



The EU Deforestation Regulation – introducing impactful deforestation due diligence from 30 December 2024

1. Background

The United Nations reported that the world is still losing 10 million hectares of forest each year.¹ As part of the European Green Deal and the wider EU strategy to protect the world's forests,² the EU Deforestation Regulation (EUDR) aims to prevent products and commodities that have contributed to deforestation from entering the EU market. For specific products such as coffee, soy and palm oil, the party placing these products on the EU market must 'ensure' that a product has not contributed to deforestation and has been produced legally. The EUDR thus creates a far-reaching obligation for companies to implement a due diligence procedure and collect extensive data on the products' origin to prove that no deforestation occurred.

In this factsheet, we provide a high-level overview of the EUDR's scope and its obligations. First, in sections 2 and 3, we discuss the EUDR's scope (including impacted parties) and its key obligations. In sections 4 and 5, we explain the risk of enforcement and entry into force.

2. The EUDR's scope

Relevant products

The EUDR applies to seven commodities: cattle, cocoa, coffee, oil palm, rubber, soya and wood ("the commodities") as well as certain products that contain or have been made with these commodities. These

¹ Section 2 of the Preamble of the EUDR.
² Section 10 of the Preamble of the EUDR.

products include cattle meat (beef), leather, cocoa butter, chocolate, selected palm oil-based derivatives, tyres, furniture, printed paper and plywood (“the products”).³ The EUDR’s provisions will therefore cover far more commodities than the existing EU Timber Regulation.⁴

Although the EUDR now only focuses on deforestation, the European Commission (Commission) will have to conduct an impact assessment by 30 June 2025. This will determine whether the EUDR’s scope should be extended to ecosystems such as peatlands and wetlands, and other commodities like corn or other products (e.g. biofuels).

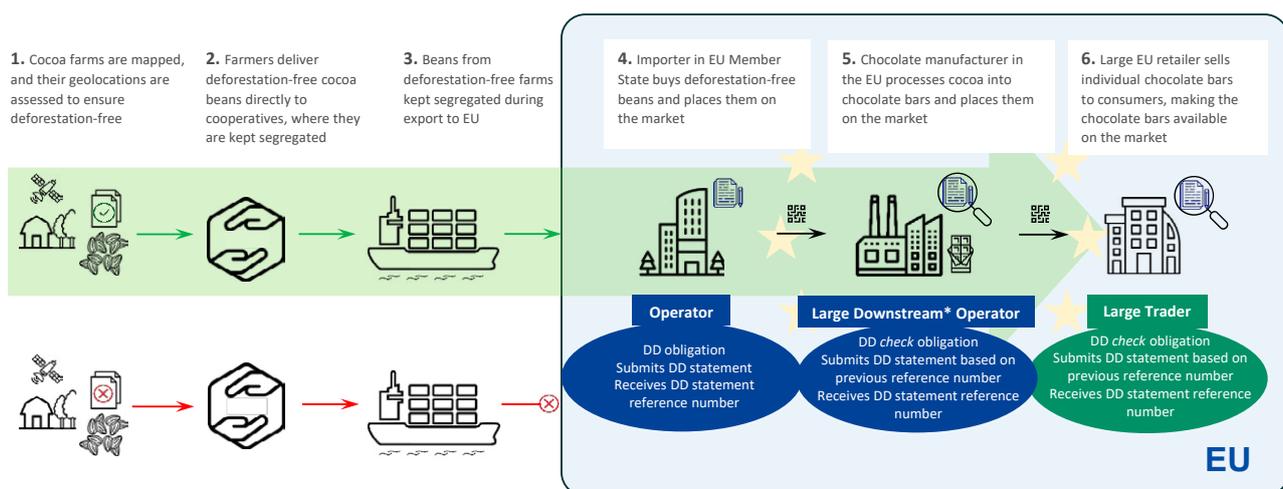
Impacted parties

The EUDR applies to *any* company that places the relevant commodities and products on the EU market. The EUDR distinguishes between operators and traders.⁵

- Operators: individuals or organisations engaged in commercial activities who “place” (i.e. make available **for the first time**) relevant commodities and products on the EU market or export them from the EU market.⁶
- Traders: individuals or organisations involved in the supply chain, excluding the operator, who commercially make the relevant commodities and products available in the EU market.⁷ To ‘make available’ means any supply of a relevant product for distribution, consumption or use on the EU market during a commercial activity.

