

VAN BAEL & BELLIS



The EU Deforestation Regulation – key obligations

| 19 June 2023

INTRODUCTION

On 9 June 2023, [Regulation \(EU\) 2023/1115](#) concerning the making available on the EU market and the export from the EU of certain commodities and products associated with deforestation and forest degradation ("**Deforestation Regulation**") was published. It will enter into force on 29 June 2023.

Through the Deforestation Regulation, the European Union seeks to reduce EU consumption of products coming from supply chains associated with deforestation or forest degradation, and therefore the EU contribution to greenhouse gas emissions and global biodiversity loss. To this end, the Deforestation Regulation imposes due diligence obligations and restricts market access for several commodities and products if they are not deforestation-free.

WHAT PRODUCTS ARE COVERED?

The Deforestation Regulation applies to six commodities: **cattle, cocoa, coffee, oil palm, soya, rubber** and **wood**, as well as certain products, which contain, have been fed with or have been made using those commodities, including meat of cattle (beef), leather, cocoa butter, chocolate, selected palm oil based derivatives, furniture, printed paper and plywood ("**covered products**"). [Annex 1](#) to the Deforestation Regulation contains the list of covered products.

WHAT MARKET ACCESS RESTRICTIONS APPLY?

The Deforestation Regulation sets out a general prohibition on placing or making available (including importing) on the EU market, or exporting from the EU market, the covered products unless they meet the three requirements, namely:

Substantive requirements	<ul style="list-style-type: none">• The covered products have been produced on land that has not been subject to deforestation or forest degradation after 31 December 2020• The covered products have been produced in accordance with the relevant legislation of the country of production
Formal requirement	<ul style="list-style-type: none">• The covered products are covered by a due diligence statement

WHO MUST COMPLY?

Operator: A natural or legal person who, in the context of a commercial activity, places the covered products on the EU market or exports them from the European Union. If a natural or legal person established in a third country places the covered products on the EU market, the first natural or legal person established in the European Union who makes those products available on the EU market is considered to be the operator.

Trader: A person in the supply chain other than the operator who, in the context of a commercial activity, makes available on the EU market covered products.

Covered products are **placed on the market** when they are made available on the EU market for the *first* time, including through importation. Covered products are **made available on the market** when they are supplied for distribution, consumption or use in the course of a commercial activity.

WHAT DUE DILIGENCE OBLIGATIONS APPLY TO OPERATORS?

Operators must undertake due diligence to ensure that the products put on the EU market have been produced on land that has not been subject to deforestation or forest degradation after 31 December 2020, and in accordance with the relevant legislation of the country of production (in particular, legislation regarding human rights, land-use rights, environmental protection as well as tax, anti-corruption, trade and customs regulation). That due diligence involves ensuring the traceability of the products and covers risk assessment and mitigation processes.

Collection of information

Operators must collect (and retain for 5 years) information relating to: (i) the description of the covered products; (ii) their quantity; (iii) (parts of) the country of production; (iv) geo-localisation coordinates; (v) the name and contact details of their relevant suppliers and customers; and (vi) adequately conclusive and verifiable data that the covered products are deforestation-free and have been produced in accordance with the relevant legislation of the country of production.

Risk assessment

Based on the information collected, the operator must assess the risk of the products being non-compliant with the Deforestation Regulation. Only if the risk assessment identifies no or only a negligible risk, may the product be placed (including imported) on the EU market or exported from the European Union. That risk assessment must be annually reviewed.

Risk mitigation

If a non-negligible risk is identified, adequate and proportionate risk mitigation measures must be taken before the products may be placed (including imported) on the EU market or exported from the European Union. Available risk mitigation measures include implementing model risk management practices, reporting, and independent audits as well as appointing a compliance officer at management level (for non-SME operators).

Operators must also introduce a **due diligence system**, meaning a framework of procedures and measures for collecting relevant information, undertaking risk assessment and adopting risk mitigation measures. They must annually review that system. Non-SME operators must also publish (online) an annual report regarding their deforestation due diligence systems.

To verify that the appropriate due diligence was undertaken before products are placed on the EU market, operators must prepare a **due diligence statement**, and submit it via an information system that will be accessible to Member State competent authorities and customs authorities.

