FAQ – EU deforestation Regulation

Deforestation

This document is a working document drafted by the Commission services intending to provide information to national authorities, EU operators and other stakeholders for the implementation of Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (referred to in this document as 'the Regulation', 'this Regulation' or "EUDR").

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Traceability

1. **Why does the Regulation require operators and traders which are not SMEs to collect geographic coordinates of the plots of land where the commodities were produced and how is it to be done?**

Traceability to the plot of land (i.e. the requirement to collect the geographic coordinates of the plots of land where the commodities were produced) is necessary to demonstrate that there is no deforestation on a specific location. Geographic information linking products to the plot of land is already used by part of the industry and a number of certification organizations. Remotely sensed information (air photos, satellite images) or other information (e.g. photograph in the field with linked geotags and time stamps) may be used for verifying if the geolocation of declared commodities and products is linked to deforestation.

The geolocation coordinates need to be provided in the due diligence statements that operators are required to submit to the Information System ahead of the placing on the Union market or the export of the products. It is therefore a core part of the Regulation, which prohibits the placing on the market, or the export, of any product covered by the Regulation scope whose geolocation coordinates have not been collected and submitted as part of a due diligence statement.

Collecting the geolocation coordinates of a plot of land can be done via mobile phones and widespread and free-to-use digital applications (e.g. Geographic Information Systems (GIS)). For plots of land of more than 4 hectares used for the production of commodities other than cattle, the geolocation shall be provided using polygons, meaning latitude and longitude points of six decimal digits to describe the perimeter of each plot of land. For plots of land under 4 hectares, operators (and traders which are not SMEs) can use a polygon or a single point of latitude and longitude of six decimal digits to provide geolocation. Establishments where cattle is kept can be described with a single point of geolocation coordinate.

2. **Does the traceability requirements apply to each batch of imported/exported/traded relevant commodities?**

The Regulation requires that operators (or traders which are not SMEs) trace every relevant commodity back to its plot of land before making it available or placing it on the market, or before exporting it. Consequently, the submission of the due diligence statement which includes geolocation information is a requirement for the shipment for imports (customs procedure 'release for free circulation') and exports (customs procedure 'export') and the consignment for transactions within the Union market.

3. **How does it work for products traded in bulk or composite products?**

For products traded in bulk, such as soy or palm oil, this means that the operator (or traders that are not SMEs) needs to ensure that all plots of land involved in a shipment are identified and that the commodities are not mixed at any step of the process with commodities of unknown origin or from areas deforested or degraded after the cut-off date of 31 December 2020.

For relevant composite products, such as e.g. furniture with a wood component, (the operator needs to geolocate all the plots of land where relevant commodities (wood for example) used for the manufacturing process has been produced. The relevant commodities components cannot be of unknown origin or/and from areas deforested or degraded after the cut-off date.

4. **Are mass balance chains of custody allowed?**

The Regulation requires that the commodities used for all products falling under the scope be traceable to the plot of land.

Mass balance chains of custody that allow for the mixing, at any step of the supply chain, of deforestation-free commodities with commodities of unknown origin or non-deforestation-free commodities are not allowed under the Regulation, because they do not guarantee that the commodities placed on the Union market or exported from it are deforestation-free. Therefore, the commodities placed on the Union market, or exported from it, need to be segregated from commodities of unknown origin or from non-deforestation-free commodities at every step of the supply chain. As mass balance is therefore to be ruled out, full identity preservation is not needed.

5. **What happens if one part of a shipment is non-compliant?**

If a part of a shipment is non-compliant, the non-compliant part needs to be identified and separated from the rest before the shipment is placed on the market or exported and that part may not be placed on the market or exported.

If identification and separation cannot be done for instance because the non-compliant products have been mixed with the rest, then the whole shipment is non-compliant as it cannot be guaranteed that the conditions of Article 3 of the Regulation are met and it may not be placed on the market or exported.

For instance, when a shipment of bulk commodities that have all been mixed is linked to several hundred plots of land, the fact that one of the plots of land has been deforested after 2020 could make the whole shipment non-compliant.

6. **How shall we understand/what is it meant by the concept of "plot of land"?**

The "plot of land" – the subject of geolocation under the Regulation – is defined in Article 2 as "land within a single real estate property, as recognised by the law of the country of production, which possesses sufficiently homogeneous conditions to allow an evaluation of the aggregate level of risk of deforestation and forest degradation associated with relevant commodities produced on that land."

