

Briefing: The Deforestation Regulation

Key elements

[Regulation \(EU\) 2023/1115 on deforestation-free products](#) (EUDR) aims to minimise the EU's contribution to deforestation and forest degradation worldwide and to promote the consumption of products from deforestation-free supply chains in the EU. The Regulation bans certain commodities and products related to deforestation practices. To enforce this ban, the European Commission will rely on due diligence and traceability obligations, a country-by-country risk assessment scheme and cooperation mechanisms. The EUDR replaces the EU Timber Regulation and takes up its elements.

Given the inclusion of printed paper in the scope of the Regulation, it will affect book publishers, especially those who print their books outside of the EU or source their paper there; it will also affect distributors and booksellers (especially if non-SMEs). The proposal will ban the entry on the EU single market of products related to deforestation that occurred after a specific cut-off date (31/12/2020). It will apply to a list of products that can be reviewed and expanded. The ban will be backed by extensive due diligence and traceability requirements – including geolocation. These requirements will be strengthened or loosened according to a country-by-country risk assessment mechanism. The due diligence requirements will be incorporated in an information system and will be considered by EU customs authorities when products in the scope of this legislation are imported.

The Commission has issued a set of [FAQs](#) to support implementation of the EUDR. A set of guidelines is expected in June/July 2024.

Timeline – What is next?

The Commission published its proposal on 17/11/2021. The Council and the European Parliament reached a provisional political agreement on 6/12/2022. The Parliament adopted the regulation on 19/04/2023, the Council on 16/05. Printed paper products, not in the scope of the original proposal, were introduced by the European Parliament. The EUDR entered into force on 29 June 2023.

The main obligations of the Regulation will enter into application 18 months after its adoption (30 December 2024) for large and medium companies, 24 months (30 June 2025) for small and micro enterprises¹. The Commission will draft some guidance for the implementation of the Regulation (which is not meant however to alter its substance) and will work with stakeholders through a platform on deforestation (of which FEP is a member). The Commission will classify countries, or part thereof, into low, standard or high risk within 18 months of the Regulation entering into force (the process is currently delayed, and the Commission intends to set all countries at the standard level to begin with). The Commission is developing the information system to be used in the framework of the Regulation.

It is paramount for publishers and other stakeholders to start preparing as soon as possible.

¹ Warning: in a previous briefing we had communicated that the longer transition time applied to SMEs.

Roles and obligations in detail

Core requirements

From the date of application, products covered by the regulation may only be placed on the European market or exported if they fulfil three requirements:

- be deforestation-free, i.e., come from territories where no deforestation or forest degradation has occurred after 31 December 2020 (cut-off date);
- be produced in accordance with the relevant legislation of the country of production;
- be the subject of a due diligence statement made by the operator who intends to place the product on the market (or export it) in which he assumes responsibility for the product's compliance with the regulation.

The biggest obligations are upon the operator who first places a product on the market, although obligations are also imposed on other players in the supply chain.

Obligations of operators

An operator is defined as a natural or legal person who, in the course of a commercial activity, places the relevant products on the market or exports them.

The exercise of due diligence by the operator who first places a product on the market requires the collection of the information and documents necessary to prove that the products are 'deforestation-free' and comply with the legislation of the country of origin. In addition, except in cases where the product originates from countries classified by the Commission as low risk of deforestation, due diligence also includes the application of risk assessment and mitigation measures.

The operator will have to draw up the due diligence statement, accompanied by the information necessary to demonstrate compliance with the requirements of the regulation, and submit it to an information system set up by the Commission to which the other operators and traders downstream in the chain will also refer. In addition, the operator will have to communicate to the other actors in the supply chain all the information necessary to demonstrate that due diligence has been exercised and that the risk identified is zero or negligible, including the reference numbers of the due diligence declarations associated with these products.

SME operators are exempted from the obligation to exercise due diligence for products for which a declaration has already been submitted, while remaining responsible for the compliance of the products with the requirements of the Regulation. Non-SME operators may refer to due diligence declarations already submitted upstream only after having ascertained that due diligence for those products has been exercised in accordance with the Regulation.

Obligations of traders

A trader is defined as a person in the supply chain, other than an operator, who makes the products concerned available on the market in the course of a commercial activity. With the exception of SMEs, traders are subject to the same obligations as operators.

SME traders are required to collect and retain, for a period of five years, a reduced amount of information that includes the data of operators upstream and downstream in the supply chain and the reference numbers of due diligence statements associated with the relevant products.

