

# ENVIRONMENT

## THE EU DEFORESTATION REGULATION

VdA EXPERTISE



July 2023

## **On the 29<sup>th</sup> of June 2023, the Regulation on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation entered into force.**

The Regulation on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation ( herein, the “EU Deforestation Regulation”, or “the Regulation”) was adopted on the 9<sup>th</sup> of June 2023 and entered into force on the 29<sup>th</sup> of June 2023. Nevertheless, the majority of the imposed obligations will only be applicable on the 30<sup>th</sup> of December 2024.

This Regulation integrates the EU Green Deal strategy, aiming to enhance the protection of forests.

To this end, the EU Deforestation Regulation imposes on **companies placing such commodities in the EU market or exporting them from the EU market** obligations concerning the assurance that certain commodities are deforestation-free.

### **1. Scope**

The EU Deforestation Regulation will, for the time being, apply to the import and export of:

- Cocoa;
- Coffee;
- Soya;
- Palm oil;
- Wood;
- Rubber;
- Cattle; and
- Derivatives of the abovementioned products, such as cocoa butter and chocolate, soya beans and flour, palm nuts, furniture and paper, tyres or meat.

The obligations imposed under the EU Deforestation Regulation apply to:

- Operators – Natural or legal persons who, in the course of a commercial activity, place or export relevant products on/from the market.
- Traders – Any other person in the supply chain who, in the course of a commercial activity, makes relevant products available on the market.

The obligations imposed depend on the dimension of the entities at stake. Traders that are considered SMEs are only obliged to collect and retain for information, for 5 years, concerning operators or traders who have supplied them products, and of traders to whom they have supplied the covered products. This information includes the name, contact information and reference numbers of the due diligence statements for the covered products.

### **2. Relevant prohibitions and obligations**

The EU Deforestation Regulation imposes a prohibition of placing on the EU market and of exporting from the EU market relevant commodities that:

- Are not considered “deforestation-free”. To be considered “deforestation free” products must have been produced on land that has not been subject to deforestation or in the case of wood (or wood containing products) the wood has been harvested from forest without introducing degradation, after the 31<sup>st</sup> December 2020;
- Have not been produced in accordance with the relevant legislation of the country of production;
- Are not covered by a due diligence statement.

As a consequence, obliged entities must undertake effective due diligence to ensure that products aimed at placement in the EU market comply with relevant legislation of the country of production and have not been produced on illegitimate land.



To this end due diligence procedures shall include the following steps:

- Collection of information, data and documents;
- Assess the risk of non-compliance;
- Mitigation of identified risks.

It should be noted that relevant legislation of the country of production encompasses legislation regarding human rights, land-use rights, environmental protection, tax, anti-corruption, trade and customs regulation. As such, the due diligence steps identified above must also focus on these areas

The due diligence framework of procedures should be continuously updated and annual reports regarding these due diligence systems should be published.

Additionally, competent authorities of each Member-State will be obliged to carry out checks, within their territory, in order to monitor if operators and traders are complying with the EU Deforestation Regulation. The checks carried out should follow a risk-based approach and, as such, the percentage of operators checked depends on the risk level of the country of production of the relevant commodities.

### 3. Enforcement measures

Member States will need to nominate or design an authority responsible for the implementation and application of enforcement measures.

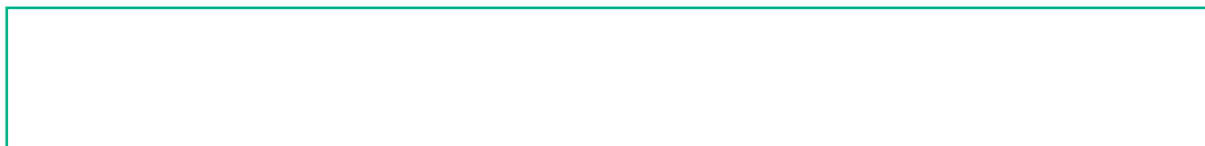
Enforcement measures of the Regulation include:

- The performance of checks;
- Carrying out investigations based on substantiated concerns;
- Implementation of interim measures for situations of high risk of non-compliance, such as the seizing of products or suspension of imports | exports;
- The imposition of corrective actions – such as the withdrawing or mandatory donation of the product – or corrective penalties – such as a percentage of the turnover or temporary prohibition from placing products in the EU market.

### 4. Implementation and next steps

The obligations imposed on operators and traders will be applicable from the 30<sup>th</sup> December 2024 onwards.

In order to operationalize the obligations imposed by the EU Deforestation Regulation an information system that will be accessible to Member State competent authorities and customs authorities will be created. Operators and traders will have to submit their due diligence statements through this system.



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