



**Regulation on the making  
available of certain commodities  
and products associated  
with deforestation and forest  
degradation**

COM(2021) 706

# Executive summary

AK welcomes the proposed regulation on deforestation-free products. In the opinion of AK, the following improvements are necessary:

- Compliance with **internationally recognised human and labour rights** should be included in Article 3. The Regulation should be supplemented by **civil liability for damage** caused by a failure to comply with their due diligence.
- There is a need to **expand the six listed commodities and their products**. To comprehensively address the problem of deforestation, additional raw materials such as rubber, corn, as well as products such as tinned beef, must be included.
- **Important ecosystems** such as savannahs and wetlands are **not covered** by the proposal. Natural areas which are serving as important CO<sub>2</sub> sinks, are worthy of protection and should be included as well.
- The **cut-off date 31 December 2020** specified for whether a product is classified as “deforestation-free” is **too late**. All products grown on land that was deforested and associated with human rights and environmental violations prior to this cut-off date are thus classified as deforestation-free.
- **SME traders** are exempt from due diligence requirements. AK rejects this distinction. Instead, **appropriate and proportionate due diligence obligations** should apply to all operators and traders. In addition, the **financial sector** should be **included**.
- **More detail** is needed on what is meant by “**adequate and verifiable information**” which market participants must collect in order to prove that commodities have been produced in a deforestation-free and legal manner. With **consumer information** - as is already to be found with the “egg databank” or the depiction of fishing areas on packaging - trust and reliability must be ensured.
- Article 12, which generally exempts the **obligation to assess and mitigate risk** for countries classified as low risk, should be deleted.
- **The minimum standards** for controls by national authorities such as minimum control levels, controls in case of third-party concerns, and controls without prior notice, are **welcomed**.
- The introduction of **minimum sanctions** are to be welcomed, but further **harmonisation** is needed to prevent distortions of competition within the European Union.
- The procedures provided for customs authorities as well as the rules for **effective cooperation among the competent authorities** on national and EU-level are **explicitly welcomed**.
- **Many open questions** arise with regard to the **benchmarking system**, which allows countries to be classified into three risk categories. The exact procedures for classification are still completely unclear, but reclassification of a country would have a significant impact.
- The new **minimum requirements** concerning **substantiated concerns** of natural or legal persons, which provide for a reasoned decision in case of rejection, as well as access to justice, are welcomed.
- The Commission should only be able to undertake an **addition**, but not an amendment, to the **products** covered under Annex I.
- **Consistency** in the regulation of **due diligence and reporting requirements** is crucial. Reference is made to other regulations, some of which are currently under negotiation ([CSRD](#), [SCG](#)).
- AK calls for **coherence**, especially with **EU trade policy**. Deforestation and human rights are part of the sustainability chapters of e.g., the **EU-Mercosur agreement** but are excluded from the general dispute settlement mechanism. This exception is opposed to the goal of ensuring a level playing field for market participants.

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# AK's position

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The Austrian Federal Chamber of Labour (AK) advocated binding due diligence obligations for companies along their supply chains for a long time. While a cross-sectoral horizontal directive proposal has been presented on 23 February 2022, the [Regulation on deforestation-free products](#) proposed on 17 November 2021 focuses on a product-related approach. This is intended to ensure that the products listed may only be imported into or exported from the EU if they have been produced legally and without contributing to global deforestation. The proposal is intended to replace the Timber Regulation (Regulation (EU) No 995/2010).

This Commission's proposal requiring companies to comply with due diligence obligations and thus setting itself the goal of mitigating the European Union's contribution to global deforestation and forest degradation and the associated loss of biodiversity and exacerbation of climate change is welcomed. At the same time **fundamental reforms** are needed to prevent these developments: The European Commission identifies the expansion of agricultural land to produce commodities such as palm oil and soy as the main cause of the deforestation problem. In light of a steadily growing global population and the strong increase in meat consumption worldwide, the question arises what consequences need to be drawn in the context of the socio-ecological crisis.

Nevertheless, the present proposal represents a **meaningful step** towards better protection of the climate and the environment worldwide. It is now up to the European Parliament and the Member States to ensure that the substantive provisions of the proposal are preserved and strengthened to meet citizens expectations.

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## Human and labour rights covered insufficiently

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AK does not share the view of the European Commission that the coverage of human and labour rights is adequately covered by the legality requirement in Article 3 lit b. The article stipulates that relevant raw materials and products may only be imported or exported if they have been "produced

in accordance with the relevant legislation of the country of production." According to the European Commission's statement, this entails that "labour, environmental and human rights laws applicable in the country of production (both national and international) will need to be taken into account when assessing the compliance of products with this initiative." The main justification is that the regulation is complemented by the Corporate Sustainability Due Diligence Directive, which addresses i.e. negative impacts on human rights.

