Trade, Trees, and Human Rights: Implementing the European Union Deforestation Regulation

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Executive Summary

1. The European Deforestation Regulation (EUDR) is an urgently needed policy to address a critical environmental threat – the decline of forests worldwide.
2. However, it addresses only one type of ecosystem. It is the first step in a longer biodiversity regulatory protection journey; it is important to get the design and implementation right.
3. The precedent set by this policy in balancing the needs of trade and the needs of ecosystem protection will carry into other ecosystems, commodities and regulatory structures.
4. Smallholder farmers face significant barriers to meet all the requirements envisaged by the EUDR. If not well-managed, smaller players can be excluded from trade, affecting livelihoods.
5. Traders and operators active in challenging areas can be discouraged from trade, making sustainable economic development more difficult and potentially undermining human rights.
6. Outcomes of the policy will depend on the relative market power of the EU across relevant commodities. In areas of low exposure, trade will tend to divert to lower regulated markets.
7. EU policymakers should not weaken the EUDR. Instead, they should find the best possible, long-term sustainable path for implementation.
8. Active transition management for each commodity is needed to balance the pressures of trade, ecosystem and human rights protection.
9. The EUDR is highly likely to be the first step in a long-term trend in steadily increasing biodiversity regulations.
10. For traders and operators, the most effective response to the EUDR would be to exceed its requirements, and thereby position for this structural change.

About Scaled Impact

Scaled Impact is a project development and advisory company. Founded in 2016, it has offices in Johannesburg and Berlin and operates across Africa.

A not-for-profit social enterprise, Scaled Impact combines strategy development, finance and analytics to carry out research and convert this to action and implementation. Addressing full value chains, Scaled Impact's mandate is to promote inclusive socio-economic development.

Scaled Impact on biodiversity

Biodiversity is collapsing worldwide because of combinations of habitat loss, pollution, climate change and unsustainable farming and management practices. Interventions to date have not been sufficient to address this collapse and have served only to slow it down.

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Glossary

Agricultural plantation *- means land with tree stands in agricultural production systems, such as fruit tree plantations, oil palm plantations, olive orchards and agroforestry systems where crops are grown under tree cover; it includes all plantations of relevant commodities other than wood; agricultural plantations are excluded from the definition of 'forest'.*

Agricultural use *- means the use of land for the purpose of agriculture, including for agricultural plantations and set- aside agricultural areas, and for rearing livestock.*

Deforestation *- means the conversion of forest to agricultural use, whether human-induced or not.*

Forest *- means land spanning more than 0,5 hectares with trees higher than 5 metres and a canopy cover of more than 10 %, or trees able to reach those thresholds in situ, excluding land that is predominantly under agricultural or urban land use.*

Forest degradation *- means structural changes to forest cover, taking the form of the conversion of:*

> *(a) primary forests or naturally regenerating forests into plantation forests or into other wooded land; or*
>
> *b) primary forests into planted forests.*

Relevant commodities *- means cattle, cocoa, coffee, oil palm, rubber, soya and wood.*

Operators *- means any natural or legal person who, in the course of a commercial activity, places relevant products on the market or exports them.*

Other wooded land *- means land not classified as 'forest' spanning more than 0,5 hectares, with trees higher than 5 metres and a canopy cover of 5 to 10 %, or trees able to reach those thresholds in situ, or with a combined cover of shrubs, bushes and trees above 10 %, excluding land that is predominantly under agricultural or urban land use.*

Traders *- means any person in the supply chain other than the operator who, in the course of a commercial activity, makes relevant products available on the market.*

The source of these terms is the European Union Deforestation Regulation as published 31st May 2023.

Perspectives on the EUDR

The EUDR is a bold plan for addressing an issue that is in all senses of the word, burning. The hurdles to its implementation, however, lie far up remote waterways and up mountainsides that have the most indirect connections to European markets.

The barriers to full certification for products from smallholder farmers in Africa, Central America and Southeast Asia as envisaged by the EUDR are significant. Arabica coffee, rubber, cocoa, timber, nuts, even mangoes and chillies are sourced in large part from farmers with small plots away from roads, often on communal land or in high forest areas with tenuous land rights.

Farmers in these areas can experience acute survival pressures that can make deforestation all but unavoidable. In winter the only source of fuel can be the trees. New generations need their own space to grow food and have to clear forests to move beyond their homes. Climate change forces farmers higher up mountains and into forests to maintain the conditions that allow their crops to mature.