The EUDR also distinguishes between SMEs and non-SMEs. SME traders have less stringent obligations than non-SME operators and traders. In this factsheet, we focus on the obligations of non-SME operators and traders.

While non-SME traders have the same obligations under the EUDR as operators, they can, to an extent, rely on the due diligence statement that is made by the operator who has placed the relevant products on the EU market for the first time. Nevertheless, such traders – and other operators further down the supply chain – are obligated to assess whether the due diligence statement of the ‘first operator’ is correct. The Commission provided the following useful infographic to explain how this works.⁸



3 Annex 1 to the EUDR contains the list of the relevant commodities and products.

4 Sections 80 and 81 of the Preamble of the EUDR.

5 Section 30 of the Preamble of the EUDR.

6 Article 2(15) of the EUDR.

7 Article 2(17) of the EUDR.

8 [European Commission Expert Group/Multi-Stakeholder Platform Deforestation, supply chains infographics slides presented at the 12th meeting 30 January 2023.](#)

Lastly, we note that the EUDR does not cover the financial and investment sectors. It does not oblige financial institutions to prevent financial flows that contribute directly or indirectly to deforestation and forest decline. However, this may change based on the impact assessment that the Commission will have to conduct by 30 June 2025.

3. EUDR's key obligations

The EUDR prohibits (see Article 3) placing relevant products on the EU market unless they meet three criteria: (i) they are “deforestation free”, (ii) they have been produced “in accordance with the legislation of the country of production”, and (iii) they are covered by a “due diligence statement”. The EUDR furthermore contains several information requirements. Below we elaborate on these three obligations.

(i) Products must be “deforestation free”

The EUDR's core obligation prescribes that products that are placed on the EU market must be deforestation free. Commodities are deforestation free when they were produced on land that has not been converted from forest to agricultural use, whether human-induced or not, after 31 December 2020. Products are deforestation free if they were made or fed with commodities that were deforestation free. In addition, for products containing or made from wood, it means that they were harvested from forests without causing forest degradation after 31 December 2020. “Forest degradation” refers to the conversion of primary forests or naturally regenerating forests into plantation forests or into other wooded land.

Whether a product came from an area where deforestation had occurred after 31 December 2020, must be assessed by the operator or trader itself, based on the due diligence it needs to conduct. As part of the due diligence process, the operator or trader must make a **risk assessment** to determine whether there is “*no or only a negligible risk that the relevant products are non-compliant*” (Article 10(1)). As a minimum therefore, there may only be a negligible risk that a product contributed to deforestation. If a non-negligible risk is identified, the operator or trader must take adequate and proportionate **risk mitigation** measures.

The EUDR does not give a clear definition of the term “negligible risk”. The EUDR's definition in Article 2 only stipulates that, based on “*a full assessment of product-specific and general information, and, where necessary, of the application of the appropriate mitigation measures*”, the products should “*show no cause for concern*” of having contributed to deforestation. The criterion is therefore rather vague.

Risk assessment

The operator or trader will have to assess whether there is only a “negligible risk” that a product has contributed to deforestation. Based on the risk assessment, the trader must at least have a high level of confidence that the relevant product has not contributed to deforestation. When precisely the risk is “negligible” is difficult to say. However, the obligations regarding the due diligence procedure indicate that this assessment must be based on verifiable information that shows from which plots the products originate and how they have been transported from the plot to the EU. Furthermore, the EUDR's Article

10(2) mentions several factors that must be considered in the risk assessment, such as the level of risk assigned to the country from which the products came, the presence of indigenous people, the prevalence of deforestation in the relevant area, the complexity of the supply chain, and “any information that would point to a risk that the relevant products are non-compliant”. Regarding the first factor, the EU will publish a list by 30 December 2024 in which countries and parts of countries will be categorised according to the risk of deforestation (low, medium, high). Operators are furthermore required to document and review risk assessments on an annual basis.

