to act of the competent authorities.

6. Consequences of non-compliance with the regulation

By making available the due diligence statement to competent authorities, the operator shall assume *responsibility* for the compliance of the relevant product with the regulation. In turn, the trader shall also assume *responsibility* for the products made available on the market. The European Commission has therefore confirmed that, in case of non-compliance with the regulation, each actor in the supply chain bears responsibility and may be obliged to bear the consequences of non-compliance.

Rules on penalties will be laid down by each Member State. The Directorate-General for Biodiversity, Forests and Desertification of the Spanish Ministry for Ecological Transition announced during the COP28 sessions that it was working on a national regulation to lay down such rules.

The regulation anticipates what sanctions should be applied, including fines, confiscation of products and revenues, and temporary exclusion from public procurement processes and from access to public funding.