

**Voluntary Report** – Voluntary - Public Distribution

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**Report Name:** EU Commission Proposes Rules to Curb Deforestation Linked to Agricultural Production

**Country:** European Union

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**Report Category:** Policy and Program Announcements, Climate Change/Global Warming/Food Security, Livestock and Products, Oilseeds and Products, Wood Products, Coffee

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**Report Highlights:**

On November 17, 2021, the European Commission published a proposal for legislation aimed at preventing products causing deforestation or forest degradation from entering the EU market. The proposal targets commodities identified by the Commission as the main drivers of agricultural expansion leading to deforestation: soy, beef, palm oil, wood, cocoa, and coffee. The proposal lays down mandatory due diligence rules for companies wanting to place these commodities on the EU market. The proposed legislation also introduces a benchmarking system to assess countries and their level of risk of deforestation and forest degradation driven by the commodities in the scope of the regulation. The risk level assigned to each country through the benchmarking system (low, standard, or high) will determine the level of scrutiny applied to the relevant products it exports to the EU. The Members States and the European Parliament will now assess and amend the proposal and agree on a compromise legal text.

## **General Information:**

On November 17, the European Commission (EC) published [a legislative proposal](#) for a new Regulation 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.”

The Commission’s objective with this proposal is to curb deforestation and forest degradation that is linked to European consumption and production. To do so, the initiative aims to minimize consumption of certain products coming from supply chains associated with deforestation or forest degradation and increase European demand for ‘deforestation free’ commodities and products. The EC expects this proposal to also reduce greenhouse gas (GHG) emissions and global biodiversity loss.

The proposal includes mandatory due diligence rules for companies wanting to place some commodities on the European Union (EU) market. Large enterprises face higher due diligence obligations than small and medium-sized enterprises (SMEs), which received a carve-out in the proposal.<sup>1</sup> Importers would need to demonstrate their products are “deforestation-free.” Under this proposal, “deforestation-free” means that the relevant commodities and products, including those used for or contained in relevant products, were produced on land that has not been subject to deforestation and that the wood has been harvested from the forest without inducing forest degradation after December 31, 2020.

## **Scope of the Proposal**

The proposed Regulation lays down rules for a list of commodities identified by the Commission as the main drivers of agricultural expansion leading to deforestation.

Annex I of the proposal sets the list of commodities and products that have been fed with or have been made using the relevant commodities that are in the scope of the Regulation and for which importers would need to demonstrate that their products are “deforestation-free”:

- Cattle
- Cocoa
- Coffee
- Oil palm
- Soya
- Wood

The full list of products in the scope of the Regulation, with HS codes, can be found at the end of this report.

## **Third-Country Benchmarking**

One of the key features of the proposal is the introduction of a country benchmarking system. Through this benchmarking system, the European Commission will assess the risk that countries, or parts thereof, produce relevant commodities and products that are not deforestation-free. The benchmarking system

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<sup>1</sup> SMEs are defined in [Directive 2013/34/EU](#).

will assign each country one of three possible levels of risk: low-risk, standard, and high-risk. Unless identified as presenting a low or high risk, countries will be considered as presenting a standard risk.

The due diligence and checks obligations are differentiated according to the level of risk of the country of production. The proposal foresees simplified due diligence duties for operators sourcing from low-risk countries and enhanced scrutiny for competent authorities operating checks on commodities and products produced in high-risk countries.

The identification of low and high-risk countries or parts thereof will be done by the Commission. The EC will consider information provided by the country concerned which will be based on the following assessment criteria, as listed in article 27 of the proposal:

- Rate of deforestation and forest degradation,
- Rate of expansion of agriculture land for relevant commodities,
- Production trends of relevant commodities and products,
- Whether the nationally determined contribution (NDC) to the United Nations Framework Convention on Climate Change covers emissions and removals from agriculture, forestry and land use which ensures that emissions from deforestation and forest degradation are accounted towards the country's commitment to reduce or limit greenhouse gas emissions as specified in the NDC;
- Agreements and other instruments concluded between the country concerned and the Union that address deforestation or forest degradation and facilitates compliance of relevant commodities and products with the requirements of this Regulation and their effective implementation;
- Whether the country concerned has national or subnational laws in place, including in accordance with Article 5 of the Paris Agreement, and takes effective enforcement measures to avoid and sanction activities leading to deforestation and forest degradation, and in particular whether sanctions of sufficient severity to deprive of the benefits accruing from deforestation or forest degradation are applied.

