

# THE UPCOMING EU PROPOSAL ON “DEFORESTATION-FREE PRODUCTS”: FROM THEORY TO PRACTICE THROUGH THE LESSONS LEARNED FROM THE EUTR IMPLEMENTATION

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## INDEX

4	<b>Summary</b>
6	<b>Introduction</b>
10	<b>Research objective and methodology</b>
12	<b>Results</b>
13	Objectives, scope and requirements
15	Obligations for the actors
16	Main Due Diligence System elements (DDS)
18	Enforcement and implementation
20	<b>Discussion</b>
21	Objectives, scope and requirements
21	Obligations for the actors
22	Main Due Diligence System elements (DDS)
22	Enforcement and implementation
24	<b>Conclusion</b>
26	<b>References</b>
30	<b>Annex</b>



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## SUMMARY

This paper aims to assess the main features of the new EU regulatory proposal to curb deforestation and forest degradation driven by the expansion of agricultural land to produce specific commodities destined for the EU market. Since the new proposal is aimed to replace the European Union Timber Regulation (EUTR), expanding its scope and approaches, the assessment will be conducted through a comparative analysis between the new proposal and the EUTR, considering lessons learned from its implementation. The EUTR focuses on timber legality, while, the new proposal introduces specific “deforestation-free” criteria, that companies should respect for ensuring that commodities covered by the Proposal (cattle, wood, palm oil, soy, cocoa and coffee) are not produced on land deforested or degraded after a specific cut-off date.

With respect to the EUTR, the new proposal clarifies in more detail the definition of the obligations and due diligence procedures required of operators and professionals. The new proposal also adds innovative elements, such as the central information system for recording operator due diligence declarations, and country benchmarking, which will be established for assigning a high, medium or low-risk status to the country of production. However, the proposal remains critical on certain aspects: the new proposal risk to put more economic and bureaucratic burden on both operators and Competent Authorities, that already are facing problems of underfinancing and understaffing related to the EUTR implementation.

Since the new proposal will involve many actors from different sectors (the number of Italian importers potentially involved will be more than double than it was under the EUTR), it is desirable that, unlike the EUTR, the enforcement will be uniform across all EU member states and accompanied by appropriate economic and technological support.

Changes presented by the EU Council proposal on June 2022<sup>1</sup> and by the Committee on the Environment, Public Health and Food Safety Report<sup>2</sup> on July 2022 are referenced by asterisks in the text and presented in detail in the Annex.

<sup>1</sup> <https://data.consilium.europa.eu/doc/document/ST-10284-2022-INIT/en/pdf>

<sup>2</sup> [https://www.europarl.europa.eu/doceo/document/A-9-2022-0219\\_EN.html#\\_section2](https://www.europarl.europa.eu/doceo/document/A-9-2022-0219_EN.html#_section2)

## INTRODUCTION

According to the Food and Agriculture Organization (FAO) of the United Nations (FAO, 2020), over the past three decades, the world has lost approximately 178 million (M) hectares (ha) of forest. Deforestation, as well as forest degradation, are the greatest threats to global forests (IUCN, 2021), representing the major driver of biodiversity loss (FAO and UNEP, 2020) and the second largest contributor to climate change after fossil fuels combustion, accounting for nearly 12% of global greenhouse gas emissions (European Commission, 2019; Pendrill *et al.*, 2019a; Shukla *et al.*, 2019).

However, deforestation rates vary markedly across regions. While in the last decades forest cover in Europe, North America and East Asia has been increasing (e.g., through afforestation and natural forest expansion) (FAO and UNEP, 2020), forests in tropical and subtropical areas, particularly Africa and South America, have been decreasing at a rate of about 10 Mha per year (Pendrill *et al.*, 2019).

The expansion of agricultural land to produce agroforestry commodities, such as cattle, palm oil, soy, cocoa or coffee, represents the main direct driver of deforestation and forest degradation in tropical countries (FAO, 2020). According to Pendrill *et al.* (2019), between 2005-2013, at least 62% (around 5.5 Mha per year) of global forest loss was due to agricultural and pastureland expansion, which have a far greater impact than illegal or otherwise unsustainable logging (EPRS, 2022a).

