SLAUGHTER AND MAY/

ESG: GETTING READY SERIES

EU DEFORESTATION REGULATION

GOVERNANCE & SUSTAINABILITY
Part of the Horizon Scanning series

WHAT

From 30 December 2025 (delayed from 30 December 2024), businesses dealing with deforestation-linked commodities will have to comply with the European Union's Regulation 2023/1115 on deforestation-free products ("EUDR"). The EUDR looks to guarantee that products consumed by EU citizens do not contribute to deforestation or forest degradation and will have far reaching implications for businesses and products that are within its scope.

The seven commodities covered by the EUDR are cocoa, coffee, soy, palm oil, wood, rubber and cattle. It also applies to products derived from these commodities, including, for example, beef, leather, chocolate, tyres and plywood.

To supply or sell these products within the EU, or to export these products from the EU, the products must be:

1. deforestation-free, meaning they do not contain commodities produced on land that was converted from forest to agricultural use after 31 December 2020;
2. produced in accordance with the laws of the country of production; and
3. covered by a due diligence statement.

In order to produce a due diligence statement, companies need to collect prescribed due diligence information (including evidence that the product is 'deforestation-free') and undertake a risk assessment calibrated to reflect the risks and locations involved. If the risk assessment reveals a more than negligible risk that the products are non-compliant, the company must take mitigating steps to reduce the risk before it can place the product on the EU market or export it. This may take the form of requesting further information from suppliers or carrying out independent surveys or audits to evaluate the information provided.

A flowchart of this process can be found in the Annex. The EUDR also introduces ongoing requirements, such as setting up risk management systems, assisting supply chain partners, reporting, and record keeping.

Compliance with the EUDR will be directly enforced by EU member states' regulators. The fine for the most substantial and repeated breaches will be at least 4% of EU turnover. Competent authorities can also confiscate products and revenues and exclude companies from public procurement processes. In addition, private parties can submit substantiated concerns to companies or regulators when they consider that an operator or trader is not complying with the EUDR. These can lead to an obligation on a business to notify the regulator about the concern and an investigation by the regulator into potential breaches.

WHEN

In October 2024, the Commission announced plans to delay the implementation of the EUDR by 12 months. We expect the proposed delay to be approved by the European Parliament and the Council (the Commission has 'invited' them to do so by the end of the year), meaning that the EUDR will apply from 30 December 2025 for large companies and 30 June 2026 for micro- and small enterprises.

The EUDR allows the Commission to evaluate the scope and impact of the EUDR at five-year intervals. In addition, the legislation anticipates that the Commission may extend the EUDR to other biomes, such as grasslands, peatlands and wetlands, in June 2025.

WHO

Businesses will be in-scope if they are either an "operator" or a "trader", as defined under the EUDR. An operator is a natural or legal person who first places a relevant product on the EU market or exports it from the EU market. A trader means any person in the supply chain, other than the operator, who makes the product available on the EU market.

It is the responsibility of the operator or trader to conduct the due diligence, risk assessment and risk mitigation steps that feed into their due diligence statements. By issuing a statement, the company assumes responsibility for the product's compliance and the statement will be accessible to authorities, traders, and the public.

WHY

The EU's imports are one of the biggest global drivers of deforestation, accounting for 36% of deforestation linked to crop products and over 25% of deforestation linked to ruminant livestock products and equivalents.

The EUDR is part of a plan of action to tackle deforestation and forest degradation first outlined in the 2019 Commission Communication on Stepping up EU Action to Protect and Restore the World's Forests. This commitment was later confirmed in the European Green Deal, the EU Biodiversity Strategy for 2030 and the Farm to Fork Strategy[1]. It closely relates to the subject matter of the EU Timber Regulation (EU) No 995/2010 and supersedes that regulation.

GETTING READY

1. **Assess the impact of the EUDR.** Entities should be assessing the extent to which they produce, supply or are supplied with any of the products identified in the EUDR. Companies may look to prioritise goods based upon their importance to the business and the products' footprint. For businesses in some sectors, the EUDR may well prove a significant commercial challenge and should be prioritised accordingly. Even where companies are not directly caught by the EUDR, they may still need to familiarise themselves with the due diligence requirements so they can provide the necessary information to their downstream customers.
2. **Use and monitor EU guidance.** Many stakeholders have raised concerns about the lack of clear and detailed guidance from the EU about the EUDR, especially given its stringent requirements and short timeframes to prepare for compliance. Perhaps in response to this, the Commission has recently released further guidance (in October 2024), including an updated FAQs document, which elaborates on a wide range of the provisions set out in the EUDR and includes example scenarios. In-scope businesses will likely wish to review their existing scoping analyses to ensure that they reflect the further clarity that has been provided. In addition, the proposed delay to the EUDR also extends the Commission's deadline to classify countries as low, standard or high risk until 30 June 2025, and the Commission has noted that it expects a large majority of countries to be classified as 'low risk'.
3. **Prioritise traceability and engage early with suppliers.** An increased focus on traceability is important. Businesses bringing in-scope products into the EU will need to work with their supply chain to gather the relevant information. This will likely involve a mixture of contractual measures and direct engagement with suppliers. Businesses may also need to provide information and training directly to indirect suppliers to ensure they can provide the relevant information to the business. Where suppliers cannot provide the necessary information, even after direct engagement, businesses may need to consider alternative supply arrangements. As part of this effort, businesses should consider reviewing onboarding processes for new suppliers, (re)developing supplier codes of conduct and conducting enhanced levels of supplier screening.