In this context, it should be highlighted that deforestation and forest degradation are directly associated with [serious violations of human and labour rights](#). Particularly indigenous people and local communities are affected by deforestation. Forests provide livelihoods for 1.6 billion people, 70 million are indigenous. Conflicts over land use and resources are a main driver for violence against indigenous people. In 2020, 227 environmental activists were murdered worldwide for fighting illegal land grabbing. Therefore, the European Parliament clearly advocated in its [Resolution of 22.10.2020](#) that human and labour rights must be covered by any future proposal on deforestation. Hence, article 3 should be expanded to include the requirement to explicitly respect **all internationally recognised human and labour rights** (In particular, the ILO Core Labour Standards, UNDROP, UNDRIP, ILO Convention No. 169 on the Protection of the Rights of Indigenous Peoples and the FAO Guideline on the Responsible Governance of Tenure of Land, Fisheries and Forests, as well as the Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises).

On the other hand, legality requirement would imply that there would be no minimum human rights standards to comply with resulting in a patchwork of national regulations. This in turn would lead to legal uncertainty and distorted competitive conditions for operators and traders. With regard to the Corporate Sustainability Due Diligence Directive, it should be added that attention must be paid to a coherent framework for due diligence obligations. It must be ensured that higher standards of protection are applied in each case.

The demand for **civil liability for damages** is central. It intends to ensure that victims of injuries are compensated, if there was no compliance to due diligence.

### **Article 1 in conjunction with 32 line 3: material scope of application**

The six listed product groups, namely cattle, wood, palm oil, soy, coffee, and cocoa, account for most of the deforestation for conversion to agricultural land. However, it is incomprehensible why products such as corn and rubber were not included, even though the Commission concludes in its [Impact Assessment](#) that imported deforestation is also driven by these products. In the interests of an effective approach further products should be included. The products fixed in Annex I are incomplete as well. The current draft covers cattle and chilled beef, whilst tinned beef or soy-fed poultry are missing.

Article 32 line 3 allows the Commission to “amend or extend” the list of covered products. Here, a clarification should be made that the Commission is only allowed to add to, but not delete products from the list.

### **Article 2 line 8 in conjunction with Art 32 line 1: Definition of “deforestation-free” and natural areas covered**

According to Article 3 lit a, products must have been produced “deforestation-free”. Article 2 line 8 provides the definition for when a product is to be classified as “deforestation-free” again. It should be highlighted that it is about production on land that has not been deforested “after 31.12.2020”, which is set far too late. It is widely known that in recent years [\(illegal\) deforestation has occurred on gigantic scale](#), e.g. in Brazil. Hence, the cut-off date chosen by the Commission has the effect of automatically considering all deforestation activities “deforestation-free” until 31.12.2020. De facto, this is a cure for unlawful conditions. It is therefore preferable to use the cut-off date of 31.12.2015, which was the date that the European Parliament [proposed](#).

According to Article 32 line 1, the Commission shall evaluate within two years after the entry into force whether the scope of the Regulation should be extended to other ecosystems. This possible expansion comes too late: Ecosystems such as savannahs and wetlands must be covered by the proposal from the effective date. They represent important CO<sub>2</sub> sinks, and there is concern that land-grabbing pressures for agricultural use will shift from forests to other ecosystems.

### **Article 4 and 6: Appropriate and proportionate due diligence obligations for all operators and traders**

The proposal differentiates between “operators”, who import or export products on the internal market, and “traders”, who provide products on the market. Furthermore, different obligations are foreseen depending on the size (SMEs and large companies) of the trader or operators. Although the Commission’s consideration to differentiate according to influence and company size is understandable, the form of implementation is to be rejected. As a result, SME traders would be exempt from the due diligence process under Article 8 et seq. This contradicts the [UN Guiding Principles on Business and Human Rights](#). In accordance with these Guiding Principles (Principle 14), all companies, regardless of their size, have a responsibility to respect human rights. However, the policies and procedures for meeting these obligations must be commensurate with the size (Guiding Principle 15). Therefore, AK demands appropriate and proportionate due diligence obligations for both traders and operators.

The financial sector is not covered by the present proposal. However, it should be highlighted that the financial sector has [significant role in the deforestation problem](#). The Commission’s reference to the future Corporate Sustainability Reporting Directive (CSRD) and the EU Taxonomy Regulation are misguided: These do not provide for their own due diligence rules (“duty to do”).

### **Article 9: Implementation of due diligence obligations**

Article 9 requires operators and large traders to collect information proving that a product has been produced “deforestation-free” and “in accordance with the relevant legislation of the country of production”. Subparagraphs (g) and (h) state that “adequate and verifiable information” must be provided on this “including any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity.” With regards to the criterion of freedom from deforestation, reference is made at least to the use of geodata. However, it stays unclear concerning the legality criterion what is to be subsumed under the term “relevant legislation of the country of production”.

