

EU Approves Ban on Products Linked to Deforestation

Distributors of cattle, cocoa, coffee, oil palm, rubber, soy, wood and derived products will be subject to increased supply chain due diligence

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Deforestation and **forest degradation** are drivers of climate change and biodiversity loss. Between 1990 and 2020, 420 million hectares of forest – an area larger than the European Union – were lost due to deforestation, the Food and Agriculture Organization of the United Nations (FAO) reported. The EU is responsible for 7-10% of global consumption of deforestation-linked crops and livestock products.

To minimise these impacts, in November 2021 the Commission proposed a Regulation (the “Deforestation Ban”) to prevent certain key products (such as **cattle, cocoa, coffee, oil palm, rubber, soy** and **wood**) and their derivatives from being exported from or placed on the EU market, when deforestation or forest degradation take place anywhere in their supply chain. On April 19, and May 16, 2023, the EU Parliament and Council respectively approved the Deforestation Ban, which will now therefore enter into force.

This alert *memorandum* provides an overview of the upcoming Deforestation Ban.

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I. Background

Deforestation and forest degradation are due mainly to the sourcing of wood as well as the expansion of land used to raise cattle and source agricultural products such as oil palm, rubber, soy, cocoa and coffee. Efforts to reduce deforestation have gained significant momentum in the EU in the course of the last few years.

On November 17, 2021, the European Commission adopted a package of regulatory initiatives as part of the EU Green Deal.¹ This included the Deforestation Ban proposal.

The Deforestation Ban was approved by the EU Parliament and Council on 16 May, 2023, and entered into force 20 days after. Companies will have between 18 and 24 months to align with its provisions.²

II. Scope

The Deforestation Ban will apply to the export from and placement on the EU market of certain commodities listed in Annex I – that is, **cattle, cocoa, coffee, oil palm, rubber, soy** and **wood** and their derivatives (such as leather, chocolate and furniture) (overall, the “Affected Goods”). The Commission will periodically evaluate potential expansion of the Deforestation Ban to include other commodities (such as maize) in light of changing deforestation patterns.

III. Key provisions

Affected Goods will be banned from the EU market unless:

1. They are “deforestation-free”, meaning that they do not contain, nor were fed or manufactured, through the use of:
 - commodities produced on land that was subject to “**deforestation**” (defined as the conversion of forest to agricultural use, whether human-induced or not), or
 - wood harvested in a way that has caused “**forest degradation**” (defined as the conversion of either (a) primary forests or naturally

regenerating forests into plantation forests or other wooded land or (b) primary forests into planted forests),

occurred after the cut-off date of December 31, 2020;

2. They are produced in accordance with local laws applicable to deforestation and logging, such as on **environmental protection, land use rights, tax, anti-corruption, trade and customs, labour rights** and the **rights of indigenous people**;

and

3. They are covered by a **deforestation due diligence statement**, which distributors and importers will need to submit to the competent national authorities designated by each EU Member State³. The Commission is expected to eventually set up an electronic interface for this purpose.

Due diligence statements should include:

- relevant information pertaining to the Affected Goods’ production processes,
- conclusive and verifiable information proving that they are deforestation-free (no. 1 above) and compliant with the applicable laws (no. 2 above); and
- a statement that the necessary due diligence was carried out, and that no or only negligible risks of deforestation were found along the supply chain.

Smaller companies will be able to rely on larger operators to prepare their due diligence statements.

IV. Deforestation due diligence

Adequate deforestation due diligence should include:

1. Collecting all information necessary to demonstrate that the Affected Goods are compliant with the Deforestation Ban, including as to quantity, suppliers, country of production, and the geolocation of all the plots of land on which the raw materials were gathered or produced; companies will have to store

¹ For a dedicated analysis of the EU’s Green Deal, see our alert memo “*A Sustainable Recovery for Europe: The EU’s Green Deal*”, accessible [here](#).

² The finalised text of the Deforestation Ban is accessible [here](#).

³ For any Affected Good crossing the border into and out of the EU market, the national competent authorities will check its compliance with the Deforestation Ban, taking into account the due diligence statement submitted by distributors and importers.

this information for 5 years;

2. Carrying out a risk assessment to verify the correctness of the information collected, taking into account the risk profile of the country of production and the presence of indigenous people;
3. Applying proportionate controls to mitigate and manage the risks of non-compliance (such as audits and management-level compliance officers in charge of guaranteeing compliance).

V. Enhanced controls for high risk countries

The Deforestation Ban will introduce a three-tier risk benchmarking system (to be regularly updated by the Commission), which will assign a certain level of risk of deforestation and forest degradation (high, standard or low) to different countries.

In running this assessment, the Commission will consider for each territory (i) the rate of deforestation and forest degradation; (ii) the rate of expansion of agricultural land for relevant commodities; and (iii) the production trends of relevant commodities and products.

Companies' burden of proof will vary according to the level of risk of the country of production, with enhanced due diligence requirements for commodities coming from high-risk countries (and vice versa for low-risk).

The competent national authorities will be responsible for verifying the information provided by companies through checks (including, potentially, through satellite monitoring tools). Each Member State shall ensure that its competent authorities check at least 9% of products coming from high-risk countries (versus 3% and 1% for medium and low-risk).

VI. Sanctions

Where national competent authorities find a breach of the rules, they will impose "effective and dissuasive" penalties.

This could lead to sanctions of up to 4% of a company's EU-wide turnover, and may include the confiscation of

non-compliant goods and of the revenues gained from their sale, as well as temporary marketing prohibitions.

VII. Potential future inclusion of financial institutions in scope

Within two years from now, the Commission will assess the need to add further obligations specific to financial institutions, in light of their potential role in preventing financial flows towards deforestation.

VIII. Parallel developments beyond the EU

Other countries have expressed concerns about global deforestation.

The UK Environment Act 2021 for instance will require companies to implement a due diligence system for forest risk commodities in their supply chain and issue annual reports on their efforts.

The US is also currently reviewing its Forest Act and might in the future impose similar (although likely more limited) requirements on companies willing to trade commodities produced in illegally deforested areas.⁴

Not all countries have welcomed the EU's efforts with open arms, on the other hand.

Brazil, Indonesia and Malaysia recently expressed their concerns that the new global change may be too burdensome and costly, and even opened to the possibility of challenging the EU's and the UK's rules on deforestation before the World Trade Organization.

IX. Conclusions

Some companies already have deforestation action plans in place, which aim to protect remaining forests and restore degraded areas through direct funding of initiatives and projects. By including deforestation commitments in their internal policies, these companies endeavour to run preliminary internal assessments, collaborate with local NGOs and require their suppliers to adhere to codes of conduct.⁵

Other companies have established voluntary disclosure mechanisms that provide information on their supply chain.⁶ Others yet have signed agreements with

⁴ "EU ban on deforestation-linked goods sets benchmark, say US lawmakers", The Guardian, January 2023, accessible [here](#).

⁵ See Kellogg's Global Policy on Deforestation, accessible [here](#).

⁶ See the Coca-Cola Company – Forest 2022 report, accessible [here](#).

authorities in producing countries to fight deforestation as well as to improve local farmers' quality of life.⁷

The EU's regulatory initiative and the increasing momentum around **ESG supply chain due diligence**⁸ more generally will require companies to implement potentially far-reaching reviews and changes to their supply chain.

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⁷ See Ferrero's Action Plan to end deforestation and restore forest areas in the cocoa supply chain, accessible [here](#).

⁸ For a dedicated analysis on the latest endeavors on supply chain

due diligence in the EU, see our alert memo "*The Corporate Sustainability Due Diligence Directive*", accessible [here](#).