Due diligence

Economic operators will have to exercise due diligence before placing products on the EU market (or exporting them from it) and submit a due diligence statement (DDS) to the competent authorities. The due diligence includes the collection of information and documents needed to demonstrate that the products are deforestation-free, plus, upon certain conditions, risk assessment & mitigation measures.

Information requirements include: description of the products (including in the case of relevant products that contain or have been made using wood, the common name of the species and their full scientific name); quantity; identification of the country of production and, where relevant, parts thereof; geolocation of all plots of land where the relevant commodities that the relevant product contains, or has been made using, were produced; contact details of supplier and receiver; adequately conclusive and verifiable information that the relevant products are deforestation-free and produced in accordance with the relevant legislation of the country of production (such as evidence of legal harvest). A key requirement, in this step, is to obtain the geographic coordinates of the plots of land where the relevant commodity was produced and to provide relevant information – product, CN code, quantity, country of production, geolocation coordinates – in the DDS to be submitted via the Information System. If the operator (or traders which are not SMEs) cannot collect the required information, it must refrain from placing (or making available in case of non-SME traders) on the market or exporting the relevant product concerned. Failing to do so would result in a violation of the Regulation, which could lead to sanctions.

Operators shall verify and analyse the information collected and on this basis carry out a risk assessment to establish whether there is a risk that products are non-compliant with the Regulation. Operators need to demonstrate how the information gathered was checked against the risk assessment criteria and how they determined the risk. Unless this risk assessment reveals no or only negligible risk, operators shall not place the relevant product on the Union market nor export it. The risk assessment shall take into account a series of criteria, mainly related to the assignment of risk and other characteristics of the relevant country of production.

Except where the risk assessment has revealed that there is no or negligible risk, the operator shall adopt (prior to placing the relevant products on the Union market or to their export) risk mitigation procedures, which may include requiring additional information, data or documents, undertaking independent surveys or audits or other measures. These measures need to be documented.

Risk assessment and risk mitigation will not be necessary (under certain conditions) for products coming from areas identified as low risk.

The main responsibility falls on players who place a product for the first time on the EU market. Some obligations concern also traders further down the value chain: non-SME players in the supply chain other than the main operator, in fact, are subject to the same obligations.

However, SME operators are exempted from the obligation to exercise due diligence for relevant products contained in or made from the relevant product that have already undergone due diligence and for which a due diligence statement was already submitted. Nonetheless, these operators remain responsible for the compliance of the relevant products.

Summary of roles and obligations

| Operator | |
|--|--|
| A natural or legal person who places relevant products on the market (incl. via an import) or exports them in the course of commercial activity. This definition also covers companies that transform one relevant product (already been the object of due diligence) into another relevant product. | |
| Non-SME | SME |
| Due Diligence System ✓ Information and Due Diligence Statement ✓ Risk assessment ✓ Risk mitigation For low-risk countries: simplified due diligence (no risk assessment/mitigation). | Due Diligence System ✓ Information and Due Diligence Statement ✓ Risk assessment ✓ Risk mitigation For low-risk countries: simplified due diligence (no risk assessment/mitigation). |

| Downstream operator | |
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| Operators further down the supply chain (“downstream” operators) are those who transform a relevant product (already been subjected to due diligence) into another relevant product. | |
| Non-SME | SME |
| Due Diligence Statement (can reference upstream Due Diligence Statement upon “ascertaining” it complies with Regulation). | No due diligence (for products/parts thereof already subject to it). Provide due diligence reference numbers obtained from previous steps in the value chain. |

| Trader | |
|--|---|
| A person in the supply chain, other than an operator, who makes the products concerned available on the market in the course of a commercial activity. | |
| Non-SME | SME |
| Due Diligence Statement (can reference upstream Due Diligence Statement upon “ascertaining” it complies with Regulation). | Collect information on upstream and downstream operators/traders. |

In addition:

- All operators and traders: Keep relevant records for 5 years.
- All operators and traders except SME traders:
 - Exercise full due diligence for parts of relevant products that have not been subject to due diligence
 - Liable in case of breach of the Regulation, also for a due diligence carried out or a due diligence statement submitted by an upstream operator.

