



EU Deforestation Regulation: Is your company prepared?

The EUDR requires companies trading in cattle, cocoa, coffee, oil palm, rubber, soya and wood, as well as products derived from these commodities, to conduct extensive diligence on the value chain to ensure the goods do not result from recent (post 31 December 2020) deforestation, forest degradation or breaches of local environmental and social laws.

The EUDR at a glance

On 29 June 2023, a landmark due diligence regulation entered into force that prohibits the import into, trading within or export of certain products from the EU market unless it can be proven they are “deforestation-free”. Companies could face fines of up to 4%

of their turnover in the EU for non-compliance with the regulation, in addition to other sanctions such as confiscation of products.

The EUDR will have a wide reach primarily in the consumer industry, affecting any company that sells or exports the relevant commodities and

derived products to or from the EU market. Its principal burden will be on companies that are making relevant products available on the market for the first time, or exporting them. Companies should consider now the impact of the EUDR on their supply chain due diligence to prepare for the new obligations that apply from 30 December 2024.

Due diligence requirements

The EUDR imposes significant requirements on both ‘operators’ and ‘traders’. An operator is any natural or legal person who, in the course of a commercial activity, places relevant products on the market or exports them. In addition, where a natural or legal person outside the EU places relevant products on the market, the first natural or legal person established in the EU to make these products available, will also be deemed an operator. A trader, on the other hand, is any person in the supply chain other than the operator who, in the course of a commercial activity, supplies a relevant product for distribution or consumption.

Requirements for operators

Prior to placing relevant products on the market or exporting them, operators must exercise due diligence with regard to all relevant products supplied by each particular supplier. There are three essential steps to be taken in this due diligence procedure.

1. Collection of information about the relevant product to demonstrate compliance with the EUDR, including the country of production, geolocations of plots of land where the commodities were produced, conclusive and verifiable information that the products are deforestation-free and have been produced in accordance with the relevant legislation of the country of production.

“Deforestation-free” means that the land has been free from deforestation and forest degradation since 31 December 2020: this includes conversion to agricultural use, or conversion of primary forests or naturally regenerating forests into plantation forests or planted forests.

“Relevant legislation of the country of production” includes land use rights, environmental protection, labour rights, tax, anti-corruption, trade and customs regulations, and importantly, international human rights and the

principle of free, prior and informed consent (FPIC) of indigenous peoples.

This first step will require companies to liaise with their suppliers all the way up their supply chains. Once the data is collected, the information must be submitted to the dedicated information system to be established by the European Commission by 30 December 2024.

2. Carrying out a risk assessment for each product to evaluate risks of non-compliance in the supply chain.
3. Taking adequate and proportionate mitigation measures to address and avoid risks. Such measures include reporting measures and model risk management practices.

To perform these due diligence requirements, operators must also establish and keep up to date a due diligence system to ensure that the relevant products they place on the market or export comply with their respective conditions.

Requirements for traders

The main requirement for traders is to keep information relating to the relevant products they intend to make available on the market. This information includes the name, the registered name or registered trade mark, postal, e-mail and web address of the operators/traders who have supplied the relevant products to them, and to whom they have supplied relevant products themselves. In addition, traders should collect and keep the reference numbers of the due diligence statements associated to those products.



Is your company impacted by the EUDR?

The EUDR details an exhaustive list of in-scope goods. These so-called ‘relevant commodities’ are: cattle, cocoa, coffee, palm oil, rubber, soya and wood. While this list may seem rather short, ‘relevant products’ are also covered. This includes any product that contains, has been fed with or has been made with the aforementioned relevant commodities, significantly increasing the amount of in-scope goods.

Penalties

Member States will be obliged to lay down rules on penalties should infringements occur. These penalties include fines up to 4% of the operator’s or trader’s total Union-wide turnover, confiscation of the relevant products, temporary exclusion from public procurement processes and access to public funding and temporary prohibition from placing on the market or exporting relevant products.