### **The Commission’s benchmarking system and its legal implications**

Article 27 of the Regulation introduces a benchmarking system that classifies countries into three risk classes, namely low, normal, and high risk. Initially, all countries are to be classified as normal risk

countries by default. Upgrading or downgrading has legal consequences: If a country is classified as a high-risk country, the national control authorities shall increase the minimum control density from 5% of the respective products to 15% of the respective products. This form of consideration in the sense of a risk-based approach is expressly welcomed. Conversely, if a country is classified as a low-risk country, this will result in a simplified due diligence process under Article 12: Accordingly, companies are no longer required to undertake risk assessment and mitigation measures under Article 10 with respect to these countries, but only to collect and retain information. Only if the market participant obtains information that products may have been manufactured contrary to the provisions of the Regulation, this exception does not apply.

A simplified duty of care is rejected by AK: It is fundamentally contrary to the UN Guiding Principles to exclude entire pillars of the multi-stage due diligence process, namely risk analysis and risk mitigation. Even within the European Union, illegal logging has taken place in Poland and Romania, for example - countries that might be classified as "low risk." It is therefore essential to have a minimum level of due diligence and controls, even for "low" risk countries.

Many unanswered questions exist regarding the specific process for classifying countries as low, normal, or high risk. In any case, a categorisation of the countries should already be determined when the regulation enters into force and is published by the EU. This could be accomplished via an annex to the regulation.

### Control and sanction mechanisms

As stated in the [Fitness Check on the Timber Regulation](#), the monitoring organisations provided for in Article 8 of the Timber Regulation to control the due diligence obligations have not performed as expected. Instead of tightening up the control system of the Timber Regulation - which is only based on voluntarily - the idea of monitoring organisations has now been dropped completely with the new proposal. This is regrettable, as there are areas - such as **organic products** or **medical devices** - where a functioning, **credible certification and control system** have been established.

The national competent authorities are responsible for controls in accordance with Article 14. As regards obligations to perform checks and sanctions, it is to be welcomed that building on the experience of the Timber Regulation, more detailed minimum standards are to be laid down. According to Article 14 line 9, at least 5% of the market participants and 5% of the

quantity of each relevant product shall be checked. Robust enforcement mechanisms and a tight control network are crucial to effective regulation. The minimum controls should not be limited to operators but should also cover traders and the financial sector. The introduction of inspections without prior notice is welcomed, as well as the more detailed specifications for inspections based on justified concerns compared to the Timber Regulation, including access to justice according to Articles 29 and 30.

With regards to the sanctions set out in Article 23, it should also be noted that the introduction of minimum sanctions is explicitly to be welcomed. Nevertheless, further harmonisation is needed to prevent distortions of competition and circumventions.

### Measures for cooperation between authorities at home and abroad and within the institutions of the European Union

The detailed provisions on effective cooperation between the authorities concerned are expressly welcomed, as well as the cooperation with foreign customs authorities and the European Union authorities responsible for setting up the common IT registry.

### Consistency with other EU regulations providing for reporting and due diligence requirements

The European Commission and European legislators are currently working on various regulations that provide for reporting and due diligence requirements or are trying to influence them through sustainability requirements. Examples include the [Corporate Sustainability Due Diligence Directive](#), the [Corporate Sustainability Reporting Directive](#) which are currently under negotiation, the [Sustainable Finance Disclosure Regulation](#), and the [Taxonomy Regulation](#) (Article 18). Here, it will be necessary to scrutinise exactly how these sets of rules interlock, work in the event of a clash and complement one another.

### Regarding European trade policy and WTO Law

To achieve the objectives of the Regulation, which are to minimise the contribution to deforestation and forest degradation and biodiversity loss, a coherent European Union policy is needed at all levels. The role of free trade agreements such as the EU-MERCOSUR agreement should be highlighted in this regard. The provisions of the sustainability chapter must be systematically subjected to robust enforcement mechanisms. Otherwise, the goal of avoiding social

and ecological dumping and thus distortions of competition cannot be achieved.

Recital 18 addresses the Union's role in promoting "a universal, rule-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the WTO, as well as an open, sustainable, and assertive trade policy." It should be emphasized that the EU must ensure that international trade rules support and do not hinder socially and environmentally sustainable development. The WTO's liberalisation agenda to date has also contributed to social and environmental cleavages worldwide, as well as a race to the bottom in terms of standards. In order to remain credible, it is paramount for the EU to advocate at WTO level that the WTO aligns itself with the needs of the climate crisis and a just transition as well as with the goal of achieving decent working conditions. This involves anchoring workers' rights as a social clause in the WTO treaties as well as including the ILO's core labour standards in the list of general exceptions to Art XX GATT.



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## About us

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The Austrian Federal Chamber of Labour (AK) represents by law the interests of about 3.8 million employees and consumers in Austria. It acts on behalf of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore, the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the AK EUROPA Office established in 1991 in Brussels are the representation of AK towards the European Institutions and interest groups. Other objectives are the monitoring of EU policies and transferring relevant information from Brussels to Austria, as well as to lobbying the expertise developed in Austria and positions of the Austrian Federal Chamber of Labour in Brussels.