



EU Paves Way for Landmark Deforestation-free Products Regulation

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In the early hours on Tuesday, 6 November 2022, representatives of the European Parliament, the European Commission, and the European Council concluded their “Trilogue” discussions, reaching an agreement in principle over a landmark due diligence regulation, which aims to prevent commodity-driven deforestation and forest degradation in selected supply chains of the EU.

The announcement comes a little over a year after the [regulatory proposal](#) on the issue [was first introduced by the Commission](#) and one year after the pledge to halt and reverse forest loss and land degradation by 2030, which was signed at the Glasgow Climate Change Conference (UNFCCC COP 26) by more than 140 countries. Even though the official text of the regulation is not available yet, and the regulation is still awaiting formal approval by the European Parliament and the European Council, the EU is already planning for its entry into force and implementation. The regulation is expected to enter into force in May/June 2023, followed by an 18-month implementation period for larger stakeholders and a 24-month period for small and medium-sized enterprises (SMEs). Commentators have described the EU regulation as a “paradigm shift” for deforestation, moving from voluntary initiatives towards mandatory legislation.

The EU regulation on deforestation-free products is a part of the European Green Deal and follows the lines of the [2019 European Commission communication](#) on stepping up EU action to protect and restore the world’s forests. In this communication, the Commission announced four action items on deforestation:

- Reducing the footprint of EU consumption;
- Stepping up international cooperation;
- Improving sustainable financing; and
- Boosting research and innovation.

The new regulation builds on the first action item by recognizing that the EU is complicit in global deforestation through domestic consumption. It complements the 2030 Forest Strategy, with which the EU aims to strengthen reforestation and conservation efforts at home, and builds on and replaces the EU Forest Law Enforcement Governance and Trade regulation (FLEGT), which includes the EU Timber regulation (EUTR) and already addresses deforestation-related issues partially by focusing on illegal logging and associated trade. The EU regulation on deforestation-free products builds on three pillars:

- A focus on relevant commodities and products;
- A mandatory due diligence procedure coupled with strict traceability; and
- A risk benchmarking system for countries and/or regions.

It covers seven commodities, as well as some related derivatives and products, which have been identified in supplemental research to represent the largest share of EU consumption-driven deforestation worldwide. These are palm oil, cattle, soy, coffee, cocoa, and timber, as well as derived products, such as beef, chocolate, furniture, charcoal, and printed paper products. Since the Commission first announced the proposal on the regulation in November 2021, the scope of covered commodities [has been extended](#) to include rubber and more related derivatives for the other commodities. Over the coming years, the scope of covered commodities will be regularly reviewed and possibly extended.

Mandatory due diligence provides that while no country or commodity as such will be banned from the EU single market, companies will not be allowed to sell their products in the EU or export them from the EU without a due diligence statement. In this statement, companies will have to provide information to

ensure that the commodities and products are: a) deforestation-free, meaning produced on land that was not subject to deforestation or forest degradation after the cut-off date of 31 December 2020 (as defined by SDG target 15.2); and b) compliant with all relevant applicable laws in force in the country of production, including human rights and Indigenous Peoples' rights laws. To enable "competent" EU authorities to verify compliance with the deforestation-free requirement, companies also have to collect precise geographical information on the farmland where the commodities that they source have been grown.

Here again, the definition of "forest degradation" has been expanded since the announcement of the initial regulatory proposal, and its scope will be subject to review one year and two years after the regulation's entry into force.

Contrary to the initial proposal, the regulation now includes additional measures to avoid duplication of obligations and measures to reduce the administrative burden for companies and authorities, for example by allowing larger companies to prepare the due diligence statements of small companies.

A country benchmarking system, to be developed by the Commission, will "assess countries or parts thereof and their level of risk of deforestation and forest degradation." The system will place countries in three baskets based on risks of deforestation – low, standard, and high. Although the details of this sorting are not yet clear, it will likely build on scientific reports, the stringency of domestic legislation in producer countries, and other criteria.

The benchmarking is meant as a monitoring aid to assess the extent of due diligence procedures required by companies and of compliance controls by "competent EU authorities." The risk level assessment will probably also be used to guide the extent of dialogue and partnership between the EU and producer countries, with possible additional support for the "high risk" category.

The regulation comes with a range of opportunities that mostly lie in improving the coherence of obligations that aim to level the playing field for companies who increasingly saw themselves confronted with a hodgepodge of different sustainability standards, measures, and procedures. The regulation is also expected to fuel the trend towards sustainable sourcing practices and increased transparency, as well as a possible push for enhanced sector governance by all actors in global supply chains. Possible spillover effects of the obligations are also expected, for example from upcoming investments in traceability systems to comply with the regulation, which might be useful for future business models.

However, there are also challenges. Some producer countries have criticized the regulation, including in an [open letter](#) circulated last week by Brazil and Indonesia to all members of the World Trade Organization's (WTO) Committee on Agriculture. In addition to the short implementation timelines, the benchmarking system has attracted the most criticism, with some producer countries openly questioning its compliance with the WTO's legal framework.

The EU has responded to these concerns by citing the urgency of addressing deforestation, by claiming that EU companies face the same requirements as non-EU companies and by stating that the regulation will not lead to trade distortion due to continued investments in and engagement with "high-risk" countries/regions. Nevertheless, questions remain regarding the regulation's implementation, the nature of partnerships and supporting measures, and the details of the benchmarking system, whose development observers will be watching closely before the regulation's scheduled entry into force in 2023.

Source: <https://sdg.iisd.org/news/eu-paves-way-for-landmark-deforestation-free-products-regulation/>