To this end, national authorities will be obliged to carry out regular checks (in principle without warning) on operators and traders to ensure compliance with the Regulation. Where national authorities deem that relevant products present a high risk of non-compliance, the relevant authority may even take immediate interim measures to suspend the placing or making available of the products on the market.

In addition, any natural or legal person may submit a substantiated concern to the competent authorities when they consider that an operator or trader does not comply with the Regulation. These substantiated concerns must be diligently assessed and addressed by the authorities.

Is your company prepared ?

While the Regulation will only apply from 30 December 2024, its provisions will already apply to goods produced today. Therefore, due diligence systems should be set up and implemented in due course. In this regard, companies should make the following assessment.

1. Assess the scope of application: Are your products covered by the Regulation?
2. Verify your role under the Regulation: Is your company considered an operator or a trader under the Regulation?
3. Analyse the requirements: Which requirements apply to your company? Companies should consider the requirements for their commodities and engage with their supply chains to understand how their products are produced, and foresee any possible risks of non-compliance.
4. Evaluate internal (due diligence) process: Companies should evaluate their own systems in terms of qualities and operations, and be able to benchmark those against the text of the Regulation. This will allow them to identify any gaps, where they may need to strengthen their systems, and assess existing sourcing programmes and policies. The benchmarking system provided by the Commission is expected to simplify operators' task of classifying risks.

Our multidisciplinary ESG Advisory team can support you with your EUDR compliance strategy

The role of geolocation and the use of technology

Geolocation data provides an efficient and cost-effective way of monitoring deforestation by drawing a precise link between the commodity or product placed on the EU market and the location where it was grown. The EU offers guidance on how to collect geolocation data in an efficient and budget-friendly manner, such as generating GPS coordinates through phones and digital applications. (EU Deforestation Regulation - Publications Office of the EU)

Combining geolocation with remote monitoring satellite images is expected to boost the effectiveness of the Regulation. Ultimately, this geographic information will enable authorities to verify whether products and commodities are deforestation-free. However, discussions remain on which images and service providers will most successfully result in "adequately conclusive and verifiable" information to back up compliance and accompany the due diligence statement. Particularly for forest degradation, it will be crucial to use images showing different degrees of resolution to precise where forests have been degraded.

Implications for producers outside the EU

The Regulation guarantees that domestic and imported commodities will be measured by the same standards. Nonetheless, non-EU companies may increasingly be asked by their EU partners to provide information in order to fulfil their due diligence responsibilities. On a positive note, the Regulation will continue to support producing countries alongside other measures, by establishing forest partnerships that enhance forest governance and socio-economic opportunities for communities in sustainable supply chains. Hence, an increasing demand for sustainable products in the EU is expected to boost deforestation-free businesses around the world.

Conclusion

The EUDR is a pivotal piece of EU legislation in the fight against deforestation. It places stringent obligations on businesses, including due diligence and risk assessments. Non-compliance may result in fines, product confiscation, and temporary exclusions from procurement processes.

Companies must promptly establish due diligence systems and assess their operations to meet the Regulation's requirements. The Regulation not only reflects a commitment to environmental sustainability but also presents opportunities for businesses to thrive in a market increasingly prioritising deforestation-free practices. Embracing these guidelines enables companies to contribute to a more sustainable future and meet the evolving demands of the global marketplace.

Our services

Our multidisciplinary ESG Advisory team can support you in understanding the potential impact of the EUDR on your operations and how to set up your company for compliance "EUDR readiness check".

We can assist in mapping your position by connecting commodities and products with relevant legal entities and mapping the value chain up to the required level. Additionally, we can identify the EUDR requirements for each legal entity specific to your commodities and products.

We work together with you to develop short-term and mid-term strategies and scenarios to ensure EUDR compliance across various areas including changes in procurement procedures, designing an effective due diligence strategy, and remediate and (re)negotiate supplier contracts to reflect new obligations.

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