7. **What happens with public or communal land that does not fall within the concept of "real-estate property"?**

The Regulation requires that commodities placed on the Union market or exported from it must have been produced or harvested on the land designated as a plot of land. The absence of a land registry or formal title should not prevent the designation of land that is de facto used as a plot of land (see below).

8. **How can operators and traders that are not SMEs obtain geolocation data in countries where there are no property registers and where farmers for instance might lack IDs or titles over their land?**

Farmers can collect the geolocation of their plots of land via mobile phones. They can do so regardless of the absence of a land registry or the lack of IDs or titles over their land. No personal information is required from the farmers (unless they are direct suppliers of the operators or operators themselves). The geolocation of the land they cultivate is sufficient.

As regards the legality requirement, the Regulation requires compliance with national laws. If under the national laws (which might lack a property register and where some farmers might lack IDs), farmers are legally allowed to farm and sell their product, then that would also mean that operators (or traders that are not SMEs) would generally be able to meet the legality requirement when sourcing from those farmers. Operators (or traders that are not SMEs), nonetheless, would need to verify that there is no risk of illegality in their supply chains.

There are many different means that operators (or traders that are not SMEs) already use today to collect the geolocation and legality information: some resort to mapping directly their suppliers, while others rely on intermediaries like cooperatives, certification bodies, national traceability systems or other companies. Operators (or traders that are not SMEs) are legally responsible for ensuring that the geolocation and legality information is correct, regardless of the means or intermediaries they use to collect that information.

9. **Is it sufficient to have producers map their own land?**

Yes. The Regulation does not apply to producers (i.e smallholders) which do not place products on the Union market themselves (and thus do not fall under the definition of operators and traders). In the case of commodities produced outside the EU, the main subject of obligations would be the operator placing the products on the EU market .

In such a case, the operator will have to guarantee that the area effectively mapped and geolocated corresponds to the plot of land where the relevant commodities were produced.

10. **Would operators and traders which are not SMEs need to verify and prove that the geo-location is correct, or are they only expected to exercise due diligence on the risks associated with that location?**

Ensuring the truthfulness and precision of geolocation information is a crucial aspect of the responsibilities that operators and traders must fulfil. Providing incorrect geolocation details would constitute a breach of the obligations under the Regulation.

11. **For shipments containing commodities/ products from a given land area (i.e. similar geolocation), are operators expected to conduct due diligence as many times as they place such commodities on the Union market?**

The geolocation information obligation that needs to be provided in the due diligence statements, via the Information system, is connected to specific commodities and products. Operators (or traders that are not SMEs) will thus need to indicate these information each time they intend to place, make available on the market or export a commodity or a product on or from the Union market. This allows the operator to update geolocation coordinates accordingly.

12. **Can a polygon cover several individual plots of land? Can polygons cover contiguous plots of land?**

Polygons are to be used to describe the perimeter of the plots of land where the commodity has been produced. Each polygon should indicate a single plot of land, whether contiguous or not. A polygon cannot be used to trace the perimeter of a random land area that might include plots of land only in some of its parts.

13. **If compliant goods from multiple origins are mixed into the same silo, and then some of those goods are shipped to the EU, would you expect the origin declared on arrival in the EU to include: a) The origin of all goods that entered the silo since it was last empty (and could therefore potentially be included in the shipment to the EU); or b) the origin of x amount of goods that entered the silo, where x is the amount shipped to the EU.**

The operator would need to declare the origin of all goods effectively shipped to the EU.

Option a) is in line with the requirements of the Regulation.

Option b) is not allowed under the Regulation, as it would violate the prohibition under the Regulation of placing products of unknown origin on the Union market.

14. **How will geolocation allow for checking the validity of a no-deforestation claim in practice? Is it aligning GPS and deforestation maps? Will there be baseline maps that forest areas or areas that have undergone deforestation and forest degradation? How will it work if geolocation of farms, plantations or concessions are not available?**

It is the responsibility of the operator (or traders that are not SMEs) to collect the geolocation coordinates of the plots of land where the commodities were produced. If the operator cannot collect the geolocation of all plots of land contributing to a shipment, then s/he shall not place the products on the Union market or export them from it, in accordance with Article 3 of the Regulation.

Operators (and traders which are not SMEs) and enforcing authorities could cross-check the geolocation coordinates against satellite images or forest cover maps to assess if the products meet the deforestation-free requirement of the Regulation. However the operators (and traders that are not SMEs) remain liable.