Smallholder farmer routes to market can be through three, four and five layers of intermediary agents. These trading networks are a large part of the supply chains that support our food, clothes and manufacturing industries. Their revenue is often the only source of cash for these farmers.

The EUDR seeks to give structure to these relations to protect the biodiversity upon which the supply chains and the communities around them rest. It requires certification as proof of action to prevent damage to forest ecosystems and it levies penalties where this cannot be provided.

Faced with the EUDR, operators and traders working in these value chains have, rather basically put, a three-way choice. **First,** exit trading such products due to the high risk of these sources; **second**, consolidate around a more or less secure set of sources of product where the risk of deforestation can be controlled and exit the other areas; **third,** take a maximal approach to EUDR compliance, embracing the full risk of difficult supply chains, seeking to control deforestation wherever possible and demonstrating good intention and intent to act where it is not. Another approach is to be non-compliant, but this is not one we recommend.

Since they involve stopping trade or changing trade patterns, the first and second options can both mean responsible players leaving areas where they are needed the most. The threat of deforestation will not go away. It may even accelerate if less responsible traders and processors move in. The easiest areas to control will then supply the EU, while the most difficult will end up the least protected. The product will go to less restrictive markets and both smallholder farmers and forest ecosystems will lose.

The EUDR is not an isolated, one-off regulation. It is part of a long-term move towards the full regulation of biodiversity. The Kunming-Montreal protocol agreed and signed in 2022, commits the signatories to ensuring biodiversity integrity, connectivity and resilience across *all* ecosystems by 2050. Setting a good precedent in the EUDR could inform and help determine that future development path.

Success will mean finding a balance in implementation between the needs of ecosystem protection and the needs of sustainable trade. There is still time to find that balance before the deadline for implementation in January 2025. The authorities designated by each state need to have good structures for roll-out and monitoring. Full disclosure and transparency needs to be achieved across all EU Member States. This is a lengthy process, which will enable and benefit from a transition period to make sure it is done well.

Furthermore scrublands and biodiverse savannahs, such as the highly biodiverse Cerrado in Brazil, are excluded from this regulation. The Cerrado is severely degraded through deforestation for soy and cattle production. In one year, the EUDR will be reviewed to determine if "*other wooded land*" like these high biodiversity value savannah areas should be included.

From 2026, the law could cover more ecosystems that represent high biodiversity value or carbon content. Additional commodities and derived products – like maize and biodiesel – could be included in the regulation then. All this points in the same direction: more environmentally stringent regulations will constrain operators and traders' ability to place products in the European market without substantial investment in the ecosystems that support them.

A sound implementation of the EUDR would find a balanced transition mechanism to allow those with high interest and incentive to deliver to EU markets to maintain their exposure to difficult and high deforestation risk locations but develop solutions that over time that enable them to meet these goals. Severe economic penalties and a fast, stringent implementation of this regulation risks entirely discouraging a transition to more sustainable outcomes.

Sound implementation also means acting with awareness of the constraints to both regulation and to trade. The EUDR alone cannot achieve its stated goals. Pressures on forests will continue regardless of trade restrictions. Smallholder farmers will tend to be excluded from formal supply chains. Leakage markets will be created, taking advantage of supply chain complexities.

The EUDR will only have influence according to the EU's relative market power within the trade system. Indeed, commodities with the highest deforestation rates are those where the EU has the least exposure (see figure 1 below). Without some trade cooperation, the goals of the EUDR are likely only to be met in less critical commodities where the EU has high regional market share.

The EU is the largest importer of cocoa in the world with up to 50% of global imports, from the top five producing nations[1]. Soybeans by comparison, find a home in other regions, with only 12% of them making their way through an EU port[2]. The difference in power to switch sources and destinations is evident. The results for managing deforestation will follow.

While the regulation aims to bring about a sustainable transition across these supply chains, there should be a balance that allows all players with high interest and incentive to continue engaging in EU markets, even if they operate in regions with high deforestation risk.

