

## EUDR on the Horizon

### Lost in the woods? BMEL tries to guide you

9 September 2024

Starting December 30, 2024, the provisions of the [EU Regulation on Deforestation-Free Products \(EUDR\)](#) will apply to large and medium enterprise operators. From that date, relevant commodities and products – including cattle, cocoa, coffee, oil palm, rubber, soy, and wood – may only be placed on the market, made available, or exported if they are deforestation-free. Additionally, they must have been produced in accordance with the relevant legislation of the country of production, and a due diligence statement must be submitted.

There are increasing calls to delay the applicability of the EUDR from producing countries affected by it, including EU members. The German Federal Ministry of Food and Agriculture (*BMEL*) also advocates for a delay, citing concerns that the regulation, in its current form, may not be implemented efficiently, practically, or without excessive bureaucracy.

To provide guidance to the German forestry sector, the BMEL published a [guidance document](#) on August 14, 2024 (only available in German). This aims to clarify the requirements of the EUDR and address any uncertainties. Below, we summarize the key points of the BMEL guidance for you.

### **BMEL: Germany as a Low-Risk Country**

According to the BMEL, Germany should be considered a low-risk country for deforestation. It is important to highlight that this is not a decision that the BMEL is responsible to make. It is up to the European Commission to define each country risk classification. This is quite an important and practical definition given that products deriving from low-risk countries don't have to be subject to comprehensive risk assessments or risk mitigation measures. Instead, the responsible company involved will have to conduct just the first phase of the due diligence procedure, i.e. collect specific information which must be retained for five years and only submitted to the relevant authorities in the event of an inspection. This information includes, for example, a description of the relevant product, the quantity, and the production period. Most of this information is already required in the due diligence statement. However, companies should also keep documents such as invoices that indicate the period of timber harvesting.

## **Triggering Due Diligence Obligations: Clarification of the Term "Placing on the Market"**

The regulation imposes binding due diligence obligations to operators and traders. Operators will be the ones obligated to issue a due diligence statement confirming the regularity of the cargo. Traders, nevertheless, are also responsible for the regularity of what they commercialize even if relying on a due diligence statement made before in the supply chain. The difference between both is that, an operator places the product on the EU market for the first time, whereas a trader makes this product available on the EU market (not for the first time) for distribution, consumption or use in the course of its commercial activity.

However, the following cases are not understood by the BMEL as "placing on the market":

- Timber is placed in storage without transferring ownership to a third party (e.g., during auctions where a buyer is sought later).
- Non-commercial use for personal needs is also exempt from the regulation.

## **Scope of the Due Diligence Statement and the EU Information System**

Operators must submit their due diligence statements through the European Commission's EU Information System. Registration is expected to be possible from November 1, 2024. After submitting the statement, the operator will receive a Reference Number and two Verification Numbers. The Reference Number and Verification Number 1 are just proof that the statement was registered and must be passed on to buyers to ensure EUDR compliance throughout the supply chain. Verification Number 2 contains the support information uploaded to the system in the process of emitting the due diligence statement, including the geolocation of production. This Verification Number 2 can be shared voluntarily by the operator.

There is also the option to appoint an authorized representative to submit the due diligence statement on behalf of the operator, who withholds its liability before the EUDR. This could be a forestry association, a timber trader, or a sawmill, but it cannot be a natural person or a micro-enterprise from the downstream supply chain.

Another advantage: Timber volumes can be aggregated into a single due diligence statement over a specified period. Regarding the geolocation, it is possible to include all forest areas managed by an operator. These can be entered directly on a digital map or uploaded as a data package in the required format.

## Forestry Associations as Authorized Representatives

Forestry associations can play a key role in fulfilling due diligence obligations. They can either act as authorized representatives for their members or as operators themselves. When acting as an authorized representative, responsibility for compliance with the EUDR remains with the individual members. However, when the association acts as the operator, the responsibility lies with the management of the association, such as its board or office. In this case, timber volumes from different members can be aggregated into a single due diligence statement.

## National Enforcement Act

The BMEL is planning a national enforcement act that will specify the responsibilities and duties of the authorities tasked with implementing the EUDR. These authorities will be responsible for ensuring compliance with the regulation at the national level. Additionally, the law will establish penalties for violations of the EUDR.

The EUDR imposes extensive obligations on companies dealing in relevant commodities or products. Companies should take early steps to meet these requirements. While the BMEL guidance certainly provides some helpful insights into applying the EUDR, it does not resolve all existing uncertainties. BLOMSTEIN will continue to monitor developments related to the EUDR closely. [Roland Stein](#), [Bruno Galvão](#), [Carolina Vidal](#), and [Sarah Beischau](#) are happy to answer any questions you may have about the potential impact on your company or sector

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