15. How to declare polygons in a due diligence statement when the polygons are in shapefile format?

The detailed rules for the functioning of Information System will be established through an implementing act. Stakeholders will be informed and consulted on these developments via the Multi-Stakeholder Platform on Protecting and Restoring the World's Forests. The Information System will, where possible, facilitate the work of operators by allowing some widely used geolocation formats to be uploaded directly into the system. The Information System will evolve and become more sophisticated over time, based on feedback from users.

16. What constitutes supply chain traceability and how will it work in practice? How will data be passed along the supply chain securely?

The information, documents and data that operators and traders that are not SMEs need to collect and keep during 5 years to demonstrate compliance with the Regulation are listed in Article 9 and Annex II as well as in Article 2 (28) as regards data related to geolocalisation.

Operators (and traders which are not SMEs) shall exercise due diligence with regard to all relevant products supplied by each particular supplier. Therefore, they shall put in a place a due diligence system, which includes the collection of information, data and documents needed to fulfil the requirements set out in Art. 9; risk assessment measures as described in Art. 10; risk mitigation measures as referred to in Art. 11. The requirements for the establishment and maintenance of due diligence systems, reporting and record keeping are listed in Art. 12. The Operators will have to communicate to operators and to traders further down the supply chain all information necessary to demonstrate that due diligence was exercised and that no or only a negligible risk was found.

Operators and traders which are not SMEs are required to ensure that the information on traceability that they supply to enforcing authorities in the Member States through the due diligence statement submitted to the Information System is correct.

The development and functioning of the Information System will be in line with the relevant data protection provisions. In addition, the system will be equipped with security measures, that will ensure the integrity and confidentiality of the information shared.

17. **How will traceability work for products transported through or sourced from multiple third countries?**

Operators and traders that are not SMEs are required to ensure that the required information on traceability that they supply to competent authorities in the Member States is correct, regardless of the length or the complexity of their supply chains.

Traceability information can be added up along supply chains. For instance, a shipment of soy that has been sourced in several hundred plots of land and several countries would need to be associated with a due diligence statement that includes all relevant countries of production and geolocation information for every single plot of land that has contributed to the shipment.

18. **What do you mean by "date or time range of production", which is part of the requirements of Article 9?**

Operators (and traders that are not SMEs) are required to collect information on the date or time range of production under the obligations set out in Article 9 of the Regulation. This information is needed to establish whether the product is deforestation-free. That is why it applies to the commodities covered by the Regulation that are placed on the market or to the commodities that are used for the production of products covered by the Regulation. For commodities other than cattle, this refers to the date of harvesting of the commodities.

For products other than live animals in the cattle category, the date or time range of production refers to the slaughtering of the animals.

For products other than live animals in the cattle commodity, the time range of production refers to the lifetime of the animal including the date of slaughtering.

19. **How does traceability for cattle work? Would it be enough to provide the geolocation of the land where the calf was born? Some cattle may be moved to one or more locations before slaughter.**

Operators (or traders that are not SMEs) who place on the market cattle products must geolocate all establishments associated with raising the cattle, encompassing the birthplace, farms where they were fed, grazing lands, and slaughterhouses.

20. **What can an operator/trader placing a commodity on the market do in case their upstream suppliers do not provide required information?**

If operators and traders which are not SMEs are unable to obtain the information required by the Regulation, they must refrain from placing the products concerned on the market or exporting them as that would result in a violation of the Regulation, which could lead to potential sanctions.

23. **When placing on the market or exporting products from a low-risk country, does the operator still need to ascertain the geo-localisation coordinates of the plot of land on which the commodities were grown?**

Yes, there is no exception for the traceability requirement via geolocation. The operators also have to assess the complexity of the relevant supply chain and the risk of circumvention of the Regulation and the risk of mixing with products of unknown origin or origin in high-risk or standard-risk countries or parts thereof (Art. 13). If the operator obtains or is made aware of any relevant information that would point to a risk that the relevant products do not comply with the Regulation or that the Regulation is circumvented, the operator shall fulfil all of the obligations under Articles 10 and 11 and shall immediately communicate any relevant information to the competent authority.

Scope

24. **What products are included in the Regulation? Are products that might contain the relevant commodities but are not included in Annex I, such as soap for instance, subject to the requirements of the Regulation?**

The Regulation applies only to products listed in Annex I. Products not included in Annex I are not subject to the requirements of the Regulation even if they may contain commodities in the scope of the Regulation. For example, soap will not be covered by the Regulation, even if it contains palm oil.

Likewise, products with an HS code not included in Annex I, but which might include components or elements derived from commodities covered by the Regulation – such as cars with leather seats or natural rubber types – are not subject to the requirements of the Regulation.