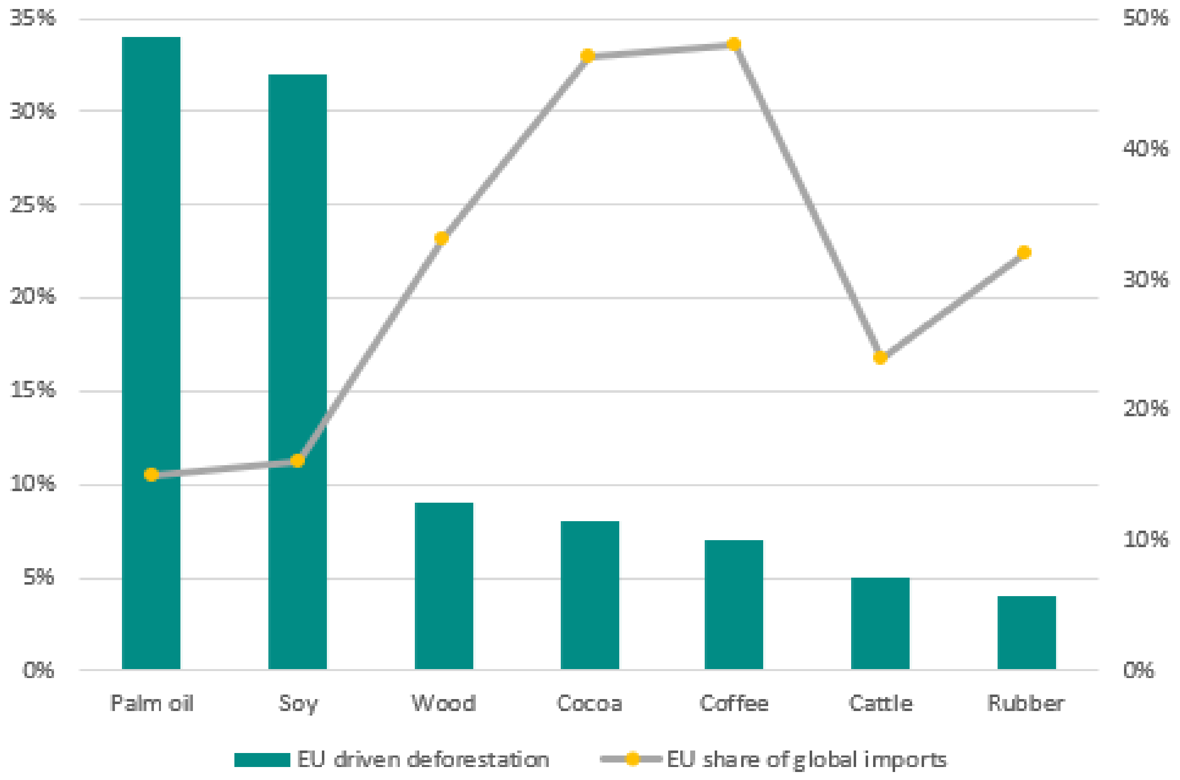
The world trade system built up since the 1950s has enjoyed success through an inclusive approach and incremental expansion to include new sectors and practices. An implementation of the EUDR that maintains its place in this trade system, creating precedent for and encouraging structured management of biodiversity through trade regulation is more likely to succeed. An implementation that runs contrary as much to the spirit of inclusion as to WTO practices themselves may have limited success in a handful of commodities.

Against this is the question of time. Deforestation is an issue now. Negotiated outcomes in trade rounds can take decades while tree cutters clearing fields for soybeans will not wait for them. The challenge for both policy makers and private sector players motivated to address deforestation is to find a path to set a precedent, that balances this critical need for action with the need to mobilise trade resources widely in support of maintaining and protecting biodiversity.

[1] European Commission Press Release, 2021

[2] Atlas of Economic Complexity, 2021

Figure 1. EU-driven deforestation and EU market share of global imports for each regulated commodity and its derived products, 2021



Source: EUDR, Atlas of Economic Complexity 2021, Scaled Impact

For the EUDR to be effective, EU policymakers need to create mechanisms that enable operators and traders to manage their transition to sustainable practices, as fast as possible, without the threat of severe economic penalties discouraging positive change during transition. Trading patterns in these commodities are deeply rooted in communities and farm practices. 'Flight paths' per commodity that allow for adaptation of these patterns and the creation of means and methods to work with high-risk groups in the most vulnerable regions will help meet the EUDR's goals.

Enabling local stakeholders to adapt and managing implementation timelines also gives a basis for extending deforestation or biodiversity regulation beyond the EU into other trade blocs. Working groups within the WTO and beyond exist to address deforestation. In a best case scenario, the mechanisms established to meet EUDR requirements will create a basis for wider adoption.

On the side of operators and traders, to ensure compliance with the EUDR and secure market access, they need to close the gaps in their supply chain transparency, traceability standards, and compliance priorities. These measures are fundamental both to comply with the EUDR and, if well managed, to go beyond the regulation's requirements.

