

Traceability and Regulation November 2024

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European Union Deforestation Regulation Update

The behaviour of the Commission and the politicians in Europe in connection to the European Union Deforestation Regulation (EUDR) is generating a lot of confusion, anxiety and frustration. Companies who have invested heavily in time and resources to be ready on time feel cheated while the laggards who did not bother to prepare are laughing. NGOs are furious and will work ceaselessly to protect the intended outcome of the regulation. The right-wing move in EU politics has brought a conservative element determined to, so-called, protect business rather than the environment. The EU Commission appears to be rudderless, making promises and then breaking them in the eyes of both the supporters of EUDR and in the eyes of the detractors.

On 2nd October, the European Commission proposed an amendment to the regulation to delay the application by 12 months from 30th December 2024 to 30th December 2025. By opening up the regulation to amendments, they immediately risked other amendments being tabled particularly from parties with bad intent. We were assured by Von Der Leyen (President of the European Commission) that she had an agreement with all parties within the Parliament that no other amendments would be tabled and that if any were tabled then the Commission would withdraw its proposal for a 12-month delay.

On 6th November, the EPP (Von Der Leyen's own party) tabled a series of amendments related to four topics. The removal of "traders" from scope, establishing a fourth category of zero risk in the benchmarking process, establishing partnership with an obligation to engage with entities like WTO and a 24-month delay. The expectation was that the Commission would then immediately retract their proposed 12-month delay amendment as they had pledged to do when confronted with the risk of what the EPP actually did.

No retraction was forthcoming; therefore all the proposed amendments went forward for voting in the European Parliament on the 14th of November. Frantic lobbying and negotiations started with NGOs, bureaucrats, and corporates (particularly cocoa and chocolate companies) urging for the EUDR's spirit and intent to be protected. At the last minute on the morning of 14th November, the EPP withdrew the amendments related to taking traders out of scope and the 24-month delay leaving the zero-risk countries category and partnership engagement amendments to be voted on. Later that same day the Parliament voted to adopt the 12-month delay and the zero-risk country category and rejected the partnership amendment.

By accepting an additional amendment that had not previously been voted on and accepted by the EU Council (on 16th October), the Parliament triggered the requirement for the additional amendment to have to go to trilogue negotiation with time rapidly running out. The Council and Commission, having made clear that they would not accept any amendment other than a 12-month delay, would be very unlikely to accept EPP's amendment which, in itself, would be highly unlikely to get through any WTO scrutiny.

Sure enough, on 20th November the Council voted and 24 out of 27 states voted against the amendment. Even then the EPP has refused to back down. So, the direction was set for continued uncertainty right up to the last minute. The timing remains tight, with approval targeted for 16th to 19th December by the European Parliament and 20th December by the Council.

The Council will now communicate its position to the European Parliament, paving the way for trilogue negotiations starting 21st November. The aim is to formally adopt the regulation and publish it in the Official Journal by the end of the year to ensure its timely entry into force.

Where are we now and what happens next?

The initial proposal for a delay was based on a good understanding of the need for some participants to have more time to be ready for the regulation. Though very frustrating and financially punitive to companies that had got ready, the decision to propose a delay was understandable. It has been suggested that the National Competent Authorities (NCAs) in many member states need more time. The late publication of Guidelines and FAQs has given rise to concerns about the interpretation of the various elements of the regulation. The country benchmarking is yet to be completed causing irritation in member states that consider themselves to be "low" risk having to do more work in the due diligence steps. The EU information system has been criticised for not being ready.

The problem now is that the EPP's intervention has created a completely unpredictable outcome.

The potential outcomes are as follows:

- A. If EPP insists on pursuing the additional zero-risk category amendment through the bureaucratic process to the bitter end, then it will likely run out of time and the regulation will enter into application on 30th December 2024. There will likely be an unofficial "soft" approach by the NCAs but even so, any relevant commodity being placed on the EU market will have to have a due diligence statement issued which will require the operator to at least have traceability to farm plot even if they choose to gamble and not carry out the required due diligence under the regulation.
- B. If EPP withdraws their amendment this would enable the Commission's pre-agreed 12-month delay amendment to go swiftly through the bureaucratic steps on time for publication in the official journal, so it would enter into force in time to push back the entry into application to 30th December 2025.

As of today (21st November), the next few weeks are going to be like watching an EUDR soap opera. My feeling is that the safest course would be to make sure that you are ready by 30th December 2024.