N.B.: The Regulation foresees that the list of products may be amended by the Commission by means of a delegated act. The Commission will assess the need and the feasibility of making a legislative proposal to the European Parliament and to the Council to extend the scope of the Regulation to further commodities, based on evidence of the impact of relevant commodities on deforestation and forest degradation. The first review of the commodity scope is to take place within two years of the entry into force of the Regulation.

25. **What about products listed in Annex I that do not contain or are not made of the commodities in the scope? What does the "ex" mean before the CN code?**

Products included in Annex I that do not contain, or are not made of, the commodities within the scope of the Regulation are not covered by the Regulation.

If there is "ex" before the CN code of products in Annex I, this means "extract" and such products are covered by the Regulation. For instance, code 9401 might include seats made of raw materials other than wood, but only wooden seats are subject to the requirements of the Regulation.

26. **Is there a threshold volume or value of a relevant commodity or relevant derived product, including within processed products, below which the Regulation would not apply?**

No. Operators and traders placing or making available on the Union market or exporting from it the relevant products included in Annex I, whatever their quantity, are subject to the obligations of the Regulation.

27. **What about products manufactured in the EU?**

Products produced inside the EU are subject to the same requirements as products produced outside the EU. The Regulation applies to products listed in Annex I, whether there are produced in the EU or imported.

For instance, if an EU company produces chocolate (code 1806, which is included in Annex I), then it will be considered as an operator subject to the obligations of the Regulation, even if the cocoa powder used in the chocolate has already been placed on the market and fulfilled the due diligence requirements. In contrast, if an EU company produces soap – which is not included in Annex I –, it will not be subject to the requirements of the Regulation, even if the soap contains palm oil.

28. **How should the text "not including packaging material used exclusively as packaging material to support, protect or carry another product placed on the market" in Annex 1 under Wood CN code 4415 be understood? For example, in the case of a producer selling packaging to manufacturers (to protect the final product - not to be sold as a final product to consumers), does this packaging fall under the scope of the EUDR?**

If any of the concerned articles is placed on the market or exported as a product in its own right, rather than as packaging for another product, it is covered by the Regulation and therefore due diligence requirements apply.

If packaging, as classified under HS code 4415, is used to 'support, protect or carry' another product, it is not covered by the Regulation.

29. **Most recycled paper/paperboard products contain a small percentage of virgin pulp or pre-consumer recycled paper (for example, discarded paperboard scraps from cardboard box production) to strengthen the fibres. Does this mean all recycled paper/paperboard containing any amount of virgin pulp fall under the scope of the EUDR?**

Annex I states that the Regulation does not apply to goods if they are produced entirely from material that has completed its lifecycle and would otherwise have been discarded as waste as defined in Article 3, point (1), of Directive 2008/98/EC. If the product contains a percentage of non-recycled material, then it is subject to the requirements of the Regulation and the non-recycled materials will need to be traced back to the plot of origin via geolocation.

Subjects of Obligations

30. Who is considered an operator?

As defined in Article 2 (15) of the Regulation, an operator is a natural or legal person who places relevant products on the Union market or exports them from the Union market in the course of commercial activity.

This definition also covers companies that transform one product of Annex I (which has already been the object of due diligence) into another product of Annex I, operators further down the supply chains. For example, if company A, based in the EU, imports cocoa butter (CN code 1804, included in Annex I), and company B, also based in the EU, uses that cocoa butter to produce chocolate (CN code 1806, included in Annex I) and places it on the market, both company A and B would be considered operators under the Regulation.

However, if company C uses the same cocoa butter to produce biscuits (CN code 1905, not included in Annex I), then company C would not be considered an operator and would not be subject to the obligations of the Regulation.

Operators placing on the market for the first time one of the products listed in Annex 1 and which have not been subject to due diligence in a prior step of the supply chain (for example importers sourcing cocoa) are, regardless of their size, subject to the obligation of filing a due diligence statement.

31. What does "in the course of commercial activity" mean?

The combined definitions of "operator" (Article 2.15) and of 'in the course of a commercial activity' (Article 2.19) imply that any company, which imports relevant products into the EU for selling (with or without transformation) or for use in the context of its commercial activities will be subject to the due diligence requirements and present the due diligence statement.

32. What are the operators further down the supply chain and how are their obligations different?

Operators further down the supply chain are those who transform a product listed in Annex I (which has already been subjected to due diligence) into another product listed in Annex I. Their obligations vary depending on whether they are Small and Medium-sized Enterprises (SMEs) or large companies.