In our view, the most defensible and adaptable position for market players is to go beyond the EUDR's stipulations. The regulation targets forest ecosystems only – one small part of the total biosphere. We can – and should – expect such regulation, to expand until it covers all ecosystems and the related commodities. The long-term outcome will be full biodiversity and regulatory management. Those operators and traders that are ahead of the curve and of the regulation now will be best positioned to meet those future demands.

The EU should enable a well-managed transition broken down by the specific needs of each target commodity. If executed effectively, the EUDR can set a positive precedent, for steadily improving biodiversity management across commodity value chains. Should it fail either for an overzealous application of rules that drives responsible players out of fragile areas, or for lack of implementation rigour that fails to change trade patterns, we will have lost an opportunity to drive meaningful change when the time available is measured in single years.

Executed well, with cooperation between policy makers and the private sector, with capacity building and involvement of local stakeholders and communities to mitigate deforestation effectively, more sustainable and equitable global supply chains can be created. A path can be set for longer term, positive biodiversity regulation.

What is the EU Deforestation Regulation?

To reduce deforestation and forest degradation, the EU has implemented its latest regulation – the Regulation on deforestation-free products (EU 2023/1115). It entered into force on 29 June 2023 and will be effective from January 2025.

According to this law, seven commodities and related products imported, produced and/or sold in the EU must not lead to deforestation and forest degradation.

Deforestation is defined by the EUDR as "*the conversion of forested areas to agricultural use, whether human-induced or not*". Essentially, expansion of agricultural land linked to commodities production must not cause further deforestation or forest degradation, whether this land transformation is legal or illegal.

Why do we need the Regulation?

This regulation is expected to lower greenhouse gas emissions and prevent biodiversity loss. It is part of a larger plan, starting with the 2019 European Commission Communication on Stepping up EU Action to protect and restore the World's forests. The Regulation will be assessed with the European Green Deal, the EU Forest Strategy for 2030 which is a flagship element of the European Green Deal, the EU Biodiversity Strategy for 2030, and the Farm to Fork Strategy.

Between 1990 and 2020, the world lost forested land estimated to be around 420 million hectares to deforestation[3]. The EU's consumption rates represent up to 10% of this deforestation[4]. Without these rules and measures being implemented, the EU would be expected to cause more than 248,000 hectares of deforestation annually, leading to an increase in global greenhouse gas emissions and threatening biodiversity and functioning ecosystems[5].

Which commodities are covered?

The seven commodities targeted by the EUDR are: soy, cattle, palm oil, coffee, rubber, cocoa, and wood. In table 1 the EUDR provide more details on the derived products for each commodity:

Table 1. Relevant commodities and examples of derived products affected by EU 2023/1115

Relevant commodities	Examples of derived products
Cattle	Leather, Meat fresh, Meat frozen, Raw hides and Live cattle
Cocoa	Cocoa beans, Cocoa butter, Cocoa powder and Chocolate
Coffee	Coffee beans, husks and Coffee substitutes containing coffee
Palm Oil	Palm nuts and kernels, Palm oil derivatives, Oil cake, Glycerol, Palmitic acid and Oleic acid

[3] EUDR, 2023
[4] EUDR, 2023
[5] EUDR, 2023

Relevant commodities	Examples of derived products
Rubber	Natural rubber, Compounded rubber, Pneumatic tyres and inner tubes, apparel and clothing (gloves and mitts) made with vulcanised rubber
Soy	Soy beans, Soy-bean flour, Soy bean oil and cake
Wood	Fuel wood, Plywood, Furniture, Casks, Pulp and paper and Printed Books

Source: EUDR, 2023

These commodities were chosen based on wide research and impact assessments across commodity and product value chains. Research[6] used for the efficiency analysis, indicated that these commodities represent the largest share of the EU's contribution to deforestation. Of these, palm oil and soy are the two main drivers.

Figure 2. Relevant commodities and their percentage of EU-driven deforestation

Source: EUDR, 2008-2017

How will this be achieved?

Under this Regulation, all operators and traders placing these commodities and derived products on the EU market are required to present verified certifications of their origin. This new EUDR will set mandatory due diligence rules for traders operating within the EU market. Traders would be required to trace products back to the actual geographical plot of land where the relevant commodity was produced, through technologies such as GIS, GPS coordinates, and satellite imagery. Digitalising this

[6] Pendrill F., Persson U. M., Kastner, T. 2020. Deforestation risk embodied in production and consumption of agricultural and forestry commodities 2005-2017

system would provide accountability and traceability of information on the origin of the commodities.

All operators and traders must prove that the products are not generated from deforested areas or have not contributed to forest degradation.