### **Due Diligence Obligations Based on The Risk Level of Countries of Production**

As noted above, the proposed Regulation introduces an obligation of due diligence for operators prior to placing relevant commodities and products (as listed in Annex I of the proposal) on the EU market. SMEs are not subject to these due diligence requirements.

Operators are defined as “any natural or legal person who, in the course of a commercial activity, places relevant commodities and products on the Union market or exports them from the Union market.” In effect, this means the importer or exporter based in the European Union.

The due diligence will include different information based on the risk level of the country of production.

The proposal states that large operators in all countries, non-withstanding their risk level, will need to collect the following information, supported by evidence:

- Description, including the trade name and type of relevant commodities and products as well as, where applicable, the common name of the species and its full scientific name;

- Quantity (expressed in net mass and volume, or number of units) of the relevant commodities and products;
- Identification of the country of production;
- Geo-localization coordinates, latitude and longitude of all plots of land where the relevant commodities and products were produced, as well as date or time range of production;
- Name, email and address of any business or person from whom they have been supplied with the relevant commodities or products;
- Name, email and address of any business or person to whom the relevant commodities or products have been supplied;
- Adequate and verifiable information that the relevant commodities and products are deforestation-free;
- Adequate and verifiable information that the production has been conducted in accordance with relevant legislation of the country of production, including any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity.

Additionally, operators sourcing from standard or high-risk countries will need to carry out risk assessments to establish whether there is a risk for the commodities or products to be non-compliant with the requirements of the Regulation. The criteria and modalities to carry out this impact assessment as well as risk mitigation are laid down in article 10 of the proposal.

### **Due Diligence Statement and Checks**

The proposal requires operators to make available to the EU Member State competent authorities a due diligence statement before placing on the Union market or exporting the relevant commodities and products. This should be done through a new information system that the European Commission will establish. Customs authorities, competent authorities, operators, and traders will have access to that information system in accordance with their respective obligations under the Regulation. Additionally, the Commission will provide access to the complete anonymized datasets of the information system in an open format to the wider public.

The due diligence statement aims to confirm that due diligence was carried out and no or only negligible risk was found. Please find the due diligence statement draft attached to this report.

### **Carve-out for Small and Medium-Sized Enterprises**

The proposal imposes different due diligence obligations on SMEs and larger traders. Traders which are SMEs are only required to collect a record of their suppliers and customers, keep that information for at least five years, and make such information available to competent authorities upon request. They are not required to meet the due diligence obligations listed above. This requirement is estimated by the EC to involve only negligible costs, as such information can be expected to be part of normal business operation.

### **Articulation with the Renewable Energy Directive (REDII) for Palm, Soy and Wood Products**

For the Commission, the new Deforestation Regulation proposal shall be applied together with the Renewable Energy Directive ([Directive 2018/2001](#)) for commodities used as biofuels or to produce biofuels, such as wood pellets or derivatives of soy and palm oil.

According to the European Commission, the objectives of the REDII and of this proposal are complementary, as they both address the overarching objectives of fighting climate change and biodiversity loss. This proposal sets requirements for commodities and products linked to deforestation and forest degradation to be placed on the EU market, with the aim of curbing EU-driven deforestation. The Renewable Energy Directive sets sustainability criteria rules for biofuels, bioliquids and biomass to be considered sustainable and specifies targets for the EU to achieve a renewable energy target. For more information about REDII, please see [GAIN Report: European Union: Biofuels Annual 2021](#).