When submitting their due diligence statement in the Information System, large operators further down the supply chain may refer to due diligence performed earlier in the supply chain by including the relevant reference number. However, they are obliged to ascertain that due diligence was carried out and they retain legal responsibility in the event of a breach of the Regulation.

SME operators further down the supply chain are subject to the same obligations as an operator and retain legal responsibility in the event of a breach of the Regulation. However, they are not required to a)

exercise due diligence for parts of their products that were already subject of due diligence exercise; b) submit a due diligence statement in the Information System. But they still have to provide due diligence reference numbers obtained from previous steps in the supply chain.

33. If a company produces products listed in Annex I with commodities already imported and verified, do you still need to issue a due diligence statement?

The Regulation applies both to exports and to imports. Operators exporting relevant products will have to include the reference number of the due diligence statement in their export declaration. Operators exporting products made with commodities that were already covered by a due diligence statement may also avail themselves of relevant simplifications in article 4 (see answer to question 32).

34. Which companies are considered large traders (traders which are not SMEs) and what are their obligations?

A large trader is a trader which is not a small and medium-sized undertaking pursuant to Article 2(30) of EUDR. This provision refers to the definitions provided in Article 3 of Directive 2013/34/EU[1].

This will essentially include any large company that is not an operator and commercialises the products included in Annex 1 on the Union market, for instance, large supermarket or retail chains.

By virtue of Article 5(1) of the Regulation, the obligations of large traders are the same as those of large downstream operators: a) they need to file a due diligence statement; b) they need to check the due diligence previously carried out in the supply chain; c) they are liable in case of breach of the Regulation.

35. Who will be held liable if products have already entered the market or in case information is not properly disclosed by the operator?

All operators retain responsibility for the compliance of the relevant product they intend to place on the Union market or export from it. The Regulation also requires operators (or traders which are not SMEs) to communicate all necessary information along the supply chain. Therefore, in case of breach of the Regulation, each actor of the supply chain concerned by the trade of the specific shipment is held liable.

DEFINITIONS

[1] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC Text with EEA relevance

36. **The wording of the deforestation-free definition in Art. 2 (13) (b) ("….in case of relevant products that contain or have been made using wood…") singles out wood from the product scope, creating the impression of a 'special case' and raising a question regarding the applicability of the "deforestation-free" criterion in Article 3 (a) to wood. Does wood need to comply with both criteria, related to deforestation and forest degradation, or only forest degradation?**

In order to meet the requirements of the Regulation, wood needs to comply with both criteria: a) it needs to have been harvested from land not subject to deforestation after 31 December 2020; and b) it needs to be harvested without inducing forest degradation after 31 December 2020.

38. What are the compliant harvesting levels? If a wood operator in 2022 harvests 20% of a forest with a 100% cover and lets the land naturally regenerate, would the harvested wood be compliant? In 30 years, once the forest will have been regenerated, could the same operation take place with the same conclusion on the EUDR compliance?

Under the Regulation, "forest degradation" means structural changes to forest cover, taking the form of the conversion of primary forests or naturally regenerating forests into plantation forests or into other wooded land, and the conversion of primary forests into planted forests (Article 2 (7).

This definition covers all categories of forests defined by the Forest and Agriculture Organisation of the United Nations. Therefore, forest degradation under the Regulation consists of transforming certain types of forests into other kinds of forests or other wooded land.

Different levels of wood harvesting are allowed, provided that this does not result in a transformation falling under the definition of degradation.

37. **Is the definition of "forest degradation" going to affect existing sustainable forest management system?**

Forest degradation under the Regulation consists of transforming certain types of forests into other kinds of forests or other wooded land. Sustainable forest management systems can be employed and encouraged, provided they do not lead to a conversion that meets the degradation definition.

38. **How shall we apply the clause "trees able to reach those thresholds in situ" related to tree height and canopy cover in the forest definition in Article 2 (4)?**

If the woody vegetation has or is expected to surpass more than 10% canopy cover of tree species with a height or expected height of 5 m or more, it should be classified as "forest", based on the FAO definition. E.g. young stands that have not yet but are expected to reach a crown density of 10 percent and tree

height of 5 m are included under forest, as are temporarily unstocked areas, whereas the predominant use of the area remains forest.

39. Deforestation is defined in Article 2 (3) as "conversion of forest to agricultural use." Is any other forest land-use change compliant with the Regulation?

Yes, deforestation under the Regulation is defined as conversion to agricultural use. Conversion for other uses such as urban development or infrastructure does not fall under the definition. For instance, wood from a forest that has been legally harvested to build a road would be compliant with the Regulation.

