

European Commission proposal for a regulation on deforestation-free products

Strong implementation and application by Member States

Introduction

On 17 November 2021, the European Commission presented a legislative proposal for [regulation](#) on deforestation-free products which also includes a number of measures aimed at implementation and enforcement.

WWF welcomes the introduction of a clear enforcement framework for the legislation which should be maintained, but has also identified a number of challenges which should be addressed.

Next to ensuring that commodities and products placed on the European market are not linked to deforestation or forest degradation, the proposal aims to integrate the EU Timber Regulation (EUTR) which entered into force in 2013 and introduced due diligence to ensure no illegal timber products are placed on the European market. In order to see positive impacts on halting forest loss and degradation, the teething troubles of EUTR implementation and the lessons-learnt and shortcomings identified in its [fitness check](#) (2021) must be taken into account during the ongoing negotiations of the draft proposal.

A wider market oversight and some EUTR loopholes closed

Under the EUTR, some companies have exploited loopholes to circumvent their obligations while continuing to trade illegal timber products¹. The proposed regulation gives operators full responsibility for compliance² before placing the product on the market (via issuance of a due diligence declaration) and must provide authorities with the widest possible legal basis to hold companies to account.

The **obligation for large traders to carry out due diligence** (Art. 6 (5)) partly closes a gap under the EUTR, where only operators who first place the product on the market were covered, and **must be maintained**. It reduces chances for (large) companies to evade due diligence obligations by establishing small subsidiaries/front companies as operators to place their products on the market. The inclusion of large traders allows for greater scrutiny and traceability along the supply chain. For competent authorities, controlling large traders can **improve the effectiveness of controls** when hundreds of small operators supply one large trader. Traceability along the supply chain (including by SME traders) must be ensured in practice.

¹ See for instance [Environmental Investigation Agency \(2021\). State of Corruption](#)

² Certifications can be used as a tool for the due diligence exercise but do not constitute a green lane. The concept of Monitoring Organisations foreseen under the EUTR, “*which have not functioned as expected*” according to its fitness check, is removed.

The **simplified due diligence** (Art. 12) for sourcing from low risk countries - a *de facto* exemption - **should be removed**. This provision risks encouraging laundering of non-compliant commodities and products via low-risk countries. The ranking of countries or parts thereof as “low risk” might hide localised risks linked to one actor, sector or local context.

Public reporting by companies will be an important transparency tool and **SMEs that qualify as operators should not be exempted** (Art. 11 (2)). With clear guidelines, annual public reporting does not represent an undue burden after SMEs have completed their due diligence. Transparency towards consumers should be encouraged by making available information of origin and species (where relevant) in products and commodities³.

Effective implementation by Member States and authorities

A first condition for effective implementation is that competent authorities carry out **thorough controls in sufficient quantity**. **Minimum annual coverage of operators and commodity volume** by competent authority **checks** (5% and 15% for high risk countries, Art. 14 and 20) and clear risk-based procedures for checks (Art. 15-16) will ensure **harmonized scrutiny on operators** and avoid market distortion towards less-regarding Member States. While provisions represent a strong increase in the number of checks in comparison to the EUTR, this is **necessary but also attainable given the concentration of soft commodity sectors⁴ and digitalisation of information**. The increased scrutiny on high-risk origins is *de facto* in line with the risk-based checks planning of competent authorities. Checks will further be facilitated by the **installation of the centralized information system collecting the due diligence declarations** of companies. **Unannounced controls should cover both the due diligence obligations but also the conformity of products according to Art. 3**. The use of scientific methods and satellite monitoring in combination with precise geolocation enables verification of compliance of the product with zero-deforestation requirements (Art. 3).

Cooperation and exchange of information between involved authorities and Member States (Art. 18) and cooperation with customs (Art. 25) - are a clear improvement from the EUTR. The proposal asks for immediate exchange of information in case of an infringement that also affects other countries (Art. 18). This is particularly relevant and efficient when operators are placing products on several Member State markets. For instance, Cargill was the largest importer of Brazilian soy in 2018, operating via 11 EU Member States⁵.