Almost 70% of deforestation caused by the expansion of agricultural land is driven by the production of goods consumed within domestic markets, whereas around one-third is led by the production of commodities that are destined for international markets. Most of these traded commodities end up being consumed in countries characterized by an increase in their forest cover, particularly in Europe and China. According to WWF (2021), the European Union (EU) imports of six specific commodities – cattle, wood, palm oil, soy, cocoa and coffee – between 2005 and 2013 were responsible for 3.5 Mha of tropical deforestation. This is normally referred to as embodied deforestation, i.e. deforestation associated, as an externality, with the production of a good or commodity that may be consumed in the country of origin or traded elsewhere (Cuypers *et al.*, 2013). To address deforestation embodied in traded or consumed products there is increasing recognition of the role of demand-side initiatives, i.e. targeting countries that import and consume commodities whose production may have caused deforestation at the countries of origin.

In the last 10 years, voluntary collective commitments were made by private and public actors, pledging to achieve zero-deforestation in the value chains of forest-risk commodities with the highest overseas impact such as cattle, soy, palm oil, and timber products (Global Forest Watch, 2021). These included multi-stakeholder commitments such as the Consumer Goods Forum 2010 Zero Net Deforestation Resolution and the New York Declaration on Forests (2014) and the Amsterdam Declarations Partnership. While at the European level some important 2020 climate-related targets were achieved (European Environment Agency, 2021), the EU seems far from reaching the zero-deforestation commitment pledged in previous initiatives (Lambin *et al.*, 2018; Garrett *et al.*, 2019), such as the EU Commission communication in 2008 on “addressing the challenges of deforestation and forest degradation to tackle climate change and biodiversity loss”<sup>3</sup>, the EU Communication (2019) on Stepping up EU Action to Protect and Restore the World’s Forests<sup>4</sup> and the EU 7<sup>th</sup> Environmental action programme for the period up to 2020<sup>5</sup>.

<sup>3</sup> The communication is available on the following link:  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008DC0645>

<sup>4</sup> The communication is available on the following link:  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1565272554103&uri=CELEX:52019DC0352>

<sup>5</sup> The 7<sup>th</sup> Environmental action programme for the period up to 2020 is available on the following link:  
<https://ec.europa.eu/environment/action-programme/#:~:text=The%207th%20Environment%20Action%20Programme,within%20the%20planet's%20ecological%20limits.>

The existing EU regulatory and policy framework to address global deforestation is highly fragmented and covers only specific sectors and/or commodities. For example, the Renewable Energy Directive 2018/2001 (RED II) and the supporting Commission Delegated Regulation (EU) 2019/807, addresses the negative environmental impact – including indirect land-use change – of biofuels production, whilst the European Timber Regulation (EUTR) addresses illegal logging and timber trade. Both measures, however, address the wider deforestation problem only partially.

In the case of the EUTR, for instance, the exclusively focus on legality has not proven effective in reducing the rate of net forest loss (EUPRS, 2020). From the above data it is clear that the main drivers of deforestation extend far beyond the edges of the logging and timber sector. Furthermore, it should be recalled that the EUTR, nearly ten years after its adoption, still faces implementation and enforcement challenges (WWF, 2019).

The urgency of action to tackle agricultural commodity-driven deforestation in the tropics called for new regulatory measures and an increased focus on environmental sustainability. On 17 November 2021, the European Commission published a legislative proposal to curb deforestation and forest degradation driven by the expansion of agricultural land to produce specific commodities<sup>6</sup>. The proposal (hereafter referred as to “Deforestation Proposal”) has been developed in the context of the European Green Deal and its 2050 Neutrality-Climate Target Plan. The Deforestation Proposal is aimed to replace the EUTR and possibly expand its scope and approaches. Its main contents are the result of a long consultation process with various stakeholders including the civil society, public authorities, academia, environmental non-governmental organisations, businesses and the industry, certification bodies and others, including third countries.

<sup>6</sup> Proposal for a regulation on deforestation-free products, as well as annexes and Staff Working Document is available at the following link:  
[https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products\\_it](https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_it)





Credits: Elena Massarenti



## RESEARCH OBJECTIVE AND METHODOLOGY

This paper aims to provide a comparative analysis between the EUTR and the EU Deforestation Proposal by evaluating innovative aspects, practical barriers, shortcomings as well as the possible impacts of the upcoming Deforestation proposal on the Italian market building on the lessons learned from the EUTR. In order to facilitate the comparative analysis, the study assesses similarities and differences between the two legislative initiatives and groups the key findings into the following areas of action:

1. Objectives, scope and requirements
2. Obligations for the actors
3. Main elements of the Due Diligence System (DDS)
4. Enforcement and implementation.

