



FROM EUTR TO “EUDR”? POSSIBLE IMPLICATIONS AND REQUIREMENTS FOR THE TIMBER SECTOR

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The EU Deforestation Due Diligence Proposal:

- November 2021: Proposal for a Regulation on **placing on the EU market and exporting from the European Union wood**, cattle (beef), cocoa, coffee, palm oil and soy and derived products associated with deforestation and forest degradation, by the EU Commission
- **No longer be placed or made available on the EU market**, nor can they be exported from the EU market, unless they are deforestation-free.
- Part of the European Union's initiatives to address climate change, **it replace the EUTR**

- CUT OFF DAY:

EU COMMISSION	EU COUNCIL	EU PARLIAMENT
Deforestation-free' refers to products that were produced on land that has not been subject to deforestation after December 31, 2020	'Deforestation-free' refers to products that were produced on land that has not been subject to deforestation after December 31, 2021	Deforestation-free' refers to products that were produced on land that has not been subject to deforestation, and have not induced or contributed to forest degradation or forest conversion after December 31, 2019

A new approach:

At the core of the proposal is a set of information requirements for operators (& non SMS traders) to demonstrate compliance through a mandatory due diligence mechanism.

- Only products that are both deforestation-free and legal - need to be covered by a due diligence statement;
- Strict traceability linking the commodity to the plot of land where it was produced;
- Information system: Host due diligence statements and related information to facilitate enforcement by Member States

OPERATORS

Natural or legal persons who in the course of a commercial activity place the covered goods on the EU market or export them from the European Union.

TRADERS

Traders are defined as any person in the supply chain other than the operator that makes available on the EU market covered goods

Main elements:

Benchmarking system that allows to assign risk to countries according to the level of risk of deforestation [low, standard, high];

Cooperation with partner countries

- No ban against any country or commodity
- The Commission will step up cooperation programs to ensure that EU partners are able to reap the benefits of new EU rules on deforestation
- The Commission will also intensify engagement with consumer countries such as China and USA as well as in international fora.

Specific obligations for operators and Member State authorities – simplified due diligence for low-risk and enhanced scrutiny for high-risk countries;

Minimum level of inspections for Member States authorities to perform (5% -10%).


Effective, proportionate and dissuasive penalties (max amount 4% annual turnover);

General Provisions:

Article 3: Prohibition

Products cannot be placed on the market or exported, unless they are:

‘Deforestation-free’ – as per Art 2:

- relevant commodities/products were produced on land that has not been subject to deforestation;
- harvested wood – without inducing forest degradation 

Legal: As in EUTR, covering national applicable laws and international treaties in the country of production; and covered by a

Due Diligence statement: New requirement (contained in U.S. Lacey Act, but not EUTR), aimed at facilitating court action, improving traceability and providing information to competent authorities to enforce the Regulation.

Obligations of operators and traders:

- **Article 4:** Obligations of operators - operator is responsible for the compliance of the relevant commodity or product and may not place commodities/products on or export from the market if:
 - No due diligence statement was submitted
 - the commodities/products are found to be non-compliant
 - the exercise of due diligence revealed that the risk of non-compliance is non-negligible (e.g. for lack of information on the origin of the commodities or products)
 - the operator was unable to complete a due diligence procedure as required information is not available; .
- **Article 6:** Traders that are not SMEs shall be considered operators – SMEs traders simplified procedure for the information required.
- **Article 7:** If operator is based outside the EU, first buyer within the EU is considered operator (new clause vis a vis EUTR to avoid loopholes)

New requirements:

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Information Requirement
– step one of due diligence
Art 9 of the new proposal

The operator shall implement measures and procedures providing access to the following information concerning the operator's supply of timber or timber products (Article 6):

- Name (common, trade and scientific) and type of product
- Country of harvest, and where applicable: sub-national region and concession of harvest,
- Quantity (volume, weight or number of units),
- Name and address of the supplier to the operator,
- Name and address of the trader,
- Documents or other information indicating compliance of those timber and timber products with the applicable legislation.

DEFORESTATION PROPOSAL (ADDITIONAL TO EUTR)

- Name **email** and address of any business or any person to whom relevant commodities or products have been supplies;
- Adequate and verifiable information:
 - **the relevant commodities and products are deforestation-free & in accordance with relevant legislation, law and standards of the country (including human rights);**
 - disclosing the **views of any indigenous peoples, local communities and other groups that claim tenure rights** in respect of the area used;
 - obtained via **independent audits** and appropriate consultation processes

New requirements:

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DEFORESTATION PROPOSAL

Information Requirement – step one of due diligence



12 months after the entry into force of this Regulation - to clarify due diligence responsibilities and traceability rules of operators – To be developed in consultation with relevant stakeholders, including from third countries

- **Geo-localisation:** coordinates latitude and longitude for all plots of land where the relevant commodities and products were produced, or the geolocation coordinates, latitude and longitude of all points of a polygon for the plots of land where the relevant commodities and products were produced;
- any deforestation or degradation in the given plots of land shall automatically disqualify all products and from being placed and made available on the market or exported therefrom;
- **operators shall provide the date or time range or harvesting season of production of the commodity or product;**