Risk mitigation

If the risk assessment does not indicate a negligible risk of deforestation, operators or traders can only sell products in the EU if they take appropriate measures to reduce the risk of deforestation. Such measures can entail

demanding additional information, data or documents, or carrying out independent surveys or audits. Furthermore, the operator must have in place proportionate policies, controls and procedures to mitigate and manage effectively non-compliance risks.

In short, it is ultimately up to the operator or trader to establish whether there is no or only a negligible risk that the relevant products contributed to deforestation before they place them on the EU market. If there is a risk, sufficient mitigation measures must be taken to ensure that the risk becomes negligible. As operators need to assess the risk themselves, it is not sufficient to rely solely on third-party certification. This can only be one part of the risk assessment.

(ii) Products must be “legally produced”

Products may only be placed on the EU market if they have been produced according to the “relevant legislation” of the country of production. Article 2 defines relevant legislation as the laws applicable in the country of production concerning the legal status of the area of production in terms of: (i) land use rights, (ii) environmental protection, (iii) forest-related rules, including forest management and biodiversity conservation, (iv) third-parties’ rights, (v) labor rights, (vi) human rights protected under international law, (vii) rights of indigenous people, (viii) tax, anti-corruption, trade and customs regulations.

What is problematic with this obligation is the significantly broad spectrum of the legislation that is mentioned. It is unclear if a product is already non-compliant if, for example, only some minor customs regulation is violated or if there is some small dispute regarding a land use title. It is hard to imagine that the EU legislator intended that even a minor violation of a customs regulation would constitute a relevant infringement of the EUDR. It is likely that this requirement means that more “material” rules should not be violated. However, due to the very general formulation of this obligation, this is not entirely certain. The EUDR does not provide more guidance when an infraction of a rule is sufficiently material to violate the obligation that a product must be legally produced.

Regarding this requirement, the operator or trader must also make a risk assessment. Similar to the requirement that a product must be deforestation free, a product may only be placed on the market when there is no or only a negligible risk that a product was not legally produced. Here, the same factors mentioned in the EUDR’s Article 10(2) must be considered. The operator or trader will have to make its own assessment whether the product was legally produced.

(iii) Products must be covered by a due diligence statement

Before products are placed on the EU market, the operator or trader must make a due diligence statement that the products are deforestation free and are produced according to the relevant legislation. Essentially this can be seen as a procedural requirement that supports the first two obligations. The operator or trader must implement a due diligence procedure to assess whether the risk that a product had contributed to deforestation or was legally produced is negligible. The due diligence statement is the operator’s conclusion that this risk is negligible.

Operators and traders further down the supply chain may refer to due diligence carried out earlier in the supply chain by including the relevant reference number for the parts of their products that have already been subject

to due diligence. However, they are obliged to ensure that due diligence has been carried out and remain legally responsible in the event of a breach of the EUDR.

The due diligence must be performed in respect of all relevant products. Operators and traders must implement a due diligence process, which is a framework of procedures and measures that consists of (i) collecting the necessary information, data and documents to fulfil the information requirements, (ii) assessing risk and (iii) implementing risk mitigation measures. We have already discussed the second and third requirement above. Here we focus on the information requirement that must be complied with to adequately conduct the risk assessment.

Information requirements

Article 9 stipulates that operators and traders must collect information, documents and data which verifiably and conclusively demonstrate that the covered products are deforestation free and produced according to the relevant legislation of the country of production. To comply with this requirement, operators must have a clear understanding of their supply chains, from raw materials to final products. In this respect, information on three topics is crucial: (i) geolocation coordinates of all the plots where the relevant commodities have been produced, (ii) the date or period of production and (iii) the way the products are transported and processed. This information must make the products “traceable” from the source until they are placed on the EU market.