The comparative analysis has been carried out through an in-depth review of the two EU legislative acts, with the support of the official documents published by the Commission (e.g., EUTR Fitness Check 2020) and the European Parliamentary Research Service (EPRS, 2020, EPRS, 2022a; EPRS, 2022b). The discussion section drawn on reports by non-governmental organisations (e.g., WWF, 2021 and Client Earth, 2021), scientific articles and position papers. Trade data by UN Comtrade were assessed to identify the possible impacts of the Deforestation Proposal on the market, especially the Italian one, while datasets estimating the role of each commodity on deforestation were sourced from Pendrill *et al.*, 2019.



## RESULTS

## OBJECTIVES, SCOPE AND REQUIREMENTS

The main objective of the EUTR, which came into force on 3 March 2013, is tackling illegal logging and associated trade in timber and timber products in the EU. Since the EUTR focuses on timber legality, companies should demonstrate that the timber products placed on the EU market have been harvested according to the applicable national legislation of the country of origin. This approach, based on the legal requirements in force in the producing country, may not be effective in preventing the placing on the market of commodities associated with deforestation or forest degradation (Henn, 2021). The Deforestation Proposal attempts to address this gap, introducing a specific “deforestation-free” criterion/standard. Indeed, in addition to the existing legality-based requirements, companies should demonstrate that the commodities covered by the Proposal are not produced on land deforested or degraded after a specific cut-off date (proposed as 31 December 2020).

Since the impact of the timber sector on deforestation is far lower than other crop commodities (Honosuma et al., 2012; Pendrill et al., 2019), the Deforestation Proposal eventually extends its scope to six “relevant commodities”: (i) cattle, (ii) cocoa, (iii) coffee, (iv) palm oil, (v) soya, and (vi) wood (already covered by the EUTR) and “relevant products” that “contain, or have been fed with or have been made using relevant commodities” (Article 1), the latter being listed in Annex I of the proposal. Among the relevant products we can find, for instance, leather, chocolate and food preparation containing cocoa.

In addition to being legal by the producing country's standard as well as deforestation-free, the Deforestation Proposal requires operators to submit a “due diligence statement” via a digital information system available to competent authorities in EU member states before their products are placed on the EU market or exported. This represents a significant change compared to the EUTR and it will be described afterwards. In addition to confirming that due diligence has been carried out and that products meet the deforestation-free standard, the due diligence statement shall contain information on the company, the products and the country of production as well as all land plots of production.

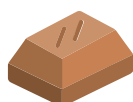
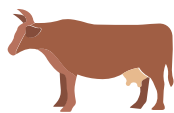


Table 1 reports a summary of the comparative analysis of the EUTR and the Deforestation Proposal with regard to their objectives, scope and requirements.

*Table 1. Comparative content analysis between the EUTR and the Deforestation Proposal: objectives, scope and requirements.*

	<b>EUTR</b>	<b>DEFORESTATION PROPOSAL</b>
<b>Objective</b>	Tackle the problem of illegal logging and associated trade in the context of overall efforts of the EU to achieve sustainable forest management.	Minimise consumption of products coming from supply chains associated with deforestation or forest degradation and reduce the contribution to greenhouse gas emission and global biodiversity loss <b>(Article 1)</b> * <sup>1</sup>
<b>Product scope</b>	<b>Timber and timber products (Article.1)</b>	<b>Cattle, cocoa, coffee, oil palm, soya and wood</b> and relevant product that contain, or have been fed with or have been made using relevant commodities. <b>(Article 1)</b> * <sup>2</sup>
<b>Main requirements for the products placed on the EU</b>	<b>Legality</b> Timber and timber products placed on the EU market should be harvested according to applicable legislation in the country of harvest.	<b>Legality and Deforestation free (Article 3):</b> Commodities or products placed on the EU market should be: <ul style="list-style-type: none"> <li>▪ <b>Deforestation-free</b> (not produced on land subject to deforestation or degradation after <b>31 December 2020</b>) *<sup>3</sup></li> <li>▪ <b>Produced in accordance with the relevant</b> legislation of the country of origin.</li> <li>▪ Covered by a <b>due diligence statement</b> (to be submitted to <b>the EU information system</b> before placing goods on the market)</li> </ul>

*Source: own elaboration, adapted from the EUTR and the Deforestation Proposal Legal acts*

## OBLIGATIONS FOR THE ACTORS

Both the EUTR and the Deforestation Proposal define two main types of actors - operators and traders - who have to comply with specific requirements. In both cases, operators are required to exercise due diligence. In the EUTR context, operators should establish and implement due diligence procedures in order to minimise the risk of placing illegally harvested timber and timber products derived from such timber on the internal market. Whereas, in the Deforestation Proposal, operators should exercise a due diligence system (DDS) in order to ensure the relevant commodities and derived products fulfil the following condition: (i) they are deforestation-free and (ii) they have been produced in accordance with the relevant legislation of the country of production. Although the operator is the core of the diligence notion of both the EUTR and the Deforestation Proposal, it should be noted that the definition of operator in the two regulations is slightly different. In the EUTR, the operator is defined as "any natural or legal person that places timber or timber products on the market", while the Deforestation Proposal takes up the same definition, clarifying however that operators are also actors that export relevant commodities from the EU market and traders not classified as small-medium enterprises (SMEs).