### **Next Steps**

The publication of this proposal initiates the beginning of a lengthy legislative process. The European Parliament and the Council of the European Union, as co-legislators, will now assess the Commission's legislative proposal. Amendments to the legislative proposal are done separately by the Parliament and Council; however, negotiations will eventually occur to find institutional agreement before the proposals are adopted as official EU law. This process can take between 18 months to two years.

**Annex I of the legislative proposal (list of commodities and products that are in the scope of the proposed Regulation):**

<p><b>Cattle</b></p>	<p>ex 0102 Live cattle</p> <p>ex 0201 Meat of cattle, fresh or chilled</p> <p>ex 0202 Meat of cattle, frozen</p> <p>ex 0206 10 Edible offal of cattle, fresh or chilled</p> <p>ex 0206 22 Edible cattle livers, frozen</p> <p>ex 0206 29 Edible cattle offal (excluding tongues and livers), frozen</p> <p>ex 4101 Raw hides and skins of cattle (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split</p> <p>ex 4104 Tanned or crust hides and skins of cattle, without hair on, whether or not split, but not further prepared</p> <p>ex 4107 Leather of cattle, further prepared after tanning or crusting, including parchment-dressed leather, without hair on, whether or not split</p>
<p><b>Cocoa</b></p>	<p>1801 00 00 Cocoa beans, whole or broken, raw or roasted</p> <p>1802 00 00 Cocoa shells, husks, skins and other cocoa waste</p> <p>1803 Cocoa paste, whether or not defatted</p> <p>1804 00 00 Cocoa butter, fat and oil</p> <p>1805 00 00 Cocoa powder, not containing added sugar or other sweetening matter</p> <p>1806 Chocolate and other food preparations containing cocoa</p>
<p><b>Coffee</b></p>	<p>0901 Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee</p>

	substitutes containing coffee in any proportion
<b>Oil palm</b>	<p>1511 Palm oil and its fractions, whether or not refined, but not chemically modified</p> <p>1207 10 Palm nuts and kernels</p> <p>1513 21 Crude palm kernel and babassu oil and fractions thereof</p> <p>1513 29 Palm kernel and babassu oil and their fractions, whether or not refined, but not chemically modified (excluding Crude oil)</p> <p>2306 60 Oilcake and other solid residues of palm nuts or kernels, whether or not ground or in the form of pellets, resulting from the extraction of palm nuts oils or kernels oils</p>
<b>Soya</b>	<p>1201 Soya beans, whether or not broken</p> <p>1208 10 Soya bean flour and meal</p> <p>1507 Soya-bean oil and its fractions, whether or not refined, but not chemically modified</p> <p>2304 Oilcake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soya-bean oil</p>
<b>Wood</b>	<p>4401 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms</p> <p>4403 Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared</p> <p>4406 Railway or tramway sleepers (cross-ties) of wood</p> <p>4407 Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed,</p>

sanded or end-jointed, of a thickness exceeding 6 mm

4408 Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm

4409 Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed

4410 Particle board, oriented strand board (OSB) and similar board (for example, waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances

4411 Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances

4412 Plywood, veneered panels and similar laminated wood

4413 00 00 Densified wood, in blocks, plates, strips or profile shapes

4414 00 Wooden frames for paintings, photographs, mirrors or similar objects

4415 Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood (Not including packing material used exclusively as packing material to support, protect or carry another product placed on the market.)

4416 00 00 Casks, barrels, vats, tubs and



	<p>other coopers' products and parts thereof, of wood, including staves</p> <p>4418 Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes</p> <p>Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products</p> <p>9403 30, 9403 40, 9403 50 00, 9403 60 and 9403 90 30 Wooden furniture</p> <p>9406 10 00 Prefabricated buildings of wood</p>
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**Attachments:**

[COM 2021 706 1 EN annexe proposition part1 v4 \(3\).pdf](#)