

WEBINAR ON DEFORESTATION REGULATION:

## DEFORESTATION REGULATION: WHAT'S AT STAKE FOR BOARD MEMBERS?

Webinar, 3 December, 10.00–11.00 CET



A&O SHEARMAN



### SUMMARY NOTE

***Most board members tend to focus primarily on the Corporate Sustainability Reporting Directive and Corporate Sustainability Due Diligence Directive, but they don't pay much attention to the Deforestation Regulation***

***On the 3rd of December 2024, ecoDa and AO Shearman, organized a joint webinar to address what the Deforestation Regulation and its implementation mean for board members.***

***Jochem Spaans Partner, AO Shearman, Environment and Regulatory, Amsterdam and Gauthier van Thuyne, Partner, Environment and Regulatory, Brussels presented the European Deforestation Regulation (EUDR). Micaela Thorström, EVP, Legal and General Counsel at Stora Enso explained how the directive is being implemented in her company.***

The European Deforestation Regulation (EUDR) imposes stringent requirements on companies that place products linked to deforestation on the EU market. The regulation is aimed at combating illegal deforestation, focusing on agricultural commodities, which are the primary drivers of deforestation. These include commodities listed in Annex 1: Cattle, Cocoa, Coffee, Oil palm, Rubber, Soya, and Wood, as well as specific products made from these commodities (e.g., leather, chocolate, furniture, paper).

It requires that no relevant commodities and products are placed on the EU market, or exported therefrom, unless if they are “deforestation-free” and have been produced in accordance with local laws of the country of production. It also mandates extensive due diligence, including knowing the source of the commodities and ensuring compliance with national laws. Companies must monitor risk and mitigate deforestation-related impacts. Non-compliance can result in severe financial penalties and legal consequences. The regulation applies primarily to larger companies but could affect smaller producers, and certification schemes may not fully address compliance needs.

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Other initiatives outside the EU have been proposed, but they are not yet finalized. The U.K. Forest Risk Commodities Scheme, established by the Environment Act 2021, is in force but awaits secondary regulations for full implementation. The U.S. FOREST Act of 2023, introduced to ban imports linked to illegal deforestation, faces uncertainty over its progression, particularly under the Trump administration.

*The EU's anti-deforestation rules will be delayed by one year, now taking effect on December 30, 2025, with no major changes to the legislation. Despite efforts by the European People's Party (EPP) to weaken the law, including a proposal to create a "no risk" category to reduce due diligence requirements for commodities from areas with negligible deforestation risk, this was rejected due to legal certainty reasons. The Commission agreed to review the regulation in 2028 for potential simplifications- but can also assess whether additional commodities must be included in the scope.. The law will now go through a final vote in the European Parliament before being published.*

## **Key Provisions of the EUDR:**

### **1. Prohibition:**

- From December 30, 2025 , relevant products and commodities (listed in Annex I EUDR) placed on the EU market or exported must meet the following criteria:
  - Deforestation-free: Products cannot be linked to deforestation after December 31, 2020 (this is the cut-off date for deforestation).
  - Produced in accordance with the relevant national legislation of the country of production.
  - Covered by a due diligence statement that confirms these conditions.
- The regulation applies to both the first placing of the product in the EU market for distribution, consumption, or use, and any subsequent supplies, as well as to export from the EU.

### **2. Due Diligence Requirements:**

- Companies must know the origin of the commodities they import, including, the quantity of the commodity and geographical coordinates to pinpoint the production location.
- Risk assessment is required to evaluate the environmental and social impacts of the commodity's production. This includes assessing potential impacts on indigenous communities, land rights, labour rights, and compliance with national and international laws.
- Risk mitigation must be implemented, with measures for products where risks are negligible or low. For higher-risk countries, more comprehensive due diligence is required.

### **3. Risk-Based Approach:**

- o Countries (or regions thereof) with a low risk of illegal deforestation will have simplified due diligence requirements, which only involve collecting information.
- o Countries (or regions thereof) with higher risk will require more detailed assessments, and mitigation measures will be stricter.

#### **4. Due Diligence Statements:**

- o Companies must prepare and submit a due diligence statement that confirms the product meets all criteria. This statement must be reviewed annually.
- o A new EU deforestation due diligence registry will be used to track compliance. A reference number from this registry must be included in the due diligence statement.
- o Due diligence statements are valid for one year, and cover the quantity/amount of relevant product/commodity the company identified- and companies will need to make additional due diligence statements if the initial estimate is exceeded.

#### **5. Penalties for Non-Compliance:**

- o Companies that fail to comply with the regulation can face heavy penalties:
  - Fines up to 4% of turnover, which can exceed the commercial gain.
  - Confiscation of products.
  - Exclusion from placing products on the market in case of repeated violations.
  - Public naming and shaming by the European Commission.
- o Personal liability could apply to individuals responsible for the non-compliance.

#### **6. Scope:**

- o The regulation applies to operators (legal entities placing on the market or exporting products) and traders (entities “making available” (ie are engaged in the commercial activity of the products/ commodities).
- o Operators are responsible for the first supply of the product on the market, whereas traders deal with subsequent supplies. Retailers are also considered operators if they place products on the market.

#### **7. Legal and Practical Challenges:**

- o Disadvantages to Smaller Producers: The regulation may create barriers for smaller producers and suppliers who may lack the resources to meet the due diligence requirements.
- o Complex Trade Flows: Complex international trade arrangements, including intra-group arrangements, may make it difficult to allocate responsibility for compliance, particularly when dealing with numerous intermediaries.

- o Certification Schemes: The regulation raises questions about whether third-party certification schemes can fully satisfy the due diligence obligations. Although certifications like the Forest Stewardship Council (FSC) may help, companies are ultimately responsible for ensuring compliance.
- o Ambiguities in legal interpretation: Some definitions in the regulation are vague or unclear, leading to potential legal uncertainties about the scope of obligations.
- o Corporate Sustainability Due Diligence Directive (CS3D): The CS3D, which is designed to apply to corporate sustainability in Europe, may provide more flexibility for SMEs.

As explained by Micaela Thorström, Stora Enso, the world's largest private forest owner, produces wood-based products and fully supports the European Union's Deforestation-free Products Regulation (EUDR). The company has long used certification models and has been working on the new regulation for the past four years, considering various business scenarios.

Key actions taken by Stora Enso include reviewing and updating relevant policies and systems, publicly reporting its due diligence process, and creating internal awareness and capacity-building initiatives. The company has developed a supplier risk assessment framework to validate and mitigate risks, and it has reviewed all internal processes. A significant part of the work involves IT changes to store, report, and receive data, ensuring full traceability to meet the EU's reporting requirements. Stora Enso is also engaging with customers and suppliers through letters, training, webinars, and new contract sustainability annexes to align with the regulation's requirements.

The implementation of the regulation poses a huge challenge, especially for those further up the supply chain. One of the main concerns is the need for extensive IT development, as well as the ambiguity surrounding due diligence requirements. National authorities' varying levels of preparedness, along with delays in providing necessary guidelines, also pose challenges for the smooth execution of the regulation.

Questioned by the audience, the speakers highlighted the fact that the regulation includes a review clause, with potential new commodities added in 2025 and a general review scheduled for 2028. While the cost of compliance is significant, the fines for non-compliance are also large. Stora Enso is focusing on integrating the regulation into its existing IT systems. For preparedness, it's crucial to define the internal due diligence process, assess suppliers, and evaluate IT needs. Internal governance is also key, with clear responsibilities and roles assigned to those managing the process.

Recording available [here](#).