As regards traders, in both legislative initiatives, they are subject to lighter obligations than operators as a trader deals with products already been placed on the EU market. Although the two legislative initiatives provide different definitions of a trader, the role of the trader in the supply chain appears to be the same. Both in the EUTR and in the Deforestation Proposal, indeed, traders are required to collect and keep information to ensure transparency and traceability of the supply chain.

A summary of the EUTR and the Deforestation Proposal requirements regarding obligations for the actors is reported in Table 2.

Table 2. Comparative content analysis between the EUTR and the Deforestation Proposal: obligations for the actors.

		EUTR	DEFORESTATION PROPOSAL
Obligations of actors	Due diligence	<b>Operators</b> , defined as "any natural or legal person that places timber or timber products on the Union market" ( <b>Article 1; Article 4</b> )	<b>Operators</b> , 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" ( <b>Article 2; Article 4</b> )  <b>Traders</b> , (whose definition is given below) $\geq$ SMEs* ( <b>Article 6</b> )
	Traceability	<b>Traders</b> , that are defined as "any natural or legal person who sells or buys on the internal market timber or timber products already placed on the internal market." ( <b>Article 1; Article 5</b> )	<b>Traders</b> ( $\leq$ SME) that are defined as "any natural or legal person in the supply chain other than the operator who, in the course of a commercial activity, makes available on the Union market relevant commodities and products" ( <b>Article 6</b> )

\* Micro, small and medium sized enterprises

## MAIN DUE DILIGENCE SYSTEM ELEMENTS (DDS)

As previously mentioned, both the EUTR and the Deforestation Proposal require operators to implement a DDS. This, in both cases, is made up of three main elements: (i) access to information, (ii) risk analysis and (iii) mitigation measures. With regards to the first element of the DDS (i.e. access to information), both the EUTR and the Deforestation Proposal require operators to collect the main information relating to the products that will be placed on the market, such as: (i) name and type of product, (ii) country of collection and sub - national region and collection concession (if applicable), (iii) quantity (volume, weight or number of units), (iv) name and address of supplier and trader, (v) documents or other information indicating compliance with applicable legislation. In addition to this information, in the context of the Deforestation Proposal, the operator has to collect the geographic coordinates of all the plot (s) of land where the relevant commodities and products were produced, as well as date or time range of production. Requesting the plot of land where the commodity was produced can facilitate the use of widely available satellite images to check whether the commodity complies with the concept of free deforestation or not.

With regards to the risk assessment, the Deforestation Proposal adds some criteria, which the operator must consider to classify the product as at a negligible risk or not. The new criteria, such as *"the risk of mixing with products of unknown origin or produced areas"* (Article 10 (g)) seem mostly dedicated to the interpretation of the criteria already present in the EUTR, and, therefore, linked to the risk that the origin of the material is illegal. Other new criteria, such as the *"Prevalence of deforestation or forest degradation in the country of origin of commodities"* (Article 10 (b)), are closely related to the risk of deforestation.

As in the EUTR, the Deforestation Proposal also considers independent certification or other third-party verification schemes as complementary information that operators can use in the risk assessment, nonetheless certifications don't automatically release operators from due diligence requirements.

Furthermore, the Deforestation Proposal also adds a very innovative element - the country benchmarking, - which should be taken into consideration by operators in their DDS. The country benchmarking, which will be developed by the European Commission, will assign each source-country or part of it one out of three possible levels of risk: low, standard and high. For relevant commodities and products originating from low-risk countries or (or sub-national regions classified as low-risk), operators should be allowed to exercise simplified due diligence, while competent authorities should enhance checks on relevant commodities and products produced in high-risk countries or parts thereof. In case of simplified due diligence, the operator should collect information, documents and data demonstrating that the relevant commodities and products follow the applicable legislation and respects the deforestation free criteria. However, they are dispensed from carrying out the risk assessment and risk mitigation.