1 The Farm to Fork Strategy is part of the European Green Deal and aims to accelerate the EU's transition to sustainable food systems, including through legislative proposals, trade policies and international cooperation instruments.

4. **Data, information and audits.** The EUDR presents a significant data challenge to businesses. Even where businesses have existing expertise and due diligence systems in place, the data required to prove that products are deforestation-free could be difficult to gather. Addressing this may involve a combination of working with suppliers and third-party data gathering. Satellite observation can generate reports and identify production geolocations. Direct engagement with suppliers may allow for product tracking and more precise geo-localisation. The first step may involve a broad audit of supply chains relating to the relevant forest commodities. Existing sustainability certifications will not be deemed a substitute for meeting the due diligence requirements, though efforts to align with these will likely be helpful for meeting EUDR requirements and some, like the PEFC, are developing EUDR-specific solutions.
5. **Monitor UK developments.** On 9 December 2023, the UK government published further detail on the shape of its equivalent forest risk regime. While a formal proposal is yet to be put forward, the structure of the UK regime seems to broadly mirror the EUDR. That said, the public consultation response published by the UK government indicates that there is likely to be divergence with the EUDR. Progress has been delayed by the general election, and it remains to be seen whether the new government will look to align more closely with the EUDR. To avoid duplication, companies with a presence in the UK and the EU should actively monitor the UK's efforts to ensure that they are well-positioned to comply with the UK approach in due course.

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EU DEFORESTATION REGULATION ("EUDR")

Keeping your forest-risk products on the EU market after the 30 December 2025 deadline

Does the undertaking supply or sell any commodities and products in Annex I EUDR?

No → The undertaking is not in-scope of the EUDR.

Yes

Note: Annex I EUDR includes cattle, cocoa, coffee, oil palm, rubber, soya and wood and products derived from them. Only those listed in Annex I EUDR and produced after 29 June 2023 are in-scope.

Is the undertaking a "trader" or "operator"?

No → The undertaking is not in-scope of the EUDR.

Yes

Note: An operator is anyone placing relevant products on the EU market or exporting them. A trader is anyone other than an operator making relevant products available on the EU market.

Are the products/ commodities already covered by the due diligence statement of an upstream supplier?

Yes → Has the undertaking submitted a due diligence statement to the national competent authority?

No

Note: Undertakings must still ascertain if due diligence was done and retain responsibility for compliance. Undertakings may refer to the upstream supplier's due diligence statement in their own statement.

Has the undertaking collected the prescribed information from its suppliers?

No → The undertaking cannot place the products on, make them available in, or export them from, the EU market.

Yes

Note: This includes supplier and product details and evidence that the commodities and products are deforestation-free and comply with local law.

Has the undertaking assessed that all the commodities or products come from "low risk" countries?

Yes → Has the undertaking submitted a due diligence statement to the national competent authority?

No

Note: Where the response is 'yes', undertakings can apply simplified due diligence. If doing so, they must still discharge certain obligations, including assessing the complexity of the supply chain.

Has the undertaking's risk assessment concluded that there is no or negligible risk of non-compliance with EUDR?

Yes → Has the undertaking submitted a due diligence statement to the national competent authority?

No

Note: The risk assessment should take into account the 14 factors listed in Article 10. These relate to the specific area and method of production.

Has the undertaking mitigated the risk so that it is zero or negligible?

No → The undertaking cannot place the products on, make them available in, or export them from, the EU market.

Yes

Note: Mitigating measures include requiring additional information or carrying out audits. Negligible in this context means there is no cause for concern that the commodities or products are non-compliant.

Has the undertaking submitted a due diligence statement to the national competent authority?

Note: There are further ongoing obligations under the EUDR, including setting up risk management policies and procedures, downstream supply chain assistance, reporting and record keeping.

No → The undertaking cannot place the products on, make them available in, or export them from, the EU market.

Yes → The undertaking can place the products on, make them available in, or export them from, the EU market.

National Considerations

This flowchart summarises the steps required to comply with the EU Deforestation Regulation. In practice, undertakings will also want to consider any national guidance, requirements and other local laws in the EU member states in which they are operating.