The stated objectives of the EUDR are to:

- Address all deforestation and forest degradation driven by agricultural expansion to produce the commodities in the scope of the regulation;
- Avoid that the listed products Europeans buy, use and consume contribute to deforestation and forest degradation in the EU and globally;
- Reduce carbon emissions caused by EU consumption and production of the relevant commodities by at least 32 million metric tonnes a year.

The adaptation period is short – 18 months for larger operators and traders and 24 months for small and micro enterprises. Operators and traders with more stringent control over their global supply chains have a higher chance of meeting this deadline. Those with limited anti-deforestation implementation policies in place must strive to find a solution fast to reduce their impact on deforestation, address illegal logging and protect biodiversity and forests' carbon sinks.

What are the EUDR's main implications for operators and traders?

Operators and non-SME traders must submit due-diligence statements in which it is confirmed that their relevant products are not from deforested or subject-to-deforestation land from January 2025. This must be submitted to the relevant and competent authorities, to be able to enter products in the EU market. This would include (1) information requirements that comply with EUDR, (2) risk assessment measures and (3) risk mitigation measures.

If the due diligence reveals non-negligible risks that the supplied products are not compliant, these operators must not place their products in the EU market.

How does the due-diligence process work?

(1) Information requirements

Operators should collect detailed information across a range of product criteria for authorities to understand where the relevant commodities were produced. Criteria include the geolocation of all plots of land, country of origin and adequately conclusive and verifiable information that the products were produced deforestation-free and that production is in accordance with the relevant legislation of the country of production.

These information requirements will provide a substantiated picture of where and what is being produced and under what circumstances.

(2) Risk assessment measures

The operators' and traders' second step would be conducting a risk assessment on non-compliance before relevant products can be placed on the market or exported. A range of fourteen criteria must be considered to determine the risk assessment of the relevant product.

Criteria include the Commission's risk classification of the country of production, the presence of forest land in the production area, the prevalence of deforestation and forest degradation in the country and area, the complexity of supply chains, the risk of circumventing and mixing products to the source as well as the reliability and validity of the information requirements.

There is also a strong emphasis from the Commission to identify human actors in risk mitigation, such as whether there has been good faith engagement with indigenous populations, any reasoned claims of ownership by indigenous peoples, and concerns such as level of corruption, potential human rights violations and armed conflict.

Together, these criteria ensure a thorough risk assessment process, focusing on environmental sustainability, value chain complexity, protection of human rights, and meaningful engagement with indigenous communities. All relevant products need also to be produced in accordance with the applicable local laws.

(3) Risk mitigation measures

Lastly, operators and traders need to adopt risk-mitigation procedures and measures for relevant commodities and products, unless the risk assessment shows that there is none to negligible risk of non-compliance.

These measures can include requesting additional information or documents, conducting independent surveys or audits, and taking other actions related to information requirements. Moreover, operators can support compliance with the EUDR among suppliers, particularly smallholder farmers, through capacity building and investments.

Operators must have appropriate policies, controls, and procedures in place, encompassing risk management practices, reporting, record-keeping, internal control, and compliance management. A compliance officer at the management level should be appointed for non-SME operators, and an independent audit function is required to assess internal policies and procedures.

Control measures will vary by country

Within 18 months of the EUDR entering into force, the Commission will classify countries or parts of countries into different risk categories: low, standard and high. Based on this ranking, different proportions of checks on operators will be performed; 9% for high risk, 3% for standard risk and 1% for low risk.

High-risk countries would also have to check 9% of total volumes. The EUDR discloses how competent national authorities must conduct checks on operators and traders to ensure compliance. These checks should be based on the risk-based approach that identifies appropriate risk criteria.

This indicates that monitoring and control measures will be implemented, and high-risk operators and traders can be targeted, highlighting the need for high-risk countries and operators to find viable solutions for compliance.

The three risk tiers will be based on the latest scientific evidence to address the following:

- Rate of deforestation and forest degradation

- Rate of expansion of agricultural land for relevant items
- Production trends of the relevant items

What are the possible costs?

Each year, the appointed regulatory bodies at national level will review all data shared by operators and traders moving commodities and products on the EU market. In case of non-compliance, Member States can order the applicability of severe interim measures, corrective actions or penalties . Each matches the financial profile of the company, its market shares, and reputation across the EU market.

Process to decide the costs

By the 30th of April of each year, Member States need to share with the public and with the European Commission their report on the application of the EUDR in the previous calendar year. This reporting scheme should include details on risks assessments, mitigation measures, number of checks performed and relative quantity of checked products.