Another important aspect related to DDS and integrated into the Deforestation Proposal is the clarification related the timing of DDS that operators should respect. While in the EUTR the due diligence is supposed to be done prior to placing timber on the market, even if there is no real obligation on operators to assume responsibilities for the compliance of timber before this would circulate in the EU market. On the contrary, the Deforestation Proposal clarifies explicitly (Art. 8) how DDS needs to be carried out prior to any placing of relevant commodities and products on the EU market or prior to exporting from the EU market.

Table 3 summarises Due Diligence elements according to the EUTR and the Deforestation Proposal



Table 3. Comparative content analysis between the EUTR and the Deforestation Proposal: Due Diligence elements.

DDS ELEMENTS	EUTR	DEFORESTATION PROPOSAL
<b>Information requirement</b>	<p>The operator shall implement measures and procedures providing access to the following information concerning the operator's supply of timber or timber products (<b>Article 6</b>):</p> <ul style="list-style-type: none"> <li>• <b>Name</b> (common, trade and scientific) and type of product</li> <li>• <b>Country of harvest</b>, and where applicable: sub-national region and concession of harvest,</li> <li>• <b>Quantity</b> (volume, weight or number of units),</li> <li>• <b>Name and address of the supplier</b> to the operator,</li> <li>• Name and address of the trader,</li> <li>• Documents or other information indicating compliance of those timber and timber products with the applicable legislation.</li> </ul>	<p>The operator shall collect and organise the following information (<b>Article 9</b>):</p> <ul style="list-style-type: none"> <li>• <b>Name</b> (common, trade and scientific) and type of product</li> <li>• Country of harvest, and where applicable: sub-national region and concession of harvest,</li> <li>• <b>Geo-localisation coordinates of all plots of land</b> where the relevant commodities and products were produced as well as <b>the date or time range of production</b> *4</li> <li>• Quantity (volume, weight or number of units),</li> <li>• name and address of the supplier to the operator,</li> <li>• Name and address of the trader</li> <li>• Adequate and verifiable information that the relevant commodities and products are deforestation-free.</li> <li>• Adequate and verifiable information that the production has <b>been conducted in accordance with relevant legislation of the country of production</b></li> </ul>
<b>Risk assessment</b>	<p>The risk assessment shall take account of the following criteria (<b>Article 6</b>):</p> <ul style="list-style-type: none"> <li>• Assurance of compliance with applicable legislation,</li> <li>• Prevalence of illegal harvesting of specific tree species or practices in the country of harvest and/or sub-national region where the timber was harvested,</li> <li>• Sanctions imposed by the UN Security Council or the Council of the EU on timber imports or exports,</li> <li>• Complexity of the supply chain of timber and timber products</li> </ul>	<p>The risk assessment shall take account of the following criteria (<b>Article 10</b>):</p> <ul style="list-style-type: none"> <li>• The <b>presence of forest</b> in the country, region and area of production</li> <li>• <b>Prevalence of deforestation or forest degradation</b> in the country, region and area production</li> <li>• The source, reliability, validity and links to other available documentation.</li> <li>• Concerns in relation to the country of production and origin (level of corruption, prevalence of document falsification, lack of law enforcement, armed conflict or presence of sanctions imposed by the UN Security Council or the Council of the EU).</li> <li>• Complexity of the relevant supply chain and in the traceability of the plot and land of production.</li> <li>• The risk of mixing with products of unknown origin or produced areas.</li> <li>• The conclusions of the relevant Commission expert group meetings published in the Commission's expert group register.</li> <li>• Substantiated concerns: that can refer to specific shipments, suppliers, operators, traders or any situation in specific countries of production that generate risks of relevant commodity or product being placed on the market.</li> <li>• Complementary information on compliance with this Regulation, which may include information supplied by certification or other third party-verified schemes, including voluntary schemes.</li> </ul>
<b>Risk mitigation</b>	<p>Measures and procedures that are adequate and proportionate to minimise effectively that risk: additional information or documents and/or third-party verification (<b>Article 6</b>).</p>	<p>Procedures and measures that are adequate to reach no or negligible risk: additional information, data or documents, independent surveys or audits (<b>Article 10</b>).</p>

## ENFORCEMENT AND IMPLEMENTATION

Both the EUTR and the Deforestation Proposal assign the Competent Authority appointed by each EU member state the responsibility of carrying out checks to verify whether relevant actors (i.e., operators and traders) comply with the applicable requirements. However, the Deforestation Proposal, in article 14, provides a greater number of operational indications, which each national Competent Authority shall respect. Indeed, in the context of the Deforestation Proposal, the annual checks carried out by each national Competent Authority should cover at least 5% of the operators within the country, as well as 5% of the quantity of each of the relevant commodities placed or made available on the market. In addition, competent authorities are required to increase checks (at least 15% of operators as well as 15% of the quantity) for relevant commodities and products produced in countries listed as high risk in the EU benchmarking system.

