

The EU Regulation on Deforestation-free Products (EUDR) – INFORMATION FOR STAKEHOLDERS IN BRAZIL

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The objective of this technical note is to provide a summary of relevant information on the European Union (EU) Regulation for Deforestation-Free Products (EUDR) to stakeholders in Brazil. In this technical note, we present the scope of the EUDR, the deforestation due diligence requirements, a timeline for its application and the aspects which are still under development or to be reviewed. As operators and traders in Brazil (and globally) are expected to abide by the EUDR by the end of 2024 when exporting certain commodities to the EU, this document aims to support preparatory actions of the affected stakeholders.

I. CONTEXT - EU POLICY MAKING AND THE EUROPEAN GREEN DEAL

The EUDR is part of the [European Green Deal](#)¹ which was introduced by the EU in 2019. The EU Green Deal aims to make [Europe climate neutral by 2050](#). Regarding sustainable land use and forests, the EU Green Deal reinforced the 2019 commitments on [Stepping up EU Action to Protect and Restore the World's Forests](#).² Its priorities are to: (1) reduce the footprint of EU consumption of land and encourage the consumption of products from deforestation-free supply chains; (2) work in partnership with producer countries to reduce pressures on forests and to “deforest-proof” EU development cooperation; (3) strengthen international cooperation to halt deforestation and forest degradation; (4) redirect finance to support more sustainable land use practices; (5) support the availability and quality of information on forests and commodity supply chains. The EUDR draws upon existing actions taking place at the EU level, for more information on the background of this process, see the technical note of the [Tropical Forest Alliance's \(TFA\)](#).

[EU policymaking is shaped around 3 EU institutions](#): the European Commission, the European Parliament and the Council of the European Union. The [Trilogue](#)³ is the negotiation process between the three co-legislators on new regulatory measures. The EUDR was agreed upon in the Trilogue in December 2022.

II. THE DEFORESTATION-FREE PRODUCTS REGULATION (EUDR)

What is it?

As existing voluntary and market-based measures in the EU have failed to shift EU consumption away from products linked to deforestation, with this new regulation the EU aims to minimise the EU's contribution to global deforestation and forest degradation, as well as to greenhouse gas emissions and global biodiversity loss by cutting off deforestation-linked commodities from the EU market.⁴

This Regulation will affect both EU and non-EU operators, which are defined as entities that initially place goods on or export them from the EU market as well as traders, which include any person in the supply chain (other than operators) that makes relevant commodities and products available on the EU market. Producers, in turn, will be affected by the Regulation through operators and traders.

Definitions used:

- The definition for [forests](#) applied is the FAO definition (“*land spanning more than 0,5 hectares with trees higher than 5 metres and a canopy cover of more than 10%, or trees able to reach those thresholds in situ, excluding land that is predominantly under agricultural or urban land use*”).

- The definition of **forest degradation**ⁱ applied includes 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.

Commodities in scope:

The EUDR targets 7 forest-risk commodities: cattle, cocoa, coffee, palm oil, soy, rubber and wood and certain derived products.ⁱⁱ

Mandatory due diligence rules for operators and traders means:

These 7 commodities and their derived products can only be placed on the EU market or exported from the EU to third countries if:

1. they are “**deforestation-free**” according to Article 2(13), which means that the commodity was produced on land that has not been deforested (legally or illegally) after **31 December 2020 (cut-off date)** and in the case of products that contain or have been made using wood, that the harvested wood has not induced forest degradation after 31 December 2020. The date is aligned with the UN SDG 2030 Target 15 and the New York Declaration on Forests (NYDF);

AND also

2. they have been produced **in compliance with relevant legislation of the concerned producer country or countries.**ⁱⁱⁱ

The due diligence statement:

- The operators and traders need to submit a due diligence statement which concludes that the commodity or product comply with both conditions to competent authorities (designated by EU Member States) before placing their products on (or exporting from) the EU market.
- SME operators do not have to exercise due diligence for products for which a due diligence statement is already available and are only required to provide the reference number of the due diligence statement to competent authorities if asked.

