

EU adopts deforestation-free products regulation



The updated EU deforestation-free regulation also aims to protect the rights of indigenous peoples



Inspiring the next “material revolution” by creating sustainable and high-performance materials from oil palm waste, **Peter Fitch**, together with IOI, have set up IOI Palm Wood to commercialise this untapped potential.

A new EU law preventing the import of commodities linked to deforestation might risk side-lining timber producers, small furniture makers, or community farmers who are unable to meet the cost of compliance of these new standards.

Days before the UN Biodiversity Conference (COP15) in December 2022, the European Parliament and the European Council reached an agreement on the terms of a new regulation on deforestation-free products. First initiated in 2021 within the Green Deal framework, this regulation is part of a wider effort from the European legislator to regulate international supply chains.

The EU agreed on a new deforestation regulation that requires companies to produce a due diligence statement showing when and where their commodities were produced and provide verifiable information that they were not grown on land deforested after 2020, or they will risk hefty fines.

THE SCOPE OF REGULATION

The scope of the regulation on deforestation-free products fills gaps in the EU Timber Regulation and follows a similar pattern to the EU’s Corporate Sustainability Reporting Directive:

High impact sectors targeted: Palm oil, beef, timber, coffee, cocoa, soy and rubber are subject to mandatory due diligence rules. These relevant commodities and their products (RC&P) — for instance, most furniture are timber products — therefore are prohibited from being imported in or exported from the EU market if they are not deforestation-free. Deforestation-free means they are produced on land that has not been subject to deforestation, and the wood has been harvested from the forest without inducing forest degradation. They must also have been produced in accordance with the relevant legislation of the country of production and must be covered by a due diligence statement.

Human rights protection: As deforestation is often linked to human rights violations, the scope of the regulation has been broadened to include human rights obligations. Thus, RC&P must also have been produced in compliance with the relevant legislation of the country of production regarding human rights and the rights of indigenous peoples.

Key definitions enshrined: For the first time, the European legislator defines what constitutes deforestation, which is considered to be “the conversion of forest to agricultural use, whether human-induced or not”.

Forest degradation, which is a new notion, encompasses “harvesting operations that are not sustainable and cause a reduction or loss of the biological or economic productivity and complexity of forest ecosystems, resulting in the long-term reduction of the overall supply of benefits from forest, which includes wood, biodiversity and other products or services”.

Larger groups responsible: For operators and non-SME traders, the obligations laid down by the regulation are the same. The scope has indeed been widened compared to the EU Timber Regulation, and large traders’ obligations are no longer limited to traceability.

DUE DILIGENCE MACHANISM

How does the regulation’s due diligence mechanism work?

Submission of the due diligence statement:

A due diligence statement, confirming that due diligence has been carried out and showing no or only negligible risk, must be submitted to competent authorities prior to placing RC&P on the EU market or exporting them outside the union. Non-compliance, non-negligible risk of non-compliance or inability to complete a due diligence procedure are enough to prevent RC&P from being marketed, imported or exported.

Due diligence procedure: The regulation sets out a three-step due diligence procedure regarding the due diligence statement:

First, companies must fulfil information requirements by collecting the information listed in the regulation — for instance, information that shows the RC&P are deforestation-free, geo-localisation coordinates of all plots of land where the RC&P were produced, among others.

Then they must assess the risk of dealing with non-compliant products using the criteria listed in the regulation — which includes but is not limited to the prevalence of deforestation or forest degradation in the country, region and area of production, whether a third party has submitted a substantiated concern — and according to the country benchmark analysis provided by the commission.

Finally, operators and large traders must have model risk management policies and compliance management procedures in place — including a compliance officer at management level for non-SME operators. Non-SME operators must also have an independent audit function to check the internal policies, controls and procedures. In parallel, SME traders have lighter information requirements and no risk assessment or mitigation analysis to perform.

De facto extraterritoriality: The first EU entity to have RC&P in its possession is bound by the same obligations as the exporter of RC&P. This means that EU importers must perform due diligence whenever they buy RC&P from a non-union entity, regardless of whether the seller comes from a high-risk region or not. What matters, rather, is if the RC&P enter the EU market the first time.

This makes sense as not all products which enter legally a third country’s market would be considered deforestation-free under the EU regulation. For example, in the US, even if the draft US Forest Act were to be adopted in its current form, American operators would still only have to assess the goods if they originated from illegally deforested lands, whereas European operators must check that the goods do not originate from deforested lands. This is a significant difference.

DEFORESTATION-FREE PALM OIL

So how can we potentially mitigate these new requirements? Though we are focusing on timber products, included in the list of RC&P is palm oil. Despite oil palms being the most efficient producer of edible oils and the least carbon-intensive, this material has become by far the most certified vegetable oil in the world. On a daily basis, Malaysian companies already supply the highest levels of certification and traceability, because this is demanded by European customers.

Furthermore, successive Malaysian governments, and the palm oil private sector, have shown more than good faith: They have made serious commitments to advancing ambitious ESG goals.

At IOI Palm Wood, we believe that we can leverage these commitments to verifiable, universal ESG goals. Furthermore, the detailed traceability protocols already in place within oil palm estates will be able to satisfy the requirements for such documents as geolocation and certifiable chain-of-custody for our sourced main raw material being oil palm trunks (OPT).

We at IOI Palm Wood believe that such regulations from the EU will further demonstrate the sustainability credentials of this new and exciting material of palm wood. P



Deforestation is rampant throughout the world