It is also interesting to note how the Deforestation Proposal requires Competent Authorities to improve the transmission and exchange of information. To achieve this objective, the Information System (Article 31) will play a fundamental role, since it will integrate the Due Diligence Declarations provided by the operators, as well as connect them with the data and information provided by customs authorities. It's evident that the implementation of the Deforestation Proposal should be effective only through a close cooperation among the Commission, Competent Authorities and customs authorities. In the EUTR, custom authorities had an extremely marginal role, not being involved in the checks and not even involved in the exchange of data and information with other institutions.

An overview of key aspects on deforestation and implementation for both the EUTR and the Deforestation Proposal is available in Table 4.

Table 4. Comparative content analysis between the EUTR and the Deforestation Proposal: enforcement and implementation

	EUTR	DEFORESTATION PROPOSAL
<b>Checks</b>	<p>According to <b>Article 10</b></p> <ul style="list-style-type: none"> <li>• The competent authorities shall carry out checks to verify if operators comply with the requirements set out in the EUTR.</li> <li>• Checks shall be conducted in accordance with a <b>periodically reviewed plan following a risk-based approach</b>.</li> <li>• <b>May be</b> conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties.</li> <li>• Spot checks, including field audits.</li> </ul>	<ul style="list-style-type: none"> <li>• The competent authorities shall carry out checks to establish whether operators and traders comply with their obligations under Deforestation proposal (<b>Article 14</b>)</li> <li>• Checks shall be conducted in accordance with a <b>periodically reviewed plan following a risk-based approach (Article 14)</b></li> <li>• Member states shall ensure that the annual checks carried out by their competent authorities <b>cover at least 5% of the operators</b> as well as <b>5% of the quantity of each relevant commodities and products</b> placed on the market (<b>Article 14</b>) <sup>*5</sup></li> <li>• Right to perform checks without prior warning of the operator or trader (<b>Article 14</b>)</li> <li>• <b>Enhanced scrutiny</b> for relevant commodities and products produced in countries listed as <b>high risk</b> in the EU benchmarking system (to cover <b>at least 15% of the operators</b>) (<b>Article 20</b>) <sup>*6</sup></li> </ul>
<b>Cooperation and exchange information</b>	<p><b>Competent authorities</b> shall (<b>Article 12</b>)</p> <ul style="list-style-type: none"> <li>• Cooperate with each other, with the administrative authorities of third countries and with the Commission in order to ensure compliance with this Regulation.</li> <li>• Exchange information on serious shortcomings detected through the checks and on the types of penalties with the competent authorities of other Member States and with the Commission.</li> </ul>	<p><b>Competent authorities</b> shall (<b>Article 18</b>):</p> <ul style="list-style-type: none"> <li>• Cooperate with each other, with authorities from other Member States, with the Commission and if necessary, with administrative authorities of third countries to ensure compliance with this Regulation</li> <li>• For the application of enforcement of this Regulation, <b>competent authorities shall establish administrative arrangements with the Commission concerning the transmission of information</b></li> <li>• <b>Exchange information necessary for the enforcement of this regulation</b> (giving access to and exchange of data on operators and traders including due diligence statements with other member states competent authorities)</li> </ul>
<b>Role of custom authorities</b>	<p>Custom authorities have a role only in checking FLEGT and CITES licenses</p>	<ul style="list-style-type: none"> <li>• <b>Custom authorities (Article 24)</b> shall control the correct declaration of relevant commodities and products entering or leaving the Union market</li> <li>• Verify the status and information of the <b>due diligence statement</b> using the <b>"electronic interface"</b></li> </ul>

## DISCUSSION

## OBJECTIVES, SCOPE AND REQUIREMENTS

As reported also by the EUTR Fitness check (European Commission, 2021), even if hampered by numerous weaknesses in its design and enforcement, the EUTR has been recognised as an important tool to tackle illegal logging and associated trade of timber. However, its scope appeared limited in reducing tropical deforestation, and, therefore, the scope of the Deforestation Proposal will expand the scope to six commodities (beef, palm oil, soy, cocoa and coffee) and their derived products. For this reason, the number of economic sectors as well as stakeholders affected by the Deforestation Proposal will be much greater than the EUTR.