- 1. Geolocation:** The operator must obtain the geolocation coordinates of all the relevant plots on which the products were produced. Geolocation coordinates consists of two numbers, one representing a latitude and the other a longitude, the intersection of which corresponds to a point on the Earth's surface.⁹ For parcels of less than 4 hectares and for cattle holdings, a single geolocation point (a latitude and a longitude reference) is sufficient. For parcels larger than 4 hectares, polygons with sufficient points to describe the perimeter of these parcels will be required. Polygons should represent the boundaries of individual plots of land on which the commodity was produced. This localisation of every relevant plot is an important step in the risk assessment. Article 9(1)(d) states that “*any deforestation or forest degradation on the given plots of land shall automatically disqualify all relevant commodities and relevant products from those plots of land from being placed or made available on the market or exported*”. If deforestation has occurred on a plot, this suggests that all commodities from that plot are ‘tainted’.
- 2. Time frame of production:** The communication of the specific production date is crucial. Unlike stable geographical information, production dates vary with each consignment entering or leaving the EU market. The Commission requires precise harvest dates for all commodities except cattle, making it impossible to provide broad time frames (e.g. months).¹⁰
- 3. Transportation and processing:** The operator must obtain sufficient information to assess the risk of commodities mixing with commodities of unknown origin during transportation and storage. If commodities or products are mixed in the supply chain, the operator must ensure that all plots of land involved in a shipment are identified. This ensures that products marketed in or exported from the EU can be checked against all possible origins of the commodities. According to the Commission's latest FAQ document, if a consignment of mixed bulk products is linked to several parcels of land, deforestation on any one of these parcels after 2020 could render the entire consignment non-compliant.¹¹ These complications can be avoided if products are transported and stored separately from other commodities.

⁹ Article 2(27) and 2(28) of the EUDR.

¹⁰ EU Commission FAQ, question 22.

¹¹ EU Commission FAQ, question 12.

4. Enforcement and sanctions

Penalties for infringements by operators and traders are regulated in the EUDR's Article 25. Penalties include fines based on the environmental damage and the product's value. For legal persons, the maximum fine is at least 4% of the annual Union-wide turnover. There is also a provision for the seizure of relevant products, the confiscation of income and the temporary exclusion from tendering procedures and subsidy applications. Member States are required to notify the Commission of final judgments against legal persons for EUDR infringements under Article 25(3). The Commission then publishes a list on its website, including the name of the legal person, the date of the judgment, a summary of the activities infringed and any fines imposed. This list serves as a "naming and shaming" mechanism. In addition, Article 23 allows competent authorities to take provisional and corrective measures in respect of infringements.

In **the Netherlands**, a bill has been introduced to implement the EUDR.¹² The Minister for Nature and Nitrogen Policy will be the competent authority unless that Minister designates another authority.¹³ In addition, inspectors from Customs and the Netherlands Food and Consumer Product Safety Authority will be appointed by ministerial decree. The inspectors will carry out regular compliance inspections using their powers under the General Administrative Law Act (Algemene wet bestuursrecht). This means they have the option of imposing an order subject to a penalty or an administrative enforcement order.

This bill provides that, insofar as not already included in connection with the EU Timber Regulation, the measures mentioned in the EUDR's Article 25 will be introduced in Article 18.16a of the Environment and Planning Act (Omgevingswet). This will enable the Minister for Nature and Nitrogen Policy to impose the penalties and take the administrative measures referred to in the first paragraph of this section.

Lastly, acting in violation of the EUDR's Articles 3, 4 and 5 is classified as an economic offence under Article 1a(1°) of the Economic Offences Act (Wet op de economische delicten) in conjunction with Article 11.132 of the Environmental Activities Decree (Besluit activiteiten leefomgeving), which means that a violation of these articles can be criminally enforced.

5. Entry into force

From 30 December 2024, operators and non-SME traders must demonstrate that relevant commodities and products are deforestation free, comply with country-specific legislation and have a negligible risk of non-compliance. For SME traders, the previous obligations will apply from 30 June 2025.

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¹² [Wet uitvoering verordening ontbossingsvrije grondstoffen en producten](#) ("Draft implementing the EU Deforestation Regulation (EUDR)") dated 12 March 2024.

¹³ Under Article 3.69 of the Environmental Quality Decree.