40. Would a natural disaster – such as forest fires or tornados - count as deforestation?

The definition of "deforestation" in the Regulation encompasses the conversion of forest to agricultural use, whether human-induced or not, which includes situations dues to nature disasters. A forest that has experienced a fire and is then subsequently be converted into agricultural land (after the cut-off date) would be considered deforestation under the Regulation. In this specific case, an operator would be prohibited from sourcing commodities within the scope of the Regulation from that area (but not because of the forest fire). Conversely, if the affected forest is allowed to regenerate, it would not be deemed deforestation, and an operator could source wood from that forest once it has regrown.

41. Will 'other wooded land' or other ecosystems be included in the scope of the Regulation?

The Regulation relies on the definition of 'forest' of the Food and Agriculture Organization of the United Nations. This includes four billion hectares of forests – the majority of habitable land area not already used by agriculture – which encompasses areas defined as savannahs, wetlands and other valuable ecosystems in national laws.

The first review of the Regulation to be done within one year of the entry into force will assess the impact of further expanding the scope to 'other wooded land'. The second review to be done within two years of the entry into force of the Regulation will assess the impact of expanding it to ecosystems beyond 'forests' and beyond 'other wooded land'.

The conversion from naturally regenerating forest to plantation forests or to other wooded land is already part of the definition of 'forest degradation', and wood products coming from such converted land cannot be placed on the Union market or exported from it.

DUE DILIGENCE

42. As an EU operator (or a trader which is not a SME), what are my due diligence, risk assessment and risk mitigation obligations?

As a general rule, operators (and traders which are not SMEs) will have to set up and maintain a Due Diligence System, which consists of three steps.

As step one, they would need to collect the information referred to in Article 9, such as the commodity or product which they intend to place on or export from the Union market, including under customs procedures 'release for free circulation' and 'export' as well as the respective quantity, supplier, country of production, evidence of legal harvest, among others. 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 due diligence statement 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 the affected products on the Union market or exporting from it. Failing to do so would result in a violation of the Regulation, which could lead to potential sanctions.

In step two, companies will need to feed the information gathered under the first step into the risk assessment pillar of their Due Diligence Systems to verify and evaluate the risk of non-compliant products entering the supply chain, taking into account the criteria described in Article 10. Operators need to demonstrate how the information gathered was checked against the risk assessment criteria and how they determined the risk.

In step three, they will need to take adequate and proportionate mitigation measures in case they find under step two more than a negligible risk of non-compliance in order to make sure that the risk becomes negligible, taking into account the criteria described in Article 11. These measures need to be documented.

Operators sourcing commodities entirely from areas classified as low risk will be subject to simplified due diligence obligations. According to Article 13, they will need to collect information in line with Article 9, but they will not be required to assess and mitigate risks (Articles 10 and 11) unless the operator obtains or is made aware of any relevant information, including substantiated concerns submitted under Article 31, that would point to a risk that the relevant products do not comply with this Regulation (Article 13.2).

43. What constitutes an 'authorised representative' and what are the obligations of this role in practice?

According to Article 6, the operator and the trader which is not a SME may mandate authorised representatives to submit a due diligence statement on their behalf. In this case, the operator and trader will retain responsibility for the compliance of the relevant products. If the operator is a natural person or microenterprise, it may mandate the next operator or trader in the supply chain to act as its authorised representative, provided it is not a natural person or micro-enterprise. In this case, the first operator retains responsibility for the compliance of the product.

44. Under what circumstances can a company conduct due diligence on behalf of its subsidiary?

The internal organisation and due diligence policy of a company is not governed by the rules of the Regulation. When a product is placed or made available on the market, the relevant operator or trader – hence the entity whose name figures in the due diligence statement – is responsible for the compliance of the product and for the overall compliance with the Regulation.

45. What are my due diligence statement obligations if I am re-importing a product that was previously exported from the EU?

If an operator (or trader that is not an SME) re-imports a product that was previously exported from the EU and places it under the customs procedure 'release for free circulation', then the same obligations apply as the product would be placed for the first time on the market. Already existing due diligence statements can help the operator to exercise due diligence.

46. What is the role of certification/verification schemes under the Regulation?

Certification schemes can be used by supply chain members to help their risk assessment to the extent the certification covers the information needed to comply with their obligations under the Regulation. Operators and traders which are not SMEs will still be required to exercise due diligence and they will be held accountable for any breach.