Just as an example, according to COMTRADE data, the value of 2020 Italian imports of the products targeted by the Deforestation proposal, as a whole, is more than double of the Italian imports of wood products, targeted by the EUTR. Furthermore, the share of Italian imports of timber products from non-European countries is significantly lower (around 20%) if compared to the share of Italian imports of soy, palm oil and coffee from not-EU countries (more than 90%).

Importers from non-EU countries, who will act as operators, the other actors included in the supply chains of relevant commodities covered by the Deforestation Proposal, will be thousands and vary from small farmers to large retailers. Given the number and different types of companies that will have to comply with the requirements of the Deforestation Proposal, the role of public and private institutions, such as trade associations, in supporting companies in the first months after the Regulation enforcement will be very important. Support might include awareness campaign as well as technical support for DDS development, as these have already been reported as possible gaps during the first phase of the EUTR enforcement (Gavriliu<sup>t</sup> *et al.*, 2015).

The opportunity to exercise simplified due diligence in case of commodities or products from low-risk countries can facilitate operators' compliance with the requirements. There is an open question whether due diligence requirements differentiated based on the risk profile of the country/region would create trade distortions and therefore raises doubts about compatibility with WTO rules.

As already pointed out by Mariano (2022) and ClientEarth (2021), the text of the current version of the Deforestation Proposal is characterized by a lack of clarity in several important definitions and this can imply difficulties in the phase of implementation. For example, unlike "deforestation", which has a clear definition and can be easily identified, the definition and detection of "forest degradation" requires predetermined thresholds, based on quantitative references. To date, the proposal does not support the assessment and verification of forest degradation with any specific thresholds.

## OBLIGATIONS FOR THE ACTORS

The definition of the operator, as provided by the Deforestation Proposal in Article 2, covers both exported and imported goods from the EU market, and this would prevent possible adverse impacts on the functioning of the internal market and on trade aspects, ensuring that products entering and leaving the European market are covered by the same requirements. This will likely also create a larger demand for full traceability of the supply chain, as well as fair conditions among companies operating in the same market.

Traders' obligations, which in the context of the EUTR appeared rather general, are described in greater detail in the Deforestation Proposal. Anyway, by expanding the products included within its

scope the Deforestation Proposal will involve an enormous number of actors, although it is hard to precisely estimate it. To date, not even for the EUTR, which just addresses one commodity (timber) and has been implemented almost ten years ago, estimates on the number of traders are available. Controls on traders by Competent Authorities have been few (one-tenth compared to controls on operators). For this (as well as other) reasons, in the EUTR context, numerous smaller operators have switched to becoming traders rather than continuing to import (Ricardo *et al.*, 2021). Therefore, one of the challenges of the Deforestation Proposal will be the integration, also in terms of checks, of traders into its enforcement.

## MAIN DDS ELEMENTS

In terms of DDS elements, the Deforestation Proposal requires traceability requirements, introducing the obligation to provide geo-localisation coordinates, latitude and longitude of all plots of land from where the commodities or products were produced, as well as the date or time range of production (Client Earth, 2021). The aim of this requirement is to ensure that the land, where relevant commodities have been produced, has not been subjected to any deforestation or forest degradation. This new requirement will likely imply an increased economic and bureaucratic burden for both operators and Competent Authorities. To address this, the Competent Authorities will have to adapt and improve their management systems, integrating innovative technological tools, as well as considering data and information from other institutions, such as those collected from customs authorities. This looks quite challenging when considering that for the enforcement of the EUTR Competent Authorities have been found using very few innovative or technological tools, as well as suffering from a lack of staff and financial capacity to perform activities they are in charge of (Client Earth, 2019).

## ENFORCEMENT AND IMPLEMENTATION

One of the main weaknesses that emerged during the implementation of the EUTR was the lack of information flows/exchange between the Competent Authorities and the European Commission, as well as the lack of consistency across the member states, in terms of, among others, the type/entity of sanctions and the number of controls (Client Earth, 2021). The Deforestation Proposal aims to address this gap, introducing a very innovative tool, the information system, which will constitute a central information system for the collection and recording of the operators' due diligence statements. The information system will only be developed through an active role of the customs authorities of all member states. Therefore, it will be essential that the Deforestation Proposal will be accompanied by an involvement, both in terms of staff skills and technological systems, of all customs authorities, which had very marginal role in the EUTR.





