

Latest information about EUDR at 9th October 2024.

EU COMMISSION PROPOSES A 1-YEAR DELAY TO EU DEFORESTATION REGULATION

The European Commission has proposed a **1-year of phasing-in time** for the EU Deforestation Regulation, making it applicable on **30 December 2025** for large companies and **30 June 2026** for micro- and small enterprises.

The Commission has also announced the publication of the [Guidance document](#) and [updated FAQ's](#) today.

However, the delay needs first to be formally approved by the European Parliament and Council.

Below are some headlines taken directly from the Guidance document, from various sections. These are by no means a full list, and all concerned should read the document in full, and seek legal advice where necessary in order to understand their position with regards to EUDR:

3. DATE OF EFFECT AND TIME-FRAME FOR APPLICATION

The following rules apply for all commodities and associated relevant products with the exception of timber and timber products covered by the Annex of the EUTR:

- if a relevant commodity or a relevant product is placed on the market during the transitional period applying to the respective operator, the obligations of the EUDR do not apply to the operator.
- Furthermore, any relevant product placed or made available on the market after the entry into application that is made entirely from commodities or products placed on the market during the transitional period will not be subject to the obligations of the EUDR. This means that the deferred entry into application for small and micro enterprise operators (30 June 2025) will, in cases of them placing or making available on the market, also exempt medium and large operators and traders further down the supply chain that are trading with these products or their derived products.

For **timber and timber products** as defined in Article 2(a) of the EUTR, special rules apply, pursuant to Article 37(3) of EUDR:

- For timber and timber products produced before 29 June 2023 and:
 - placed on the market before 30 December 2024, such products must comply with the rules of the EUTR;
 - placed on the market from 30 December 2024 until 31 December 2027: the rules of EUTR continue to apply;
 - placed on the market from 31 December 2027, such products shall comply with Article 3 of the EUDR.
- For timber and timber products produced from 29 June 2023 until 30 December 2024 and:
 - placed on the market before 30 December 2024, such products must comply with the rules of the EUTR;
 - placed on the market from 30 December 2024, such products must comply with the rules of the EUDR.

- Timber and timber products produced from 30 December 2024 must comply with the rules of the EUDR.

4. DUE DILIGENCE AND DEFINITION OF ‘NEGLIGIBLE RISK’

For non-SME operators further down a supply chain, the simplification under Art. 4(9) can also apply, meaning the non-SME operators in this case merely have to ascertain that due diligence was properly carried out upstream. Ascertaining that due diligence was properly carried out may not necessarily imply having to systematically check every single due diligence statement submitted upstream. For example, the downstream non-SME operator could verify that upstream operators have an operational and up-to-date due diligence system in place, including adequate and proportionate policies, controls, and procedures to mitigate and manage effectively the risks of non-compliance of relevant products, to ensure that due diligence is properly and regularly exercised.

6. LEGALITY Relevant legislation: EUDR – Article 2(40) – Definitions and Article 3(b) – Prohibition

According to Article 3 of the EUDR, relevant commodities and relevant products shall not be placed or made available on the market or exported, unless all the following conditions are fulfilled:

- they are deforestation-free,
- they have been produced in accordance with the relevant legislation of the country of production, and
- they are covered by a due diligence statement.

Relevant products must meet all three criteria separately and individually; otherwise, operators and non-SME traders shall refrain from placing or making them available on the market or exporting them.

7. a) Clarification – Packing and packaging materials

In summary, the following is subject to the Regulation:

- Packing material placed on the market as products in their own right;
- Containers which give a product its essential character: e.g. decorative gift boxes.

The following is not subject to the Regulation:

- Packing material presented with goods inside and used exclusively to support, protect or carry another product;
- User manuals accompanying shipments, unless they are placed on the market in their own right.

8. REGULAR MAINTENANCE OF A DUE DILIGENCE SYSTEM

Relevant legislation: EUDR - Article 12 – Establishment and maintenance of due diligence systems, reporting and record keeping

To exercise due diligence in accordance with Article 8, operators must establish and keep up to date a framework of documenting, analysing, verifying and reporting procedures and measures ('due diligence system'). The aim of due diligence under the EUDR is to achieve a required outcome by evidencing consistent processes in businesses operations. It is important that in accordance with Article 12(2) an operator shall review

its due diligence system at least once a year to ensure that those responsible are following the procedures that apply to them, the processes in place are effective and the required outcome is being achieved. Operators should also update the due diligence system if during the review or at any other point they become aware of new developments which could influence the aims of the due diligence system, such as the effectiveness and comprehensiveness of steps or procedures within the system. Any updates to the due diligence system must be recorded and records kept for 5 years.

The review can be carried out by someone within the organisation of the operator (should be independent from those carrying out the procedures) or by an external body. It should identify any weaknesses and failures and the operator's management should set deadlines for addressing them.

In the case of a relevant product due diligence system, the review should for example check if there are documented procedures:

- For collecting and recording the information, data, and documents necessary to demonstrate compliance.
- For assessing the risk of the relevant product or any component of the relevant product containing relevant products or relevant commodities that are not deforestation-free or have not been produced in accordance with the relevant legislation of the country of production.
- Describing proposed actions to take according to the level of risk.

The review should also check if those who are responsible for carrying out each step in the procedures both understand and are implementing each step, and that there are adequate controls to ensure that the procedures are effective in practice (i.e. that they identify and result in the exclusion of relevant product that pose a non-negligible risk of non-compliance). Good practice suggests that to evidence the review, the steps followed in, and outcomes of, the review are documented.

9. COMPOSITE PRODUCTS

In addition, Article 9 requires the common name and full scientific name of all species, for relevant products that contain or have been made using wood. It may in some cases be complex to identify all the species within each relevant component for highly processed composite products, such as particle boards, paper and printed books. However, if the species of e.g. wood used to produce the product varies, the operator will have to provide a list of each species of wood that may have been used to produce the wood product. The species should be listed in accordance with internationally accepted timber nomenclature (e.g. DIN EN 13556 of 1 October 2003 on 'Nomenclature of timbers used in Europe').

Further updates to follow as and when we receive them.

9th October 2024