Exercising due diligence includes:

- A) collecting and reporting information, data and documents regarding:
 - the quantity of the relevant products;
 - the geolocation coordinates^{iv} of all plots of land where the relevant commodities were produced;
 - the date or time range of production;
 - conclusive and verifiable information needs to show that the relevant products are deforestation-free (see 1. above) and produced in compliance with the relevant legislation of the country of production (see 2. above).
- and**
- B) carrying out a risk assessment, which should consider, in particular, the following criteria:
 - the risk level of the relevant country or region of production (more on this in the next section).

ⁱ Article 1, Paragraph 7

ⁱⁱ Listed in Annex I of the EUDR

ⁱⁱⁱ for Brazil for example with the Forest code and the requirements for Free Prior Informed Consent

^{iv} Those geolocation coordinates could make use of space data and services delivered under the Union’s Space programme (EGNOS/Galileo and Copernicus). For all plots above 4 ha for commodities other than cattle, the use of polygons is mandatory.

- the presence of forests in the country or region of production;
- the presence of Indigenous Peoples in the country or region of production;
- the consultation and cooperation in good faith with Indigenous Peoples in the country or region of production;
- the existence of duly reasoned land-use and ownership claims by Indigenous Peoples of the area of production, based on objective and verifiable information;
- prevalence of deforestation or forest degradation in the country or region of production;
- the source, reliability, validity and links to other available documentation of the information collected (see A above);
- concerns about the level of corruption, prevalence of document and data falsification, lack of law enforcement, violations of international human rights, armed conflict or presence of sanctions imposed by the UN Security Council or the Council of the EU, in the country or region of production;
- the complexity of the relevant supply chain and the traceability of the products to the plot of land where the relevant commodities were produced;
- the risk of circumvention of this Regulation or of mixing with relevant products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring;
- conclusions of the meetings of the European Commission expert groups supporting the implementation of this Regulation, as published in the Commission’s expert group register;
- substantiated concerns submitted regarding the compliance of traders and operators, and information on the history of non-compliance of operators or traders along the relevant supply chain with this Regulation;
- any information that would point to a risk that the relevant products are non-compliant;
- complementary information, which may include information supplied by certification or other third-party verified schemes, including voluntary schemes recognised by the Commission,^v in compliance with requirements in (1)

and

C) adopting risk mitigation measures where necessary.

See also Annex II regarding Due diligence declaration ([link](#))

Risk level of countries or regions:

Each country of production or part thereof will be classified as either low-, standard- or high-risk (See Section “*What is still in development or under evaluation*” further on).

There are simplified due diligence rules for operators whose products have been produced in low-risk countries or regions. They are still required to collect information (see “*exercising due diligence*” above) and demonstrate that there is only a negligible risk of circumvention of the EUDR or of mixing with products of unknown origin or which have been produced in standard- or high-risk countries of regions. However, they do not to assess and mitigate risks.

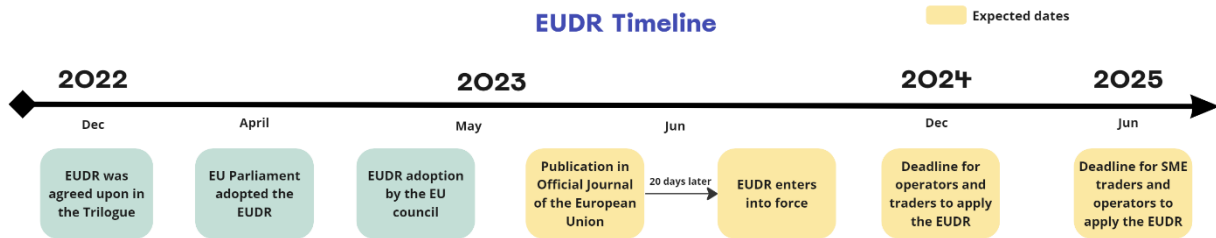
Timeline for entering into force and application:

The EUDR was agreed upon in the Trilogue in December 2022. It has since been formally adopted by the EU Parliament⁵ and the EU Council.^{vi} The law will enter into force 20 days after being published in the Official

^v under Article 30(5) of Directive (EU) 2018/2001 of the European Parliament and of the Council, (OJ L 328 21.12.2018, p. 82).

