

# EU Enacts New Regulation on Deforestation-Free Supply Chains

23 September 2024

Last summer, the European Union took another step to promote sustainability in supply chains by enacting the *EU Regulation on Deforestation-Free Supply Chains* (Regulation (EU) 2023/1115, “EUDR” or “Regulation”). The EUDR seeks to ensure that products entering into and traded on the European market are not linked to deforestation, forest degradation or violations of indigenous peoples' rights. The Regulation is part of the EU’s Green Deal initiative and complements the EU’s Corporate Sustainability Due Diligence Directive (“CSDDD”), which we have previously discussed [here](#) and [here](#).

The EUDR will take full effect from 30 December 2024 (or 30 June 2025 for micro or small undertakings). It applies to commodities such as wood, cattle and rubber, as well as certain products derived therefrom. All companies that supply and trade these raw materials and derivatives for distribution, consumption or use on the EU market, throughout the supply chain, must fulfil strict due diligence obligations in accordance with the EUDR (although there are certain exemptions for micro, small and medium-sized enterprises (“SMEs”)).

Once in effect, the EUDR will replace the EU Timber Regulation (Regulation (EU) 995/2010, “Timber Regulation”), which aims to combat illegal logging and the associated trade of illegally harvested timber and timber products in the EU market by requiring those who place such products on the market for the first time to exercise due diligence to ensure legality and for traders to keep a traceable record of their suppliers and customers.

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## Background

Deforestation and forest degradation are important drivers of climate change and biodiversity loss and are therefore considered two of the greatest active threats to the environment. Forests are home to numerous animal and plant species and play a crucial role in preserving biodiversity. Every year, millions of hectares of forest are lost worldwide through deforestation to make way for agricultural land, mining, palm oil plantations and livestock farming with devastating effects on health, lives and livelihoods

for millions of people around the world. According to an estimate published by the Food and Agriculture Organization of the United Nations (FAO), between 1990 and 2020, 420 million hectares of forest—an area larger than the European Union—were lost to deforestation. In addition, the Intergovernmental Panel on Climate Change (IPCC) estimates that more than 10 percent of all greenhouse gas emissions between 2007 and 2016 are attributable to deforestation. The additional CO<sub>2</sub> emissions caused by deforestation are further amplified by the fact that the amount of greenhouse gas emissions absorbed and stored by forests overall is decreasing as a result of the shrinking forest area.

A significant driver of these developments is consumption in the EU. It is estimated that the consumption and production of beef, cocoa, coffee, palm oil, soya and wood in the EU alone will result in the loss of around 248,000 hectares of forest per year by 2030, unless regulatory measures are taken.

In contrast to some of the existing international and national laws and initiatives, such as the draft FOREST Act (USA), the Joint Declaration on Enhancing Climate Action (China and USA) or the UK Environment Act, which are aimed at banning or restricting only *illegal* deforestation and trade, the new European regulation goes a step further and prohibits products derived from both *illegal* and *legal* deforestation, thereby sending a clear signal in favor of sustainable business practices along supply chains.

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## Subject Matter and Scope

### Commodities and Products

The EUDR restricts the placing and making available on the EU market, as well as the export from the EU market of, certain raw materials (cattle, cocoa coffee, “oil palm” ([sic], i.e., palm oil), rubber, soya and wood; “Commodities”) and a wide variety of products made from these Commodities as listed in Annex I to the Regulation (e.g., leather, products made from vulcanized rubber, new and used tires and a variety of wood-based products; “Products”).<sup>1</sup> Once the Regulation comes into effect, the trade of Commodities and Products will only be permitted if they:

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<sup>1</sup> It is worth noting that the list of Products covered by the EUDR, provided in Annex I, includes the underlying Commodity (e.g., the Products related to “cattle” also include “live cattle,” the Products related to “coffee” also include “coffee beans”). Therefore, whenever the Regulation refers to Products (or “relevant products” as they are defined in the text of the EUDR), this includes the underlying Commodity.

- are deforestation-free (i.e., the relevant Commodities used were produced on land that was not subject to deforestation or forest degradation after the cut-off date of 31 December 2020);
- have been produced in accordance with the relevant legislation of the country of production (including human rights and indigenous peoples' rights laws); and
- are covered by a due diligence statement which contains information to ensure that the Commodities and Products are deforestation-free and compliant with all relevant applicable laws.

The list of Commodities will be regularly reviewed and updated, taking into account new data such as changing deforestation patterns.

Notably, the EUDR only applies to Products produced on or after 29 June 2023 and brought into or traded on the European market after 30 December 2024 (or 30 June 2025 for micro or small undertakings). An exception is made for timber and timber products. While the EU Timber Regulation will be repealed when the EUDR comes into force at the end of this year, it will continue to apply to timber and timber products produced before 29 June 2023 until 31 December 2027. From 1 January 2028, the EUDR will apply to all timber and timber products, regardless of when they were produced.

### **Operators and Traders**

The Regulation applies to any natural or legal person who, in the course of a commercial activity, places (i.e., first makes available) Products on, or exports Products from, the EU market ("Operators"), as well as any person along the supply chain who trades Products already available on the EU market ("Traders").

### **Due Diligence Obligations**

The EUDR requires in-scope companies to conduct due diligence along their supply chains, with partial relief for SME Operators and Traders.