By the 30th of October of each year, the European Commission will have reviewed this information, consolidated it and made it publicly available.

In case of potential non-compliance, interim measures can be taken. In case of proved non-compliance corrective action and penalties will be imposed on the traders and operators.

Interim measures (Art. 23)

When potential non-compliance with this EUDR is detected, Member States can take immediate interim measures. These can include activities such as:

- Seizure of commodities or relevant products
- Suspension of the placing or making available on the market of commodities and products

Considering the full transparency and collaboration principle underlying these activities, even in case of potential non-compliance, all Member States need to immediately notify the Commission on the cause for concern as well as the implemented measure.

Corrective actions (Art. 24)

In case of confirmed non-compliance by either a trader or an operator, either a micro/SME or large corporation, for one or multiple commodities and products, corrective actions are implemented. Corrective action must be appropriate and proportionate to end non-compliance within a specific time frame.

Depending on the degree of severity and risk, Member States can order:

- Correction and rectification of any formal non-compliance, especially on current and future due diligence statements
- Prevention of sale or export of the product on the EU market
- Immediate withdrawal or recall of the product
- Donation of products to charities or public interest purposes, or disposal if nothing else is possible

Regardless of the action taken, each company shall address all shortcomings in the due diligence system, to prevent the risk of further non-compliance.

If the company fails to take corrective action within the agreed time frame, or if non-compliance persists, the application of all corrective action must be ensured by all means available under the law of the Member State concerned.

Penalties (Art.25)

Rules on and penalties for non-compliance are determined at Member State level. They must be effective, proportionate and dissuasive. These penalties include:

- Fines proportionate to the environmental damage and value of the products concerned. They will increase as infringements are repeated and must deprive operators and traders of the economic benefits derived by the infringement
    - The maximum fine will be at least 4% of the total annual Union-wide turnover in the preceding year. This can be increased to exceed the potential economic benefit gained.
- Confiscation of relevant products concerned
- Confiscation of revenues gained from transactions with relevant products concerned
- Exclusion up to 12 months from public procurement processes and access to public funding in any form
- For serious or repeated infringements:
    - Temporary prohibition from dealing any of these products in the EU market
    - Prohibition from using simplified due diligence processes

When final judgments against operators and traders have been made, Member States have 30 days to notify the Commission. The Commission will publish a list of all judgments, including the following:

- Name of legal person
- Date of final judgement
- Summary of activities which led to the infringement
- Nature, and where financial, the amount of the penalty imposed

How can operators and traders best respond?

Perceived challenges

Larger and smaller operators and traders affected by this EU Regulation have expressed their concerns regarding compliance. The main challenges currently faced by operators and traders are:

- Management of supply chain complexity around most of the commodities listed (especially palm oil, coffee and cocoa)
- Gaining direct access to the details of all smallholder farmers supplying commodities or derived products to their operations
- Controlling sourcing complexities across different stages of product processing, from additional intermediaries to processing locations
- Establishing systems for traceability and ensuring certifications for smallholder farmers, beyond existing certification schemes, in a timely manner
- Understanding the implications of national regulations and related challenges across all relevant elements of the due diligence process
- Designing approaches for compliance without clear guidance from the European Union on the full extent of the final requirements and approved reporting systems

These are reasonable concerns for compliance. However, they should be addressed as part of a more comprehensive re-take on business sustainability and market defence strategy.

Compliance approaches

Operators and traders have 18 months to decide how they wish to position themselves and their products in the European market. They are presented with the following options:

1. **Exit the market**

If the estimated cost of compliance affects returns on trade into and investments in the European Union single market, operators and traders can decide to remove products with high deforestation risk exposure from the market entirely.

This might result in an undersupply of commodities and derived products within the EU, leaving a market gap and higher prices. Compliant operators and traders will fill it, in all probability from easier to operate regions. Depending on the commodity and the overall deforestation risk, farmers and other actors in more fragile regions will lose income and consumers in Europe will face higher prices.

2. **Be compliant**

Operators and traders can achieve compliance with the EUDR by taking minimum required actions.

Operators and traders active in agricultural value chains often already have some traceability and transparency structures in place. These might have been set up for the price premium associated with product sales, and they often trace commodities back to single origination sites or producers through *Fair Trade* or *Rain Forest Alliance*.

Therefore, to be compliant, operators and traders can decide to concentrate their investments on ensuring full adaptability of their most sustainable product lines or commodities to the EUDR. This will enable them to place products on the EU market in the short term, by running compliance activities in the next 18 months.