BENCHMARKING & PARTNERSHIPS

47. What is country benchmarking and how will the benchmarking process work?

A benchmarking system operated by the Commission will classify countries, or parts thereof, in three categories (high, standard and low risk) according to the level of risk of producing in such countries commodities that are not deforestation-free.

The criteria for the identification of the risk status of countries or parts thereof are defined in Article 29 of the Regulation. Article 29 (2) mandates the Commission to develop a system and publish the list of countries, or parts thereof, no later than 18 months after the entry into force of the Regulation when the main obligations of the Regulation kick in. It will be based on an objective and transparent assessment analysis, taking into account the latest scientific evidence , internationally recognised sources

48. What is the methodology for the country benchmarking?

The methodology is currently being developed by the Commission and will be presented in future meetings of the Multi-Stakeholder Deforestation Platform and other relevant meetings.

49. How can producer countries and other stakeholders feed into the benchmarking process, and how will information supplied by producer countries and other stakeholders be evaluated, verified and utilised?

The Commission is required under Art 29(5) to engage in a specific dialogue with all countries that are, or risk to be classified as, high risk, with the objective to reduce their level of risk. This dialogue will be an opportunity for partner countries to provide additional relevant information and work in close contact with the EU ahead of the finalisation of the classification.

50. Will the benchmarking take into account legality risks as well as deforestation and forest degradation? How will the legislation and forest policies of producer countries, particularly regarding 'legal deforestation', be assessed/taken into account during the benchmarking process?

The list of criteria is described in Article 29 of the Regulation. The assessment of the Commission must take into account the criteria defined in Article 29.3 and may also take into account a range of other criteria described in Article 29.4.

51. How are producer countries and smallholders being supported to produce products in compliance with the Regulation? How can we ensure that smallholders are not excluded from supply chains?

The EU and its Member states are committed to step up engagement with partner countries, consumer and producer countries alike, to jointly address deforestation and forest degradation. Partnerships and cooperation mechanisms will support countries to address deforestation and forest degradation where a specific need has been detected, and where there is a demand to cooperate - for instance, to help smallholders and companies in ensuring working with only deforestation-free supply chains. The Commission has entered already in projects to disseminate information, raise awareness, and address technical questions through workshops for smallholders in the most affected third countries.

52. How can we mitigate the risk of operators avoiding certain supply chains or certain producer countries/regions that are benchmarked as 'high risk'?

Operators sourcing from standard and high risk countries or parts of countries are subject to the same regular due diligence obligations. The only difference is that shipments from high-risk countries will be subject to enhanced scrutiny from competent authorities (9% of operators sourcing from high-risk areas). In that sense, drastic changes of supply chains are not warranted or expected. Furthermore, high risk classification will entail a specific dialogue with the Commission to address jointly the root causes of deforestation and forest degradation, and with the objective to reduce their level of risk.

SUPPORTING IMPLEMENTATION

56. What is the Information System and the 'EU Single Window'?

The Information System (IS) is the IT system which will contain the due diligence statements submitted by operators and traders to comply with the requirements of the Regulation. The Information System will be operational by the entry into the application of the Regulation and will provide users with the functionalities listed in Art. 33(2) of the Regulation.

The EU Single Window Environment for Customs (EU SWE-C) is a framework that enables interoperability between customs IT systems and non-customs systems, such as the Information System established with Art. 33 of the Regulation[1]. The central component of EU SWE-C, known as EU CSW-CERTEX system, will interconnect the Information System with customs IT systems and will enable sharing and processing of data submitted to customs and non-customs authorities by economic operators. The Single Window will thus ensure information sharing in real-time and digital cooperation between customs authorities and competent authorities in charge of enforcing non-customs formalities, including in the field of environmental protection.

57. What data security safeguards will they have and who will have access to the information they hold?

The Information System and, subsequently, its interconnection with the EU Single Window Environment for Customs, will be aligned with the relevant and applicable provisions in terms of data protection.

In line with the Union's Open Data Policy, the Commission shall provide access to the wider public to the complete anonymised datasets of the Information System in an open format that can be machine-readable and that ensures interoperability, re-use, and accessibility.