In-scope Operators and Traders must assure traceability to the exact location where the relevant Commodities were first produced and implement a due diligence system to avoid sourcing of Commodities or Products which are not deforestation-free or have not been produced in accordance with the relevant legislation of the country of production. This requires close monitoring of suppliers and the implementation of transparent processes along the entire production chain and the adoption of certain specific measures set out in the Regulation, including:

- **Collection of Information, Data and Documentation:** Both Operators and Traders must collect the necessary information on their supply chain and retain it for at least five years. They must also inform the competent authorities immediately if they receive information that gives rise to reasonable concerns about a Commodity or Product.
- **Risk Assessment:** Companies must carry out a systematic risk analysis to identify potential risks relating to deforestation in their supply chain. Both environmental and human rights aspects should be taken into account. The criteria for the risk analysis include an assessment of the countries of origin, including a review of production practices and the treatment of indigenous peoples.
- **Risk Mitigation:** If risks are identified, companies must take measures to mitigate those risks. This can include, for example, the use of certification programs, the establishment of partnerships with sustainable suppliers or the support of reforestation projects. If a violation of the Regulation is detected, Operators and Traders are obliged to take appropriate corrective measures, which may include the immediate withdrawal of the relevant goods from trade in order to prevent them from being placed or made available on the market. Another option is to donate the relevant products to charity or dispose of them in accordance with EU waste management legislation.
- **Transparency and Reporting:** The EUDR requires non-SME Operators and Traders to publicly report, on an annual basis and as widely as possible (including on the internet), on their due diligence system. This includes the steps taken by them to implement their due diligence obligations. Companies that fall within the scope of other EU acts that establish value chain due diligence requirements, such as the CSDDD, may elect to comply with their EUDR reporting obligations by including the required information in the reporting under those other EU acts (i.e., in the annual report on CSDDD compliance).

### **SME Operators and Traders**

The EUDR provides (partial) relief for SMEs (defined according to the criteria set out in the EU Accounting Directive (Directive 2013/34/EU)). Undertakings are classified as *micro*, *small* or *medium*, respectively, if, on their balance sheet dates (i.e., the date as of which the information in their balance sheet is stated), they do not exceed at least two of the three following criteria:

Category	Balance Sheet Total	Net Turnover	Average Number of Employees During the FY
Micro	EUR 350,000	EUR 700,000	10
Small	EUR 4m	EUR 8m	50
Medium	EUR 20m	EUR 40m	250

If a due diligence report has already been submitted for the relevant products, SMEs are exempt from the due diligence obligations. However, they should store information on suppliers and customers to whom they have supplied relevant products and retain this information for a period of five years.

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## Simplified Due Diligence

In order to simplify the risk assessment, the EU Commission is introducing a three-tier country benchmarking system: countries or parts of countries are classified according to deforestation risk—*low, standard and high*. Currently, all countries have been assigned a standard risk. An updated list with risk classifications is scheduled to be published by the EU Commission by the time the Regulation takes effect at the end of this year at the latest (however, there are some media reports that suggest that the benchmarking system will not be ready until sometime in 2025).

If companies can ensure that all relevant Commodities and Products originate from low-risk countries, risk assessment and mitigation can be waived. In such cases, however, relevant documentation must be submitted at the request of the competent authority to show that the relevant risks are negligible.

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## Oversight, Enforcement and Sanctions

Member states must designate competent authorities responsible for verifying compliance of (i) Operators and Traders with the due diligence requirements and (ii) relevant Commodities and Products with the EUDR. As part of their oversight, Member states' authorities must carry out a certain percentage of unannounced inspections per

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<sup>2</sup> Member states may define thresholds exceeding the thresholds for balance sheet total and net turnover. However, the thresholds shall not exceed EUR 6m for the balance sheet total and EUR 12m for the net turnover.

year, adopting a risk-based approach (i.e., focus on Commodities and Products with ties to high-risk countries) and considering relevant information, including substantiated third-party concerns.

If non-compliance is detected, the competent authorities can not only prohibit distribution, but also force the withdrawal of affected Products from the market and the recall of non-compliant goods from end customers. The latter in particular harbors considerable liability risks for suppliers.

In addition, companies that violate the EUDR can be subject to fines of up to 4% of their annual turnover, seizure of goods, confiscation of revenues, prohibition of economic activities and exclusion from public tenders.

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## Conclusion

While the EUDR will bring significant challenges for in-scope companies required to implement or expand due diligence processes and reporting procedures, it represents an important milestone in efforts to reduce global deforestation and prevent human rights violations. It also has the potential to set a global standard for deforestation-free supply chains. The Regulation has received a mixed reception from EU member states, third countries and international organizations such as the World Trade Organization. In March 2023, agriculture ministers from twenty EU member states called on the European Commission to delay and soften the implementation of the EUDR on the basis that it imposed an excessive administrative burden for the agricultural sector. Similarly, the U.S. Trade Representative, the U.S. Agriculture Secretary and the U.S. Commerce Secretary urged the European Commission to postpone the implementation of the Regulation, arguing that its stringency and vagueness create significant compliance challenges. There are also growing concerns about the potential economic impact on countries that export raw materials to the EU, such as Brazil and Indonesia. In light of this backlash against the Regulation, the EU Commissioner for Agriculture recently called for a one-year delay in its implementation. However, unless the EU Commission decides to formally extend the transitional period, the EUDR will enter into force at the end of this year.

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Please do not hesitate to contact us with any questions.



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