

VAN BAEEL & BELLIS



The EU Deforestation Due Diligence Proposal: update on the positions of EU institutions

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On 17 November 2021, the European Commission ("**Commission**") published a [Proposal for a Regulation](#) on placing on the EU market and exporting from the European Union wood, cattle (beef), cocoa, coffee, palm oil and soy and derived products associated with deforestation and forest degradation ("**Proposed Regulation**"). According to the Proposed Regulation, those products can no longer be placed or made available on the EU market, nor can they be exported from the EU market, unless they are deforestation-free. The Proposed Regulation applies to the covered goods originating in any country.

Following the publication of the Commission's Proposal, the European Council adopted, on 28 June 2022, its [General Approach](#) on the Proposed Regulation and the European Parliament's Committee on the Environment, Public Health and Food Safety ("**ENVI Committee**") adopted, on 12 July 2022, its [report](#). The ENVI Committee's Report will be put to a vote in the European Parliament's plenary on 12 September 2022.

The below table provides an update of the EU institutions' positions on some of the key elements of the Proposed Regulation. For additional information on the Commission's Proposal, see our [Client Alert](#) of 24 November 2021.

Topic	European Commission's Proposal	Council's General Approach	ENVI Committee's Report
Scope	<ul style="list-style-type: none"> ▪ Six commodities: wood, cattle (beef), cocoa, coffee, palm oil and soy ▪ Certain derived products such as leather, chocolate and furniture 	<ul style="list-style-type: none"> ▪ Additional derived products: charcoal and other wood products, including printed paper products 	<ul style="list-style-type: none"> ▪ Additional commodities: swine, sheep and goats, poultry, maize, rubber; and additional subheadings for cattle, oil palm and wood ▪ Additional derived products: charcoal and printed paper products
Timeline for expanding the scope	<ul style="list-style-type: none"> ▪ First review no later than 2 years after the entry into force: evaluate extending the scope to other ecosystems (e.g. land with high carbon stocks and land with a high biodiversity value), and additional commodities ▪ General review after 5 years, and then at least every 5 years 	<ul style="list-style-type: none"> ▪ First review no later than 2 years after the entry into force: evaluate extending scope to other ecosystems (e.g. land with high carbon stocks and land with a high biodiversity value), and additional commodities, specifically rubber 	<ul style="list-style-type: none"> ▪ Impact assessment 1 year after entry into force, accompanied by a proposal to extend the scope to other natural ecosystems ▪ Review 2 years after entry into force: evaluate extending the scope to additional commodities and derived products, specifically sugar cane, ethanol and mining products
Cut-off date	<ul style="list-style-type: none"> ▪ 'Deforestation-free' refers to products that were produced on land that has not been subject to deforestation after December 31, 2020 	<ul style="list-style-type: none"> ▪ 'Deforestation-free' refers to products that were produced on land that has not been subject to deforestation after December 31, 2021 	<ul style="list-style-type: none"> ▪ 'Deforestation-free' refers to products that were produced on land that has not been subject to deforestation, and have not induced or contributed to forest degradation or forest conversion after December 31, 2019
Benchmarking and risk assessment	<ul style="list-style-type: none"> ▪ A three-tier system for assessing countries or parts thereof: low risk, high risk and standard risk 	<ul style="list-style-type: none"> ▪ A three-tier system for assessing countries or subnational jurisdictions thereof: low risk, high risk and standard risk ▪ Definition of 'low', 'high' and 'standard' risk ▪ Benchmarking system must apply to both EU Member States and third countries 	<ul style="list-style-type: none"> ▪ A three-tier system for assessing countries or parts thereof: low risk, high risk and standard risk ▪ Rate of forest conversion also to be taken into account in the risk assessment ▪ Before assigning a change of the existing risk category, the Commission must inform the country concerned, regional authorities, operators and traders and carry out public consultations

<p>Operators established in third countries</p>	<ul style="list-style-type: none"> ▪ If the covered product is placed on the EU market by a natural or legal person established in a third country, the person established in the EU that buys or takes possession of that product is considered an operator 	<ul style="list-style-type: none"> ▪ If the covered product is placed on the EU market by a natural or legal person established in a third country, the person established in the EU that buys or takes possession of that product is considered an operator 	<ul style="list-style-type: none"> ▪ If the covered product is placed on the EU market by a natural or legal person, regardless of size, established in a third country, the person established in the EU that buys or takes possession of that product is considered an operator ▪ If no manufacturer or importer is established in the EU, online marketplaces are subject to obligations for products and commodities for which they facilitate the sale
<p>Checks by competent authorities</p>	<ul style="list-style-type: none"> ▪ Annual checks by Member States' competent authorities must cover: <ul style="list-style-type: none"> ➢ at least 5% of the operators placing on or exporting from the EU market each of the relevant commodities on that Member State's market as well as 5% of the quantity of each of the relevant commodities placed on or exported from their market ➢ if commodities or products originate in high risk countries or if there is a risk of relevant commodities or products produced in those countries entering the relevant supply chain, the share of operators and products/commodities to be checked must be 15% 	<ul style="list-style-type: none"> ▪ Annual checks by Member States' competent authorities must cover: <ul style="list-style-type: none"> ➢ at least 1% of operators, and traders that are not SMES, where products or commodities used to produce those products originate in standard risk countries ➢ if commodities or products originate in high risk countries, at least 5% of the operators, and traders that are not SMES, if products or commodities used to produce those products originate in high risk countries ▪ Based on a risk-based approach, the competent authorities must identify situations where relevant products call for immediate action 	<ul style="list-style-type: none"> ▪ Annual checks by Member States' competent authorities must cover, at the national level: <ul style="list-style-type: none"> ➢ at least 10% of the operators placing on or exporting from the EU market each of the relevant commodities on that Member State's market as well as 10% of the quantity of each of the relevant commodities placed on or exported from their market ➢ if commodities or products originate in low risk countries, the share of operators and products subject to checks must be at least 5% ▪ If commodities or products originate in high risk countries, the share of operators and products subject to checks must be at least 20%
<p>Enforcement</p>	<ul style="list-style-type: none"> ▪ Fines proportionate to the environmental damage and the value of the relevant commodities. ▪ Maximum amount of fines must be at least 4% of the operator's or trader's annual turnover in the Member State(s) concerned ▪ Confiscation of relevant commodities ▪ Confiscation of revenues gained by the operator from product concerned ▪ Temporary exclusion from public procurement processes 	<ul style="list-style-type: none"> ▪ Same penalties as proposed by the Commission, but temporary exclusion from public procurement processes is capped at a maximum of 12 months 	<ul style="list-style-type: none"> ▪ The maximum amount of fines must be at least 8% of the operator's or trader's annual turnover in the EU ▪ Exclusion from public procurement processes and from access to public funding ▪ In case of serious or repeated infringements, temporary or permanent prohibition from placing or making available relevant goods on the EU market, or exporting them from the EU

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