[1] The EU Single Window Environment for Customs (europa.eu)

INTERPLAY WITH OTHER POLICIES AND PROCESSES

59. How does the Regulation link to the EU Renewable Energy Directive?

The objectives of the Deforestation Regulation and the Renewable Energy Directive are complementary, as they both address the overarching objective of fighting climate change and biodiversity loss. Commodities and products that fall within the scope of both acts will be subject to requirements for general market access under the EUDR and for being accounted as renewable energy under the Renewable Energy Directive (RED). These requirements are compatible and mutually reinforcing. In the specific case of certification systems for low Indirect Land Use Change (ILUC) according to Commission Regulation (EU) 2019/807 supplementing Directive (EU) 2018/2001, these certification systems may also be used by operators and traders within their due diligence systems to obtain information required by the EUDR to meet some of the traceability and information requirements set out in its Article 9. As with any other certification system, their use is without prejudice to the legal responsibility and obligations under the EUDR for operators and traders to exercise due diligence.

TIMELINES

60. What are the timelines for the Regulation's entry into force and entry into application and how do these differ for large enterprises versus micro, small and medium-sized enterprises (SMEs)?

The Regulation was published in the Official Journal of the European Union on 9 June 2023. It enters into force on 29 June 2023. However the applicability of certain Articles listed in paragraph 2 of Article 38 will enter into application on 30 December 2024 (18 months transition) and on 30 June 2025 (24 months transition) for micro- and small enterprises.

61. Will the products placed on the Union market between the entry into force of the Regulation and its date(s) of applicability have to comply with the requirements of the Regulation?

The entry into application for non-SMEs 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 SMEs this period is extended (24 months after the entry into force of the Regulation - on 30 June 2025).

OTHER QUESTIONS

62. Will the Commission issue guidelines on this Regulation?

The Commission is already gathering inputs and promoting dialogue amongst stakeholders via the Multi-stakeholder platform on Protecting and Restoring the World's Forests with a view to providing informal guidance on a number of issues. This document on Frequently Asked Questions already answers the most frequent questions received by the Commission from relevant stakeholders and will be updated over time. If needed, additional facilitation tools will be mobilised.

63. Operators which are not SMEs will have to publicly report on their due diligence system annually. For those operators that are in the scope of Corporate Sustainability Reporting Directive (CSRD) and comply with EU Sustainability Reporting Standards (ESRS) in due time, is it sufficient to publish their report according to the requirements in CSRD? Or will there be additional reporting requirements?

The Regulation provides that when it comes to reporting obligations, operators falling also within the scope of other EU legislative instruments that lay down requirements regarding value chain due diligence may fulfil their reporting obligations under the Regulation by including the required information when reporting in the context of other EU legislative instruments (Article 12.3).

64. When will the EU Forest Observatory be operational? How is this going to help companies implement the Regulation?

The Observatory will build on already existing monitoring tools, including Copernicus products and other publicly or privately available sources, to support the implementation of this Regulation by providing scientific evidence, including land cover maps on the cut-off date, regarding global deforestation and forest degradation and related trade. The use of these maps will not automatically ensure that the conditions of the Regulation are complied with, but will be a tool to help companies to ensure compliance with this Regulation, for example to assess the deforestation risk. Companies will still be obliged to carry out due diligence.

The EU Forest Observatory will cover all forests worldwide, including European forests and will be developed in coherence with other ongoing EU policy developments such as the Forest Monitoring Law and upgrading and enhancement of the Forest Information System for Europe (FISE).

There is not yet a precise date for the full operationalization of the Observatory (indicative date for the platform to be online is December 2023). The availability of the services provided in the future by the Observatory is however not a precondition to comply with the requirements set by this Regulation.

The Observatory will build on already existing monitoring tools, including Copernicus products and other publicly or privately available sources, to support the implementation of this Regulation by providing scientific evidence, including land cover maps on the cut-off date, regarding global deforestation and forest degradation and related trade. The use of these maps will not automatically ensure that the conditions of the Regulation are complied with, but will be a tool to help companies to ensure compliance with this Regulation, for example to assess the deforestation risk. Companies will still be obliged to carry out due diligence.

65. Article 17 allows Competent Authorities to take immediate measures – including suspension - in situations that present high risk of non-compliance. What constitutes high-risk, and how long can the suspension take place?

Competent authorities may identify situations where relevant products present a high risk of being non-compliant with the requirements of the Regulation on the basis of different circumstances, including on the spot checks, the outcome of their risk analysis in their risk-based plans, or risks identified through the information system, or on the basis of information coming from another competent authority, substantiated concerns etc. In such cases, the competent authorities can introduce interim measures as defined in Article 23, including the suspension of placing or making available the product on the market. This suspension should end within three working days, or 72 hours in case of perishable products. However, the competent authority can come to the conclusion, based on checks carried out in this period of time, that the suspension should be extended by additional periods of three days to establish if the products is compliant with the Regulation.