

REGULATION (EU) 2023/1115: DEFORESTATION VS SUSTAINABLE INTENSIFICATION

The latest global impact of the European Green Deal and how sustainable intensification may provide some solutions

It is T-minus 7 days to the entry into force of Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the European Union (EU) of certain commodities and products associated with deforestation and forest degradation. This is the latest of the legislative pillars of The European Green Deal.

As a regulation, it will be directly applicable in all EU Member States whereas its policy goals are global - minimizing global deforestation, greenhouse gas emissions and biodiversity loss - and will have effect worldwide. There are currently seven commodities and products within the scope of the Regulation: cattle, cocoa, coffee, oil palm, rubber, soya and wood. The Regulation sets out the rules that will govern the entry of such 'forest-risk commodities' on the EU market (as well as the export of derived products from the Union). It follows from this that all countries involved in the production of such commodities and products will be affected, to varying degrees, depending on their risk-classification under the Regulation (see below).

From 30 December 2024, the entry of such commodities and products into the EU (and the export from the EU) will be prohibited if not subject to due diligence and risk assessment - to verify that they are 'deforestation-free' and have been produced in accordance with the laws of their countries of production. The onus will be on the EU-based operators and traders to carry out and make public the results of their due diligence and risk assessments, and where necessary set out measures for risk mitigation. In turn, this will directly impact non-EU intermediaries and producers.

Enforcement of the Regulation is entrusted to the competent authorities of the EU Member States which will be required to investigate annually 1% of operators dealing with commodities and products originating from low-risk countries and 3% of them in the case of

standard risk countries, whereas 9% of operators and 9% of volumes will be investigated for high-risk countries. In all cases, verification can also come in the form of spot checks where a potential breach is suspected, as well as where a 'substantiated concern' has been reported to the relevant authority - thereby enabling monitoring by non-governmental organizations, among others.

Commodities and products from low-risk countries may benefit from simplified due diligence where the risk of non-compliance is found to be low. The list of countries and their assigned risk level will be published by 30 December 2024.

Sanctions range from interim measures such as seizures or destruction of products to remedial actions to cure future non-compliance and proportionate but dissuasive penalties up to 4% of annual EU-wide turnover and confiscation of revenues gained from dealing with non-compliant products, as well as exclusion from markets for up to 12 months.

Producing countries have little time to ensure that they fall under the lowest possible risk category and EU operators and traders and their non-EU counterparts have little time to set up the processes that will enable them to comply with the Regulation. There are some very substantial practical issues ahead such as the mixing of products in the processing or the transportation of those commodities and products. There are also some solutions such as the sustainable intensification of production or 'doing more with less' thanks to technological advances in production and management, some of which have ancillary worthwhile benefits such as social progress for the men and women in the farms and the plantations.

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1. On 29 June 2023.
 2. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R1115>
 3. The European Commission's sustainable growth strategy for Europe first published in December 2019.
 4. From its entry into force, although key operative provisions will apply from 30 December 2024.
 5. Possible extension of that list by 30 June 2025.
 6. Deforestation: the cut-off date is 31 December 2020.

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