^{vi} May 16th 2023 - [Council adopts new rules to cut deforestation worldwide - Consilium \(europa.eu\)](#)

Journal of the European Union, and this is expected to happen in the first days of June 2023. The law will also be published in Portuguese^{vii}. However, operators will only need to apply the law within 18 months from the Regulation entering into force. This means that the EUDR will become applicable around December 2024. An additional 6 months will be granted for SME traders and operators, meaning that they would need to abide by the EUDR by around June 2025.



This timeline is valid for non-wood commodities. Illegally harvested wood and timber products are already prohibited to be placed on the EU market (EU Timber Regulation (EU) No 995/2010). The EUDR will repeal the Timber Regulation.^{viii}

Enforcement/Proof schemes:

- Member States will be obliged to carry out annual checks by their competent authorities, covering at least 9%, 3% and 1 % (for high-, standard- and low-risk country or regions, respectively) of operators for each commodity. For commodities and products produced in high-risk countries or regions, the annual check needs to cover at least 9% of the quantity of each product produced.
- In case of non-compliance with the EUDR, the concerned operator or trader will be required to take corrective actions to become compliant within a specified period of time. Furthermore, penalties will be established by EU Member States, which should be proportionate to the environmental damage and the value of relevant commodity/product concerned. The fines should be at least 4% of the operator's or trader's annual turnover in the EU in the year prior in the fining decision. Additionally, penalties include the confiscation of the products concerned and the revenues gained from the transactions with the products, and temporary exclusion from public procurement processes and access to public funding.
- In case of serious or repeated infringement, the operator or trader will be temporarily prohibited to place on or export from the EU market relevant commodities and products and to exercise simplified due diligence.

III. WHAT IS STILL IN DEVELOPMENT OR UNDER EVALUATION

The benchmarking system for countries or regions is still in development.

All countries will be assigned to standard-risk from entry into force of the EUDR. The EU Commission will then classify countries as standard-, high- or low-risks (currently under elaboration/evaluation process). The classification will be formalised through an implementing act to be adopted no later than the start of application of the Regulation around December 2024. The classification of countries will be reviewed and updated if needed as often as necessary. The assessment criteria consist of:

- the rate of deforestation and forest degradation of the country or region thereof;
- the rate of expansion of agricultural land for the relevant commodities;

^{vii} potentially here: <https://eur-lex.europa.eu/search.html?name=collection%3Aeu-law-legislation&type=named&qid=1685450505733>

^{viii} For more details, please read Article 37 of the EUDR, [link](#).

- the production trends of the commodities and products.
- Some other elements to consider for the risk assessment are:
 - climate commitments, agreement and instruments between the country and the EU or its Member States to address deforestation and forest degradation;
 - any national or subnational laws in place which has effective enforcement measures to tackle deforestation and forest degradation;
 - the level of transparency of data and;
 - the existence of laws protecting human rights, Indigenous Peoples and local communities.

The European Commission is required to engage in a specific dialogue with all countries that are, or risk being classified, high-risk, with the objective of reducing their level of risk.

Legislative expansion to other ecosystems and forest-risk products:

The EUDR includes planned reviews to assess the need and feasibility of extending the Regulation to cover:

- other wooded lands^{ix} (within one year after entry into force – expected by June 2024),
- other ecosystems (e.g. land with high carbon stocks, high biodiversity value) and
- more forest-risk commodities and derived products, such as maize, and others (within two years – expected by June 2025).
- the role of financial institutions in preventing financial flows contributing to deforestation and forest degradation (also expected until June 2025).
- A general review of the EUDR, consisting, among other things, of an evaluation of the impact on farmers, Indigenous Peoples and local communities, is expected by June 2028 and every 5 years thereafter.