Annexes

The Due Diligence Statement

Information to be contained in the due diligence statement in accordance with Article 4(2) EUDR:

1. Operator's name, address and, in the event of relevant commodities and relevant products entering or leaving the market, the Economic Operators Registration and Identification (EORI) number in accordance with Article 9 of Regulation (EU) No 952/2013.
2. Harmonised System code, free-text description, including the trade name as well as, where applicable, the full scientific name, and quantity of the relevant product that the operator intends to place on the market or export. For relevant products entering or leaving the market, the quantity is to be expressed in kilograms of net mass and, where applicable, in the supplementary unit set out in Annex I to Regulation (EEC) No 2658/87 against the indicated Harmonised System code or, in all other cases, expressed in net mass specifying a percentage estimate or deviation or, where applicable, volume or number of items. A supplementary unit is applicable where it is defined consistently for all possible subheadings under the Harmonised System code referred to in the due diligence statement.
3. Country of production and the geolocation of all plots of land where the relevant commodities were produced. For relevant products that contain or have been made using cattle, and for such relevant products that have been fed with relevant products, the geolocation shall refer to all the establishments where the cattle were kept. Where the relevant product contains or has been made using commodities produced in different plots of land, the geolocation of all plots of land shall be included in accordance with Article 9(1), point (d).
4. For operators referring to an existing due diligence statement pursuant to Article 4(8) and (9), the reference number of such due diligence statement.
5. The text: 'By submitting this due diligence statement the operator confirms that due diligence in accordance with Regulation (EU) 2023/1115 was carried out and that no or only a negligible risk was found that the relevant products do not comply with Article 3, point (a) or (b), of that Regulation.'
6. Signature in the following format:

 'Signed for and on behalf of:

 Date:

 Name and function: Signature:'.

The reference number of the due diligence statement shall be made available to customs authorities before the release for free circulation or export of a relevant product entering or leaving the market.

Risk assessment and risk management

The risk assessment shall take into account, in particular, the following criteria:

- (a) the assignment of risk to the relevant country of production or parts thereof in accordance with Article 29;
- (b) the presence of forests in the country of production or parts thereof;
- (c) the presence of indigenous peoples in the country of production or parts thereof;
- (d) the consultation and cooperation in good faith with indigenous peoples in the country of production or parts thereof;
- (e) the existence of duly reasoned claims by indigenous peoples based on objective and verifiable information regarding the use or ownership of the area used for the purpose of producing the relevant commodity;
- (f) prevalence of deforestation or forest degradation in the country of production or parts thereof;
- (g) the source, reliability, validity, and links to other available documentation of the information referred to in Article 9(1);
- (h) concerns in relation to the country of production and origin or parts thereof, such as level of corruption, prevalence of document and data falsification, lack of law enforcement, violations of international human rights, armed conflict or presence of sanctions imposed by the UN Security Council or the Council of the European Union;
- (i) the complexity of the relevant supply chain and the stage of processing of the relevant products, in particular difficulties in connecting relevant products to the plot of land where the relevant commodities were produced;
- (j) the risk of circumvention of this Regulation or of mixing with relevant products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring;
- (k) conclusions of the meetings of the Commission expert groups supporting the implementation of this Regulation, as published in the Commission's expert group register;
- (l) substantiated concerns submitted under Article 31, and information on the history of non-compliance of operators or traders along the relevant supply chain with this Regulation;
- (m) any information that would point to a risk that the relevant products are non-compliant;
- (n) complementary information on compliance with the EUDR, which may include information supplied by certification or other third-party verified schemes, including voluntary schemes recognised by the Commission.

The operators shall document and review the risk assessments at least on an annual basis and make them available to the competent authorities upon request. Operators shall be able to demonstrate

how the information gathered was checked against the risk assessment criteria set out in paragraph 2 and how they determined the degree of risk.

Risk mitigation procedures and measures may include any of the following:

- (a) requiring additional information, data or documents;
- (b) carrying out independent surveys or audits;
- (c) taking other measures pertaining to information requirements set out in the EUDR.

Such procedures and measures may also include supporting compliance with this Regulation by that operator's suppliers, in particular smallholders, through capacity building and investments.

Operators shall have in place adequate and proportionate policies, controls and procedures to mitigate and manage effectively the risks of non-compliance of relevant products identified. Those policies, controls and procedures shall include:

- (a) model risk management practices, reporting, record-keeping, internal control and compliance management, including the appointment of a compliance officer at management level for non-SME operators;
- (b) an independent audit function to check the internal policies, controls and procedures referred to in point (a) for all non-SME operators.

The decisions on risk mitigation procedures and measures shall be documented, reviewed at least on an annual basis and made available by the operators to the competent authorities upon request. Operators shall be able to demonstrate how decisions on risk mitigation procedures and measures were taken.