The palm oil sector is a good example of how this transition can happen for most operators and traders.

Around 40% of global palm oil[7] is produced by smallholder farmers distributed across several producing nations, of which Indonesia and Malaysia are the leaders. The integration of smallholder farmers in formalised supply chains has challenges beyond the EUDR. Some of the barriers are the investment costs required to set up all structures, lack of consolidation points, difficulty in tracing production conditions and authentication. Commercial farms, on the other hand, have been set up to facilitate agricultural commodities supply to heavily regulated markets.

Europe is the largest consumer of Sustainable Palm Oil and this is reflected in its share of RSPO certified palm oil, which accounts for 45% of total global trade[8]. In 2019, 86% of palm oil imported to Europe was certified as sustainable[9].

To ensure compliance, operators and traders need to carefully evaluate the adequacy of existing sustainability certificates for the EUDR. If certificates do not meet all requirements, operators and traders must restructure practices for compliance and should collaborate with certification bodies to enhance analysis and assessment measures.

However, palm oil consumption in Europe decreased, especially in the food and biofuel sectors, where a 19% decline has been recorded between 2022 and 2023[10]. Therefore, palm oil importers serving the biofuel market might carefully consider the trade-off between restructuring their supply chains for compliance and shrinking market sizes.

To summarise, operators and traders have the possibility of continuing their trade in the EU market by adapting their existing supply chains. Conversion to compliance, if profitable, should start with commodities and products with the highest degree of existing control – most likely from commercial operators or already certified smallholders.

Operators and traders can keep their EU presence and, in some instances, their entire market share, with minimum proactive investments in technology and capacity building for transparency.

To achieve its deforestation goals, EU policymakers will need to work with traders and operators to minimise the extent to which trade is rerouted and rebuilt to work around the EUDR.

3. Go beyond the EUDR

Operators and traders can go one step further than EUDR compliance. They can maintain and expand their EU market share for these commodities by being ahead of the curve on environmental and human rights compliance.

In one year, the EUDR will be reviewed to potentially include "*other wooded land*" and commodities such as maize and biofuels. The US is currently debating similar deforestation laws and more commitments will be made. As regulations become more stringent, both in terms of compliance measures as well as commodities' lists and penalties, operators and traders with strong sustainability policies and commitments will be in the most defensible position.

[7] CSRWire, 2022
[8] EPOA, IDH, RSPO (2022), Sustainable Palm Oil: Europe's Business
[9] IDH Sustainable Trade, 2020
[10] Biofuel News, 2023

The soy value chain provides a useful example of how compliance beyond the EUDR is possible to build a defensible and sustainable position.

Brazil is the biggest agricultural exporter to the EU worldwide, with up to 16% of its soy production exported to the EU[11]. The Cerrado Savannah biome in Brazil, where up to half of its soy production is situated, is currently not covered by the EUDR since it is not a forest.

This biodiverse hotspot has already lost up to 46% of its original ecosystem for agricultural activities[12]. The State of Mato Grosso alone, where soy is the main commodity farmed, is responsible for the loss of 30% of all Brazilian trees in the last 20 years. Research has shown that up to 65% of the EU's soy-related deforestation as well as up to 37% of its cattle-related deforestation is happening in the Cerrado[13].

Operators active in the soy value chain can expand their efforts beyond compliance with EUDR by applying the same monitoring and sourcing requirements to this region, ahead of time. This would enable them to be immediately compliant when additional regulations are implemented, and they would not need a long transition time.

By incorporating additional environmental and human rights protection measures across sourcing operations, operators and traders can increase their trade defensibility beyond the European market. Ensuring profitability, sustainability and greater authenticity of commodities being produced and traded globally.

Operators and traders willing to push their compliance beyond EUDR will be showcasing their ambition to address global environmental challenges. This should then be reflected in their funding strategy, financing operations through the positive environmental value created.

Financial institutions and traders already have sustainability-linked principles applied to instruments like revolving credit facilities. This regulation can be seen as a lever to generate and access more capital, by matching EUDR reporting requirements to financing principles.

