

New requirements for due diligence when cattle, cocoa, coffee, oil palm, soya and wood are placed on EU market and exported from EU 1/11/24



ESG Tax Practice, PwC Latvia
Alina Ruskova

Regulation (EU) 2023/1115 of the European Parliament and of the Council on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 came into force on 29 June 2023.

Deforestation and forest degradation are carried out at an alarming rate and contribute significantly to today's two most serious environmental problems: global warming and biodiversity loss. While the EU has adopted several enactments to help combat illegal deforestation, the Regulation's impact assessment says we should also impose tighter rules on deforestation that occurs legally, for example, when doing agricultural work or making particular products. The Regulation mainly aims to fight deforestation and forest degradation by reducing the consumption of six commodities. This will primarily affect businesses that place certain products on the EU market or export them from the EU. This article looks at a list of these products and requirements for businesses.

Significance of taking action

The UN Food and Agriculture Organisation estimates the world has lost 420 million hectares of forest over the period from 1990 to 2020, an area larger than the EU. According to the Regulation, the EU imported and consumed one third of deforestation-related agricultural products sold globally over the period from 1990 to 2008, and this consumption caused 10% of global deforestation associated with production of goods or services. Even if the relative proportion of EU consumption is going down, it's still a disproportionately big contributor to deforestation.

The Regulation's impact assessment says that without an adequate regulatory intervention the EU consumption and production of six commodities (cattle, cocoa, coffee, oil palm, soya and wood) alone would increase the deforested area by up to 248,000 hectares a year by 2030.

So we need to take action to reduce the global deforestation and forest degradation that is driven by the consumption of particular commodities and products, and we need to try and minimise the resultant GHG emissions and global biodiversity loss and promote sustainable production and consumption models across the EU and globally. For EU policies to have an even greater impact, they should be geared towards the global market, not only EU supply chains.

What products are covered by the Regulation?

The Regulation lays down rules for how companies may place on the EU market and export from the EU the products listed in Annex I, which contain cattle, cocoa, coffee, oil palm, rubber, soya or wood, or are fed with any of these commodities or made using them (see Annex I for a full list of combined

nomenclature codes for these products).

Requirements for companies

The Regulation prohibits these commodities from being placed and made available on the EU market or exported from the EU unless the following conditions are met:

- They are deforestation-free.
- They have been produced in accordance with the relevant legislation of the country of production.
- They are covered by a due diligence statement.

Companies planning to place these commodities, or products containing them, on the EU market or export them are required to conduct a due diligence review and submit an appropriate statement before doing so. This obligation does not apply to small and medium enterprises (SME) defined by the Regulation if they wish to place on the EU market products containing commodities for which a due diligence statement has already been submitted. In practice, however, SMEs should also make sure a due diligence statement has been submitted, so a review should still be conducted to gain confidence.

Article 8 of the Regulation provides that a due diligence review consists of:

- Collecting information, data and documents necessary to meet its requirements
- Risk assessment measures (listed in article 10)
- Risk mitigation measures (listed in article 11)

When will these requirements apply?

The obligations arising under the Regulation will apply from 30 December 2024 (from 30 June 2025 to micro and small enterprises set up before 2021). Failure to meet these obligations attracts penalties, including a fine of up to 4% of the company's total annual revenue generated during the EU financial year before the fining decision was made.

We advise our clients on how the Regulation applies and are happy to help you in the process of preparing necessary information by conducting a due diligence review. If you have any questions, please reach out to Alina Ruskova.