

Traceability and Regulation February 2025

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What is going to happen to regulation impacting cocoa in 2025?

The world of politics has generally moved towards the right everywhere across Europe apart from the UK, and with Trump in the White House, the mood is swinging away from sustainability. This is an interesting scenario because it goes without saying that the NGO community is not going to sit by and let the politicians wreck their agenda.

We therefore have an environment where it is difficult to predict the outcome.

EU Deforestation Regulation (EUDR)

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

It is an opportunity for 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 National Competent Authorities (NCAs) will be fully ready, and the NGOs will have an additional 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 they are not entirely happy with the delay. They fully intend to realign their resources over the next 12 months to establish substantiated claims that will be landing on the NCAs' desks on 31st December 2025, followed up by demands for action.

The NCAs have geared up but admitted 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.

NCA and NGO approach

There was an interesting presentation at Chocoa, organised by Meridia, where the Netherlands NCA (NVWA) presented alongside Aid Environment (<https://aidenvironment.org/>) and Trase (<https://trase.earth/explore/commodity/cocoa>), two NGOs with the responsibility to generate the required evidence to establish substantiated claims for the activist NGOs to pick up.

The clear message was that the NCA would be predominantly looking at a risk-based approach working very closely with the NGOs, particularly using the data made available by Aid Environment and Trase. They will react to substantiated claims within the six-week required timeframe and select other supply chains based on data received from their NGO partners.

Corporate Sustainability Due Diligence Directive (CSDDD) Omnibus

The CSDDD is an EU legislative initiative aimed at holding large companies accountable for environmental and human rights impacts across their value chains. The term "omnibus" in this context refers to the consolidation of different legislations, that have a broad and comprehensive approach to implementing the directive or consolidating multiple directives and legislation, into a single legislative package to ease the reporting burden.

The objectives of the Omnibus package are widely expected to be to simplify sustainability-related reporting obligations and align existing sustainability requirements under the Corporate Sustainability Reporting Directive (CSRD), CSDDD, and the EU Taxonomy. Other EU legislation, such as the EU Carbon Border Adjustment Mechanism (CBAM), could also be included. It is not clear whether this will be a formal legislative proposal, or merely a 'roadmap' with a legislative proposal to follow later. While the precise details are unknown at this stage, recent communications from the Commission give some indication as to the direction of travel.

Any proposed amendments would have to come in the form of a formal legislative proposal to amend the directives in question. This will start the 'ordinary legislative process', in which the European Parliament and Council, as co-legislators, hammer out a deal based on the Commission's proposal, which may involve substantive amendments to the directives. The EU's legislative process is complex, and the pieces of legislation at issue were adopted after especially long and difficult negotiations. Thus, whatever the content of the Commission's proposal, there is considerable uncertainty as to the content of the legislation that might emerge from the process and the timing of that.

Key Aspects of the CSDDD:

1. Scope:
 - Applies to large EU and non-EU companies operating in the EU.
 - Targets companies with at least 500 employees and a €150 million turnover (lower thresholds for high-risk sectors).
2. Due Diligence Requirements:
 - Companies must identify, prevent, mitigate, and account for human rights and environmental risks in their operations and supply chains.
3. Liability and Enforcement:
 - Companies can face civil liability if they fail to comply.
 - National authorities will oversee enforcement.
4. Link to ESG and Sustainability Goals:
 - Aligns with the European Green Deal and UN Guiding Principles on Business and Human Rights.

Conclusion

The regulatory landscape is very unclear at the moment, and 2025 is shaping up to be a continuation of the drama that is EU politics.

The EUDR will definitely enter into application on 30th December 2025, come what may, while the CSDDD will undoubtedly be amended and played around with, though to what end we will have to wait and see.