Cooperation partnerships:

It is foreseen that the EU Commission engages with producer countries (particularly those classified as high-risk) in view of developing partnerships and cooperation to halt deforestation. Partnerships and cooperation shall promote:

- the development of integrated land use planning processes,
- relevant legislation of producer countries,
- multi-stakeholder processes,
- fiscal or commercial incentives and other pertinent tools to improve forest and biodiversity conservation,
- sustainable management and restoration of forests,
- tackle the conversion of forests and vulnerable ecosystems to other land uses,
- optimise gains for the landscape, tenure security, agriculture productivity and competitiveness, and the transparency of supply chains,
- strengthen the rights of forest-dependent communities, including smallholders, local communities, and indigenous peoples, and
- ensure public access to forest management documents and other relevant information.

^{ix} ‘other wooded land’ means land not classified as ‘forest’ spanning more than 0,5 hectares, with trees higher than 5 metres and a canopy cover of 5 to 10 %, or trees able to reach those thresholds in situ, or with a combined cover of shrubs, bushes and trees above 10 %, excluding land that is predominantly under agricultural or urban land use;

The partnerships are under development and are based on existing

- structured dialogues via EU delegations and embassies as well as workshops and multistakeholder platforms;
- cooperation programmes, such as the cocoa dialogues,⁶ Al-Invest Verde, Global Team Europe Initiatives and Euroclima,⁷ Forest Partnerships,⁸ and the KAMI Project.⁹

The EU Commission shall furthermore engage in international bilateral and multilateral discussion on policies and actions to halt deforestation and forest degradation, including in multilateral fora.^x Such engagement shall include the promotion of the transition to sustainable agricultural production and sustainable forest management as well as the development of transparent and sustainable supply chains as well as continued efforts towards identifying and agreeing robust standards and definitions that ensure a high level of protection of forests and other natural ecosystems and related human rights.

In the near future, the European Commission is expected to publish on their website answers to technical questions received by affected parties in an “Frequently Asked Questions” (FAQ) report.

IV. FURTHER READINGS

- In English: [EU-Deforestation-Regulation_10May.pdf \(tropicalforestalliance.org\)](#)
- In Portuguese [EU- Deforestation- Regulation PR-10May.pdf\(tropicalforestalliance.org\)](#)
- In Spanish: [EU-Deforestation-Regulation ES-10May.pdf](#)
- <https://ec.europa.eu/transparency/expert-groups-register/core/api/front/document/91483/download>
- https://www.carbonbrief.org/qa-what-does-the-eus-new-deforestation-law-mean-for-climate-and-biodiversity/?utm_source==
- [Bridging sustainable finance and sustainable land use initiatives to reduce deforestation: An overview of EU and Brazilian legislation](#)

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¹ European Commission (2019), The European Green Deal, [link](#) and [link](#); Swith2Green’s [post](#)

² European Commission (2019), Stepping up EU Action to Protect and Restore the World’s Forests, [link](#); European Commission’s [website](#) and a [factsheet](#); Farm Europe’s [news](#).

³ The European Parliament on [interinstitutional negotiations](#) and [legislative powers](#), on the [Ordinary Legislative Procedure, understanding Trilogue](#); the Osservatorio Balcani e Caucaso on [European institutions and the EU anti-discrimination policy](#).

⁴ European Commission (2021), Commission Staff Working Document Impact Assessment minimising the risk of deforestation and forest degradation associated with products placed on the EU market, [link](#)

^x such as CBD, FAO, UN Convention to Combat Desertification, UN Environment Assembly, UN Forum on Forests, UNFCCCWTO, G7 and G20

⁵ The European Parliament (2023), European Parliament legislative resolution of 19 April 2023 on the proposal for a regulation of the European Parliament and of the Council on 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 (COM(2021)0706 – C9-0430/2021 – 2021/0366(COD)), [link](#).

⁶ <https://ec.europa.eu/transparency/expert-groups-register/core/api/front/document/91430/download>

⁷ <https://ec.europa.eu/transparency/expert-groups-register/core/api/front/document/91480/download>

https://international-partnerships.ec.europa.eu/policies/team-europe-initiatives_en

⁸ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6653

⁹ <https://efi.int/partnerships/KAMI>