The country benchmarking system

Member States and third countries, or parts thereof, shall be classified into one of the following risk categories:

- (a) 'high risk' refers to countries or parts thereof, for which the assessment results in the identification of a high risk of producing relevant commodities for which the relevant products do not comply with the main EUDR requirements;
- (b) 'low risk' refers to countries or parts thereof, for which the assessment concludes that there is sufficient assurance that instances of producing relevant commodities for which the relevant products do not comply with the main EUDR requirements are exceptional;
- (c) 'standard risk' refers to countries or parts thereof which do not fall in the previous categories.

The list of the countries or parts thereof, that present a low or high risk shall be published by means of implementing acts, no later than 30 December 2024. That list shall be reviewed, and updated if appropriate, as often as necessary in light of new evidence. The deadline might not be met by the Commission, though. FEP has recommended prioritising the identification of low risk countries and parts thereof, given the implications of the status.

The proportion of checks on operators will be performed according to the country's risk level: 9% for high risk, 3% for standard risk and 1% for low risk. Moreover, operators shall not be required to fulfil the obligations related to risk assessment and risk management where they have ascertained that all relevant commodities and relevant products have been produced in countries or parts thereof that were classified as low risk.

Enterprise sizes

Under the EUDR, 'micro, small and medium-sized enterprises' or 'SMEs' means micro, small and medium-sized undertakings as defined in Article 3 of Directive 2013/34/EU of the European Parliament and of the Council.

The latter states the following:

Member States shall define micro-undertakings as undertakings which on their balance sheet dates do not exceed the limits of at least two of the three following criteria:

- (a) balance sheet total: EUR 350 000;
- (b) net turnover: EUR 700 000;
- (c) average number of employees during the financial year: 10.

Small undertakings shall be undertakings which on their balance sheet dates do not exceed the limits of at least two of the three following criteria:

- (a) balance sheet total: EUR 4 000 000;
- (b) net turnover: EUR 8 000 000;
- (c) average number of employees during the financial year: 50.

Medium-sized undertakings shall be undertakings which are not micro-undertakings or small undertakings and which on their balance sheet dates do not exceed the limits of at least two of the three following criteria:

- (a) balance sheet total: EUR 20 000 000;
- (b) net turnover: EUR 40 000 000;
- (c) average number of employees during the financial year: 250.

Large undertakings shall be undertakings which on their balance sheet dates exceed at least two of the three following criteria:

- (a) balance sheet total: EUR 20 000 000;
- (b) net turnover: EUR 40 000 000;
- (c) average number of employees during the financial year: 250.

Timelines

31/12/2020 is the threshold date for the deforestation. The EUDR is not retroactive; the cut-off date indicates the date after which deforestation or forest degradation must not have taken place in the area of origin of the raw materials in a supply chain. The rationale was to avoid a rush to deforestation between the moment the EUDR was proposed and the time it entered into force.

The Joint Research Centre has developed a Global map of forest cover 2020 in order to facilitate compliance with the EUDR. See [here](#). Another useful source of information can be the [Global Forest Resource Assessment 2020 \(fao.org\)](#).

The entry into application for large and medium enterprise operators and traders is foreseen 18 months after the entry into force of the Regulation (on 30 December 2024). This means that operators and traders do not have to comply with the requirements for products placed on the Union market before that date. For small- and micro undertakings this period is extended (24 months after the entry into force of the Regulation - on 30 June 2025).

29/06/2023 is the date of entry into force of the EUDR. The Regulation does not apply to relevant products (read: books) produced before this date. However, the EU Timber Regulation (EUTR) shall continue to apply until 31 December 2027 to timber and timber products (read: pulp and paper) that were produced before 29 June 2023 and placed on the market from 30 December 2024. The timber and timber products (pulp, paper) that were produced before 29 June 2023 and placed on the market from 31 December 2027 shall comply with the EUDR.

If a commodity is placed on the market during the transitional period (i.e. in the period between the entry into force of the regulation on the 30/6/2023 and the entry into application of the regulation on the 30/12/2024), when placing on the market a derived product the obligation of the operator (and of non-SME traders) will be limited to gathering adequately conclusive and verifiable evidence to prove that the relevant commodity used to produce such relevant product was placed on the market before the entry into application. This is without prejudice to the provisions on timber and timber products.

For books placed on the market as of January 2024 (by medium and large operators), coming from outside of the EU, information will have to be collected and included in the DDS. This likely means that some relevant activities (such as felling trees) are happening already now.

During the time between entry into application for large and medium and for small and micro enterprises, the chain of obligations will stop at the stage of the supply chain where a small or micro enterprise is involved. Operators downstream from there will only need to prove that there was a small or micro-enterprise upstream from them. *[this aspect was mentioned in conversation with the Commission but should become part of a future FAQ]*

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