

Traceability and Regulation January 2025

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European Union Deforestation Regulation Update: What was the final outcome?

As reported in the previous article, the European Union Deforestation Regulation (EUDR) was set for a challenging run-up to the end of the year. In early October, the Commission opened up the regulation for amendments by proposing a 12-month delay, which was accepted by the Council by mid-October. There were concerns that by opening up the regulation there would be a risk that other amendments would be tabled at Parliament level. The Commission gave reassurance that if any other amendments were proposed they would withdraw their proposal for delay and slam the door on any attempts to deliberately disrupt the process.

In early November, the European People's Party (EPP), the largest party in the ruling coalition of the European Parliament and the party of President Von der Leyen, tabled additional amendments. These included a 24-month delay rather than 12, engagement with the World Trade Organisation (WTO) and the creation of zero-risk-rated producing countries. These additional disruptive proposals shifted the spotlight to the Commission, with widespread expectations that it would honour its promise to withdraw its proposed 12-month delay and close the whole process. However, in an unsurprising turn of events, the Commission reneged on its promise.

Therefore, the plenary session in Parliament on 14th November 2024 had to vote on all the proposed amendments. They supported the 12-month delay, and the zero-risk-rated countries but rejected all the others.

The original 12-month delay amendment had already been agreed upon by the Council, therefore it could have been fast-tracked through the process. However, the additional zero-risk country amendment has now triggered the need for trilogue negotiations between the Commission, the Council and Parliament. The Council stated that they would not agree to any zero-risk-rated country wording that would look like the EU Member states feathering their nests and excluding themselves from the regulation by rating themselves zero-risk whilst requiring other producing countries to abide by all the requirements of EUDR.

A standoff followed between EPP negotiators, the Commission and the Council, with no agreement reached as negotiations continued and time running out, risking the entry into application defaulting to 30th December 2024. Just hours before a plenary vote in Parliament on 17th December, the EPP agreed to withdraw their zero-risk country amendment in exchange for non-binding commitments from the Commission.

Outcome

As part of the agreement to withdraw the zero-risk-rated country amendment, the Commission committed to easing the bureaucratic burden on businesses. However, this commitment is non-binding and not included in the wording of the regulation. This process can only happen at the point of review in 2028, following an impact assessment of producing countries implementing the regulation with simplification of requirements proposed for countries with positive outcomes, though these too are non-binding.

The Commission also committed to prioritising the operation of the information system and the benchmarking of producing countries, with a non-binding commitment to complete this task at least six months before entry into application.

Finally, after much debate, the delay was published in the Official Journal on 23rd December with the amendment invoking a 12-month delay entering into force on 26th December. The regulation therefore will enter into application on 30th December 2025.

Interpretation Differences

There have been different interpretations of the criteria of the regulation between the Commission and the National Competent Authorities (NCA) as well as between the NCAs themselves. This situation highlights the potential confusion that will occur when the regulation is in application.

A couple of examples are:

Firstly, Granularities of Traceability. The guidelines and FAQs generated by the Commission imply that declaration in excess (declaring greater than the actual number of farm plots that contributed to a specific parcel) is only acceptable if the granularity to farm plot level is not viable in a particular supply chain.

The Belgian NCA has stated that they will require traceability to farm plot level and will not accept declaration in excess at aggregator level whereas the Dutch NCA has stated that they will only require traceability to aggregator level and will accept declaration in excess thereafter.

Secondly, is Child Labour in scope? The Commission stated that they did not believe child labour was in scope in alignment with how the ECA interpreted the regulation. This position was immediately contradicted by the Dutch and Belgian NCAs stating that as far as they were concerned Child Labour is in scope and that they will be requiring conclusive and verifiable evidence of due diligence to establish no or negligible risk of child labour. Based on the wording of the regulation, I believe it is clear that child labour is indeed within its scope.

The interesting outcome from all these differences in interpretation is an observation made by one of the NCAs. In the end, when the regulation enters into application, the whip hand will be with the NCAs and judiciary of the individual member states of the European Union, not in the hands of the Commission.

What next?

As a friend recently remarked about the 12-month delay, it's like when your teacher at school announces that your exam has been postponed for a few months. Instead of making effective use of the extra time, many students still end up cramming at the last minute.

Will that be the case with EUDR? I think it probably will. The doubters still think that there will be a reprieve and that the EUDR will be cancelled, while the believers are ready anyway and are annoyed that the regulation has been delayed after having spent so much time, effort, and money being ready for 30th December 2024.

The EUDR will now enter into application on 30th December 2025 and there will be no further amendment or delay until mid-2028, which is the date specifically identified within the regulation as the first point when the regulation can be assessed.

It is an opportunity for the sectors to be ready but at the same time, it will also likely mean that there will be a hard start with no unofficial leniency in application of the regulation. In the end, the laggards may regret the delay because the NCAs will be fully ready, and the NGOs will have an extra 12 months to sharpen their armoury.

The NGO community have put a lot of resources and effort into trying to preserve the spirit and intent of the regulation and is not entirely happy with the delay. They fully intend to realign their resources to use the next 12 months to establish substantiated claims that will be landing on the NCA's desks on 31st December 2025 followed up by demands for action.

The NCAs have geared up but would admit that they were going to struggle if the application date was on 30th December 2024. They stated that even if an operator was inspected and non-compliance was found, a warning would be issued rather than a fine, partly because of their own requirement to "learn on the job". That will no longer be the case.

Conclusion

I don't imagine that the EU Commission will consider the last two years in relation to EUDR as their proudest moment. They have come across as not being able to fulfil the tasks that they set themselves in the wording of the regulation and have repeatedly made "commitments" that they have not stood by.

That being said, we are where we are and now, we know that the EUDR will enter into application on 30th December 2025 and will not be amended until mid-2028. Therefore, any participant in the seven commodities that are in scope needs to be prepared. There will be a lot of confusion because of the differences in interpretation but in the end, the only one that matters for you, as an operator, is that of your country's NCA.