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## CONCLUSION



The Deforestation Proposal, once enforced, can be an important landmark against tropical deforestation. Its approach to the problem appears very ambitious and, for this reason, it will involve many actors from different sectors. It is desirable that, unlike the EUTR, its enforcement be uniform across all the EU member states and accompanied by appropriate economic and technological support.

Consistent and uniform enforcement could also limit the trade diversion, which has been recognised as one of the main consequences of the EUTR enforcement. In fact, in the first phase of the EUTR enforcement, southern producers have preferred to export timber to markets with less stringent regulatory frameworks (e.g., China and Vietnam) since legality requirements set by the EUTR are often associated with extra production and export costs (Masiero et al., 2015).

On the one hand, the deforestation proposal has very ambitious environmental targets. On the other it does not seem to adequately integrate the compliance with human rights and operational indications on how to support smallholder farmers who can lose their primary source of income on land deforested after December 2020 since the deforestation was allowed under their national laws. For these issues, the gaps in the Deforestation Proposal should be addressed by the requirements of additional regulations and normative tools, such as for example the EU Directive on Corporate Sustainability Due Diligence, posing additional challenges in terms of both normative integrations and requirement-load for operators.

Finally, like the EUTR, the Deforestation Proposal is not the only initiative currently under development and the European Commission is not the only player involved in the development of a specific regulation targeting forest-risk commodities and their trade. Similar initiatives are being discussed/developed in the United Kingdom (Environment Act) and the United States of America (Fostering Overseas Rule of Law and Environmentally Sound Trade ("FOREST") Act of 2021). Possible inconsistencies among these different regulations might raise additional complexity, ultimately posing additional challenges on their implementation by all different actors involved.



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## ANNEX

**\*1:** The ENVI Report also includes “forest conversion”, along with deforestation and forest degradation. (Amendment 84)

**\*2:** The ENVI Report adds to the list of commodities covered by the regulation: palm-oil-based derivatives, charcoal, printed paper, rubber, maize, and other types of meat other than beef (swine, poultry, sheep and goats). For cattle meat, it also adds derived products, such as bovine tongues, dried, smoked or preserved meat. (Amendments 83 and 237)

Furthermore, it also includes financial institutions in the scope of the Regulation: *“lays down obligations for financial institutions headquartered or operating in the Union that provide financial services to natural or legal persons whose economic activities consist, or are linked to, the production, supply, placing on or export from the Union market of the relevant commodities and products within the meaning of this Article.”* (Amendment 87)

**\*3:** The EU Council proposes the cut-off date to be 31 December 2021, while the ENVI Report proposes 31 December 2019 (Amendment 17).

**\*4:** The EU Council proposal adds to Article 9 (d): *“Where a relevant product contains or has been made with relevant commodities produced in different plots of land, the geolocation of all different plots of land shall be included. For relevant products that contain or have been made using cattle, and for such relevant products that have been fed with relevant products, the geolocation shall refer to the geographical location of each of the premises or places where the cattle were raised”*

Moreover, it adds on Article 1 (29) that “geolocation” means the geographical location of a plot of land described by means of latitude and longitude coordinates corresponding to at least one latitude and longitude point and using at least six decimal digits. For relevant commodities other than cattle, for plots of land of more than 10 hectares, the geographical location shall be provided using sufficient latitude and longitude points to describe the perimeter of the plot of land.”

The ENVI Report, on the other hand, adds to Article 9 another option for the geolocation of the plots of lands where the commodities and products were produced, besides the latitude and longitude coordinates: *“a geolocation of all points of a polygon for these plots of land where commodities and products were produced. The Commission will be in charge of defining from what plots size it will be mandatory to provide polygons for geolocation. It also proposes that the harvesting season be an option for the operators to provide the commodity time of production.”* (Amendment 123)

**\*5:** The EU Council proposal divides the checks requirements according to where the commodities or products are coming from. If it comes from a country classified as “standard risk”, checks shall be made on “at least 1% of the operators, and traders that are not SMEs”, while the annual checks shall be carried out on at least 5% of the operators and traders (that are not SMEs), if it came from a high-risk country, adding that “quantified objective of checks to be carried out by competent authorities” (...) “shall be met separately for each of the relevant commodities”

The ENVI Report, on the other hand, changes the requirement of 5% of operators and 5% of the quantity of products to be checked to 10%, in both cases, allowing for 5% of checks “for commodities or products from countries or parts thereof categorised as low-risk as referred to Article 27, Member States may reduce the annual checks to 5%”. (Amendment 161).

**\*6:** The EU Council proposal deleted Article 20, related to “Enhanced scrutiny”



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