³ See [Swiss Ordinance on the declaration of wood and wood products](#)

⁴ For instance, [4900 operators place imported timber on the market in the Netherlands](#). In 2018, the Dutch CA carried out 76 controls (number of controls for [Dec 2017-June 2018](#) and from [July-Dec 2018](#)) thus covering 1.6% of operators. In 2018, 23 known companies imported Brazilian soy (representing 45% of Dutch soy imports) via the Netherlands, of which 7 supplied more than 75% of the volume (Import data consulted on [trase.earth](#). Share of imports from [resourcetrade.earth](#)). In the same year, 24 companies imported cocoa from Ghana (supplying 19% of Dutch cocoa imports) to the Netherlands, with 3 companies supplying 85% of the volume (Import data consulted on [trase.earth](#). Share of imports from [resourcetrade.earth](#)).

⁵ Import data consulted on [trase.earth](#) for Cargill Agricola SA in 2018.

Art. 18 should **reinforce the role of conclusions from the EU expert group** on the non-compliance of certain products or operators (also mentioned as source of information for companies' risk assessments Art 10 (2.h)). Such conclusions should lead to coordinated and harmonised enforcement actions **Digitalisation of information sharing** via the information system (Art. 31) and electronic interface (Art. 26) is crucial for effective implementation, therefore the electronic interface for customs data should be put in place earlier than 4 years after adoption of the implementing act.

Transparency and detailed reporting by Member States will enable scrutiny on the harmonised enforcement across Member States. Further to the information listed in Art. 19, the annual report of Member States to the Commission should include the type of detected infringements and the value of sanctions per case. The regulation should provide individuals with access to records of controls in accordance with Directive 2003/4/EC on public access to environmental information, and should require CAs to report publicly on a quarterly basis on controls, type of infringements and linked penalties. With a **formal role of substantiated concerns from third parties** (Art. 29), considering that more than a quarter of substantiated concerns under the EUTR led to enforcement actions in 16 Member States between 2016-2018⁶, transparency on the follow up by authorities is positive.

Dissuasive and harmonised enforcement

Issuance of repeated warnings in case of non-compliance, wildly disparate consequences for similar infringements across Member States and disproportionately low sanctions in comparison to consignment value have proven to be severe challenges for the EUTR. The introduction of "interim measures" or "**market surveillance measures**" is **positive but should not replace the issuance of dissuasive penalties** against the company that have caused the infringement. The regulation should clarify that "market surveillance measures" (Art. 22) are additional to penalties (Art. 23).

Clear rules for **harmonised and proportional penalties**, i.e. linking them to a company's turnover and reflecting environmental damage and value of goods are important. WWF recommends that the regulation defines a minimum sanction threshold proportional to a company's **turnover (4%)⁷ in the Union rather than at the level of Member States**, but leaves room to the top with the aim to satisfy the intention to "*effectively deprive those responsible of the economic benefits derived from their infringements [...]*". **Serious non-compliance should constitute a criminal offense⁸** and dedicated sanctions should be foreseen for **intentional circumvention** of the regulation by any trader or operator⁹.

⁶ From 2016 to 2018, 182 third party substantiated concerns were received by CAs, of which 95 triggered checks, on both domestic and imported timber. Of these checks, 49 resulted in either notices of remedial action, penalties or court cases. [WWF \(2019\) WWF Enforcement Review of the EU Timber Regulation \(EUTR\)](#)

⁷ Cf GDPR

⁸ Criminal sanctions should apply in case a company willingly or knowingly circumvents the regulation.

⁹ See for instance circumvention of strengthened enforcement in Belgium and Germany by Myanmar teak importers, who chose to place the timber on the market in Italy before trucking it to final destination. EIA(2020) State of corruption.



The provisions outlined by the EC proposal are necessary to achieve market compliance and dissuade rogue actors, they are also enforceable. Attention has been given to efficiency e.g. by information sharing within and between member states, transparency and due diligence declarations, controls on key actors of the supply chain including large traders and effectiveness of controls via transparency, scientific methods in combination with geolocation, dissuasive sanctions in case of infractions.