

Deforestation-free: EU to ban commodities and related products from deforested land

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The European Commission has proposed on the 17th of November 2021 the “Proposal for a regulation on deforestation-free products” (*Draft Deforestation Regulation*, relevant documents [here](#)), a regulation to prevent the entrance into the European Union’s market of **cattle** (live cattle, meat and leather), **cocoa**, **coffee**, **oil palm**, **soya** and **wood** and certain products that either contain or are made using these together (Relevant Products), associated with deforestation and forest degradation. The *Relevant Products* are set out in Article 1 of the Draft Deforestation Regulation, while its Annex I list the full range of by-products that are subject to its rules.

One key definition contained in Article 2 is the concept of deforestation, determined as “*the conversion of forest to agricultural use, whether human-induced or not*”. Forest is defined as land with “*more than 0,5 hectares with trees higher than 5 meters and a canopy cover of more than 10%, or trees able to reach those thresholds in situ*” excluding land predominantly urban or rural.

According to Article 3 of the Draft Deforestation Regulation, a placement or making available of the Relevant Products in the EU market would only be allowed if they are:

- deforestation-free;
- produced in accordance with the relevant legislation of the country of production (such as environmental protection, labour law, human rights, etc.); and
- covered by a due diligence statement (see below on the content).

The Draft Deforestation Regulation would have a profound impact on international trade. The prohibition referred to above would apply irrespective of whether the deforestation is legal or illegal in the country of production. In addition, the Draft Deforestation Regulation would create obligations to anyone that places the Relevant Products on the market (*Operator*) as well as to any other person that makes these products available (*Trader*).

Prior to commercializing the Relevant Products in the EU market, both Operators and Traders will have to comply with the following procedure:

- exercise due diligence to ensure that the products comply with Article 3 of the Draft Deforestation Regulation and

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- make available to the competent authorities a **due diligence statement** asserting such compliance, assuming responsibility for the legality of the Relevant Product.

The due diligence will have to include in depth information on the place of production and producer, documents and data to demonstrate compliance with the regulation, a risk assessment and risk mitigation measures when applicable. Therefore, Operators and Traders will have to structure and implement a thorough compliance program with policies control and procedures to mitigate and manage risks of non-compliance to be audited by independent monitors.

The extent of the due diligence varies according to the Relevant Products' country of origin, to be classified by the European Commission as either low or high risk in accordance with Article 27 of the Draft Deforestation Regulation, by analysing the following criteria:

- rate of deforestation and degradation;
- rate of expansion of agriculture land;
- production trends;
- whether the nationally determined contribution (**NDC**) to the Paris Agreement takes into account emissions from deforestation in its commitments;
- agreements concluded with the EU addressing deforestation and that facilitate compliance with the regulation; and
- whether the country has national laws to avoid and sanction deforestation with sufficient severity.

Any country not included in the list to be published by the European Commission will be classified as standard risk. If the country of origin is classified as **low risk**, the Operator and Trader will benefit from a simplified due diligence obligation set by Article 12 of the Draft Deforestation Regulation. Nevertheless, although a country could be defined as low risk in terms of deforestation, the Operator or Trader will still need to have in place a system of risk assessment and mitigation that allows them to declare in its due diligence statement that the Relevant Product was produced in compliance with the local relevant legislation.

If the country is classified as **high risk**, a procedure defined in Article 20 of the Draft Deforestation Regulation would be in place, demanding each Member State to enforce annual checks by their competent authorities covering at least 15% of the Operators and Traders in their market for each Relevant Product as well as 15% of the quantity of each of the Relevant Product.

It is difficult to foresee which countries would be classified as high risk, given the complexity of the procedure and the amount of data necessary for this assessment. In any

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case, it has to be noted that the EU Commission has given considerable thought to the beef supply-chain from Brazil as well the soy production in a number of South American countries (**Brazil, Argentina and Paraguay**). These countries were part of cases studies presented in [Annex 6](#) of the Commission Staff Working Document: [Impact Assessment Report](#) (accompanying document to the Draft Deforestation Regulation). Considering the findings presented in the cases studies, it is likely that they might be ranked as high risk countries by the EU Commission.

The Draft Deforestation Regulation is still a proposal from the EU Commission to the European Parliament, yet to be discussed and voted on. However, the overwhelming public support will play a role in the political discussion. With more than 1,2 million responses the public consultation for this proposal is the second most popular in the history of the EU. Thus, the interested parties should prepare themselves as of now in order to be able to comply with future requirements.

BLOMSTEIN is closely following this and other ESG regulations. If you are interested in discussing other aspects of the deforestation-free proposal or other ESG regulation, please do not hesitate to reach out to [Roland Stein](#) or [Bruno Galvão](#). They will be more than happy to assist you.