

Serious consequences for non-compliance of the EUDR



Deforestation Regulation of the EU (EUDR), which entered into force on 29 June 2023, is one of the EU's latest trade measures, regulating the marketing (incl. import) and export from the EU market of certain goods and products related to deforestation and forest degradation. The regulation imposes new obligations on the companies concerned and severe penalties for non-compliance.

EU regulation to suppress deforestation

Main objectives of Regulation 2023/1115/EU (EUDR) are to curb deforestation and forest degradation caused by EU consumption and production, reduce greenhouse gas emissions and halt global biodiversity loss. An impact assessment has been carried out as part of legislative process. It estimated that, in the absence of appropriate regulatory intervention, production and consumption in the EU of the so-called relevant products covered by Annex I to Regulation would result in the deforestation of around 2480 km² (by comparison, this area is more than twice the size of Rio de Janeiro) per year by 2030.

Relevant commodities

Under EUDR, from 30 December 2024, traders of goods subject to the regulation, defined as relevant commodities, and of relevant products containing, fed or produced using them, will face new obligations in relation to their goods and products produced after 29 June 2023 which must already meet the requirements.

Relevant commodities as defined in EUDR are cattle, cocoa, coffee, oil palm, rubber, soy, and wood. Relevant products include, but are not limited to, beef, hides and skins of cattle, also chocolate, natural, vulcanised, or unvulcanised rubber, ebonite, charcoal, paper, printed matters, furniture, prefabricated buildings, chemically pure glycerine, palmitic acid, stearic acid, or any animal feed with soya.

Persons covered by EUDR

Following persons are subject to the obligations set out in the EUDR Regulation:

- The so-called operators (any natural or legal person who

places on the market or exports relevant products in the course of a commercial activity)

- Traders who in the course of a commercial activity, makes relevant products available on the market
- Operators established in a third country, i.e. a country or territory outside the customs territory of the Union
- Operators who are SMEs (with the exception that they are subject to lighter obligations)

Due diligence statement

It is important to emphasise that operators and traders are not allowed to place their relevant products on the EU customs territory or to export them without submitting a due diligence statement to customs authorities.

A three-step due diligence procedure should be followed. Accordingly, the person concerned:

- Collect information and documents or data (e.g. on the trade name, type, quantity of the product, or the country or part of the country of production, as well as the geographical definition of each territorial unit in supply chain)
- It is required to assess risk. The significance of this is that relevant products may only be placed on the market or exported if the risk assessment indicates that there is no risk of non-compliance or that the risk of non-compliance of the relevant products is negligible
- It is obliged to take risk mitigation measures where necessary

The EUDR also requires operators to establish and keep up to date a framework of procedures and measures. The aim of the system is to ensure that relevant products' place on the market or export comply with the due diligence principle.

The system must be reviewed annually. All due diligence documentation and information must be kept for at least five years.

Consequences of non-compliance with the EUDR

There can be serious consequences for non-compliance: stakeholders can expect corrective action and fines.

The competent authorities may impose a range of sanctions for breaches of the EUDR:

- placing on the market or export of the relevant products can be prevented
- product and the proceeds of the relevant transaction can be confiscated
- products can be recalled, donate them to charity or dispose of them in accordance with EU law on waste management.

The maximum fine can be up to 4% of previous year's total annual Union-wide turnover of the operator or trader. However, maximum shall be increased, where necessary, to exceed the potential economic benefit gained.

Andersen's related services

We recommend all stakeholders not only involved in external trade that, if they are affected by any relevant commodities or products, they should exercise caution when setting up a framework based on the due diligence principle. This is justified by the severity of the penalties alone.

The establishment and operation of a triple due diligence procedure and control mechanism will bring several uncertainties, especially in the initial period. It may therefore be worthwhile to involve an expert in the process. Although application of EUDR will only start on 30 December 2024, stakeholders are suggested to start preparations now.

Andersen's experts are ready to help all relevant market players prepare smoothly. They will provide comprehensive professional support in setting up the due diligence triple bottom line and compliance processes.

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