New requirements:

EXEMPT

Low risk countries

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DEFORESTATION PROPOSAL – ART 10

Risk assessment and risk mitigation – steps two & three of due diligence

(Article 6):

- Assurance of compliance with applicable legislation,
- Prevalence of illegal harvesting of specific tree species or practices in the country of harvest and/or subnational region where the timber was harvested,
- Sanctions imposed by the UN Security Council or the Council of the EU on timber imports or exports,
- Complexity of the supply chain of timber and timber products

- The presence of forest in the country, region and area of production
- Prevalence of deforestation or forest degradation (*or forest conversion*);
- The source, reliability, validity and links to other available documentation;
- Concerns in relation to the country of production and origin;
- Complexity of the relevant supply chain and in the traceability of the plot and land of production;
- The risk of mixing with products of unknown origin or produced areas;
- The conclusions of the relevant Commission expert group meetings;
- Substantiated concerns (as per Art 29);
- Complementary supplied by certification or other third party-verified schemes, including voluntary schemes.

New requirements:

DDS ELEMENTS

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DEFORESTATION PROPOSAL – ART 10

Risk
assessment
and risk
mitigation –
steps two &
three of due
diligence

THE RISK ASSESSMENTS & THE RISK
MITIGATION DECISIONS TAKEN (WHERE
APPROPRIATE), SHALL BE DOCUMENTED,
REVIEWED AT LEAST ON AN ANNUAL BASIS

Operators shall have in place adequate and proportionate policies, controls and procedures to mitigate and manage effectively the risks of non-compliance:

These shall include:

- a) model risk management practices, reporting, record-keeping, internal control and compliance management, including for operators that are not SMEs, the appointment of a compliance officer at management level;
- b) an independent audit function to check the internal policies, controls and procedures referred to in point (a) for all operators that are not SMEs.

Obligations for operators and traders

Article 11: Obligation to :

- reviewing due diligence system annually and adapting if necessary;
- keep records for 5 years;
- reporting publicly every year (including in the context of other reporting obligations), not applicable for SMEs.

Reports shall:

- provide the information set out in Article 9 (step 1 due diligence);
- describe the information and evidence to demonstrate compliance based on the conclusions of the risk assessment and describe any risk mitigation procedures undertaken
- specify the date and place where the relevant commodities and products were placed on, or exported from, the Union market;
- provide evidence of consultation of indigenous peoples, local communities, and other customary tenure rights holders

Enforcement & Implementation:

- Article 13: Member States
 - Designation of competent authority
 - Provision of technical and other assistance to operators, especially to SMEs;
 - Exchange and dissemination of relevant information.
- Article 14: Obligation to perform checks
- Article 15/16: Content of inspections (due diligence systems, documentation records and, if necessary, field audits, satellite tools, isotope testing, field audits, etc.)



The information system: a central information system for the collection and recording of the operators' due diligence statements. It will be developed through an active role of the customs authorities of all member states. (Art 31)

EUTR

Checks

According to Article 10

- The competent authorities shall carry out checks to verify if operators comply with the requirements set out in the EUTR.
- Checks shall be conducted in accordance with a periodically reviewed plan following a risk-based approach.
- May be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties.
- Spot checks, including field audits.

DEFORESTATION PROPOSAL – Art 14

- Checks shall be conducted in accordance with a periodically reviewed plan following a risk-based approach
- Member states shall ensure that the annual checks carried out by their competent authorities cover at least 5% (**10%**) of the operators as well as 5% (**10%**) of the quantity of each relevant commodities and products placed on the market
- Right to perform checks without prior warning of the operator or trader

- The competent authorities shall verify the due diligence system of operators on an annual basis.
- The suspensions shall end within five working days

Country benchmarking

Benchmarking system must apply to both EU Member States and third countries

Article 27: Assessment of countries

Countries **or parts thereof** may be assigned three categories: low, standard and high risk - Initially all countries are considered “standard” risk

Assessment of risk based on criteria:

- **rate of deforestation**
- **rate of expansion of agriculture land for relevant commodities**
- **production trends of relevant commodities and products**
- **whether the country’s NDCs covers emissions and removals from agriculture, forestry and land**
- **existence of relevant agreements and other instruments concluded between the country and the Union**
- **national or subnational laws in place, including in accordance with Article 5 of the Paris Agreement, and takes effective enforcement measures**

Substantiated concerns:

Article 29: Natural or legal persons' substantiated concerns

Any person is entitled to submit substantiated concerns to CAs regarding breaches of the Regulation

Competent authorities are required to analyse the concern and inform the claimant of their follow up

Article 30: Access to justice

Possibility to ask for review of the procedural and substantive legality of the decisions, acts or failure to act of Cas

- Member States shall provide for measures to protect the identity of the natural or legal persons who submit substantiated concerns;
- Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.

Thank you
for your attention!