Finally, operators must communicate to other operators and traders further down the supply chain all information necessary, including the reference numbers of due diligence statements filed with the authorities, to confirm that the appropriate due diligence was carried out.

WHAT DUE DILIGENCE OBLIGATIONS APPLY TO TRADERS?

The applicable due diligence obligations depend on the size of the trader.

Non-SME traders must comply with the obligations that apply to operators.

SME-traders must collect (and retain for 5 years) the following information:

- name, registered trade name or registered trademark, postal address, email and, if available, a web address of the operators or traders who have supplied the products to them, as well as the reference numbers of the due diligence statements for the covered products;
- name, registered trade name or registered trademark, postal address, email and, if available, a web address of the traders to whom they have supplied the covered products.

ARE COVERED PRODUCTS FROM ALL COUNTRIES TREATED THE SAME?

The applicable due diligence obligations also depend on the deforestation risk in the country of production. For that purpose, the European Union will use benchmarking and categorise (parts of) countries (including the EU Member States) according to the low-risk, standard-risk or high-risk of deforestation associated with each country. For instance, simplified due diligence obligations will apply to products from low-risk countries. By contrast, if a high-risk country is involved, Member State authorities must check at least 9 % of the operators placing or making available on the market or exporting covered products and at least 9 % of the quantity of each of the covered products.

In an initial phase, all countries will be assigned a standard level of risk. However, by 30 December 2024, the Commission will publish an implementing regulation listing (parts of) countries that present a low or a high risk.

The list of low-risk and high-risk countries may change over time, as new evidence becomes available. For reviewing the list, the Commission must engage in *ad hoc* consultations with (especially high-risk) countries, with the objective of reducing their risk level.

WHO WILL ENFORCE THE DEFORESTATION REGULATION?

The Deforestation Regulation will be enforced at Member State level. For that purpose, each Member State will need to design an authority responsible for performing checks, imposing penalties, and initiating investigations upon complaints filed by natural or legal persons demonstrating “substantiated concerns”.

The competent authorities are entitled to impose interim measures where they identify situations presenting a high risk of non-compliance with the Deforestation Regulation and requiring immediate action. Interim measures include seizing the products or suspending the importation or exportation of the products. For example, suspensions must end within 3 working days (or 72 hours in case of perishable products) but may be extended by an additional period of 3 working days.

Competent authorities identifying an infringement of the Deforestation Regulation will order the operator or trader to take appropriate and proportionate **corrective action** within a specified and reasonable period of time, and may impose **sanctions**.

Examples of corrective actions:

- remedying any (formal) non-compliance
- preventing the product from being placed, made available on or exported from the EU market
- withdrawing or recalling the product
- donating or disposing of the product

Examples of corrective penalties:

- fines of at least 4% of the operator's annual EU turnover
- confiscation of the products
- confiscation of the related revenues
- temporary (max. 12 months) exclusion from public procurement processes and public funding
- serious or repeated infringements:
 - temporary prohibition from placing or making available the products on the EU market;
 - prohibition to use the simplified due diligence procedure

Finally, the Deforestation Regulation envisages publication of information regarding the operators and traders who have been found to infringe the regulation and/or have been penalised.

Lawyers to contact



Isabelle Van Damme
Partner
ivdamme@vbb.com



Gabriele Coppo
Partner
gcoppo@vbb.com



Tetyana Payosova
Sr. Associate
tpayosova@vbb.com



Alberto Zingariello
Associate
azingariello@vbb.com

VAN BAEL & BELLIS

BRUSSELS

Glaverbel Building
Chaussée de La Hulpe 166
B-1170 Brussels, Belgium

Phone: +32 (0)2 647 73 50
Fax: +32 (0)2 640 64 99

GENEVA

26, Bd des Philosophes
CH-1205 Geneva
Switzerland

Phone: +41 (0)22 320 90 20
Fax: +41 (0)22 320 94 20

LONDON

Holborn Gate
330 High Holborn
London, WC1V 7QH
United Kingdom

Phone: +44 (0)20 7406 1471