[11] Mongabay, 2022
[12] Rodrigues, Ariane A., Marcia N. Macedo, Divino V. Silvério, Leandro Maracahipes, Michael T. Coe, Paulo M. Brando, Julia Z. Shimbo, Raoni Rajão, Britaldo Soares-Filho, and Mercedes MC Bustamante. "Cerrado deforestation threatens regional climate and water availability for agriculture and ecosystems." Global Change Biology 28, no. 22 (2022): 6807-6822.
[13] Trase Insights "Proposed EU Regulation on Deforestation & Forest Degradation understanding the impact of excluding other ecosystems"

Conclusions and actions

The EUDR can be understood in part as an emergency and exceptional provision. It is needed because we are out of time to stop deforestation. The usual time horizons to allow the multi-round negotiating patience seen in normal trade negotiations do not exist here. However, by acting early to protect biodiversity, the EU runs against the pattern of successful interventions in international trade.

Success for the EUDR can be defined narrowly, such as achieving *some* of its deforestation goals – perhaps positive outcomes in two or three targeted commodities without negatively skewing trade patterns or affecting human rights. Wider success would be proof this approach to managing biodiversity protection through regulation can work in the interests of both trade and biodiversity. This would give a basis for extending to other commodities and adoption by the wider trade system.

The next stage of implementation is converting the European Union wide regulation into national law by Member States. A good conversion will see the Member States creating a balance between over- and under-regulation. Over-regulation will deter responsible operators and traders from engaging in difficult to deal areas. Under-regulation will water down the provisions, so they have limited or no effect in practice.

Good outcomes are most likely to happen where policymakers and operators work together to create 'flight paths', by commodity and by region, for transition to the new regulation.

Mechanisms for engagement in regions with deforestation to reduce and, ideally, reverse this biodiversity loss can be defined, designed and executed. They can be built into certification and contracting structures and processes by traders. As they take effect, they can be controlled for as commodities arrive in European markets.

While the priority for policymakers is to strike a balance, the priority for operators and traders should be to get ahead of the curve in implementation. There is a strong case for moving early. Failing to engage and waiting for regulations to take effect will make it hard to adjust supply chains, contracting structures and community relations to address such a complex issue as deforestation risk. Rapidly shoe-horning an existing structure into given regulatory frameworks will be a high-risk approach.

Taking a leading role in conversion of regulation to the national level, working with policy makers to define realistic and feasible ways to change practices in supply chain management as well as monitoring and transparency is a lower risk and higher return approach.

Time is not on the side of any entities exposed to deforestation risk. The longer they wait to act, the greater will be the cost to control and recover. Deforestation is also only the start. Since the approach is highly likely to expand to encompass all types of ecosystems, working out approaches against deforestation in response to the EUDR is a long-term investment.

Since conversion of the EUDR depends on detailed engagement with each step of the supply chain and understanding what is possible at what pace, the following is a build-up of recommended steps for operators, traders and, indirectly, policymakers to reach different outcomes.

The right approach will differ by commodity but combinations of these steps will ensure traders can continue to operate within the European Union, and both the EU and Members States will increase the probability that deforestation policy goals will be reached.

To comply with the EUDR:

1. Run supply chain analysis to assess exposure to deforestation risk based on commodities, ecosystems and producing regions.
2. Identify and quantify risk exposure by commodity and country, by reviewing assessments on existing certifications.
3. Where gaps exist, run risk assessments on deforestation-linked due diligence elements, both environmental and human rights.
4. Determine the best form of certification to meet the requirements of the EUDR.
5. Collaborate with traders, intermediaries and relevant local players to obtain all baseline data information and structure monitoring and evaluation.
6. Identify and quantify the untraceable percentage of commodities across countries.
7. Develop risk mitigation measures to address all risk points across the supply chain.
8. Identify the most suitable process and technology solutions to collect and monitor data for EUDR due diligence processes.
9. Monitor and assess progress on all land plots with satellite images via advance territorial comparison software (where this makes sense; satellite solutions are not always suitable).
10. Collaborate with farmers' groups, associations or co-operatives.
11. Develop structures around aggregation and buying centres to increase farmers' loyalty linked to reducing deforestation as well as monitoring activities and capacity building.

To move beyond EUDR:

12. Re-structure supply chains to reduce untraceable percentages of target commodities as far as possible.
13. Determine market dependants downstream to assess potential for cost-sharing.
14. Re-work pricing structures of farmers to compensate for the opportunity cost of deforestation.
15. Assess value chain restructuring opportunities to increase local value processing, improve transparency and farmers' loyalty.
16. Incorporate socio-economic interventions (e.g., access to healthcare services) to facilitate farmers' involvement across deforestation reduction programmes.
17. Develop localised processing units to facilitate supply chain control and sourcing transparency.
18. Incorporate human rights protection laws and considerations across the supply chain.
19. Structure access to finance and favourable terms to drive positive environmental outcomes, tied to EUDR due diligence process criteria.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