EU Regulation on deforestation-free products: What comes next for importers / exporters of agricultural commodities?

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On 19 April, the European Parliament approved the Regulation on deforestation-free products, which prohibits the placement of a number of agricultural and livestock products originating from deforested or degraded forest areas on the EU market (text will be available here). The Regulation aims to block imports associated with deforestation, particularly cattle (whether live, meat or leather), cocoa, coffee, palm oil, soy, timber and rubber (read our briefing from November 2021).

After well over a year of discussions since the proposal was introduced by the European Commission on 17 November 2021, the text now adopted by Parliament goes beyond the original proposal by including additional products, namely rubber and related products (e.g. tires), charcoal, printed paper products, and several palm oil products, which affect mostly the cosmetics industry. The Parliament also ensured a broader definition of what constitutes "degraded forest land", which now includes areas where primary (or naturally regenerating) forests have been converted into planted forests or other wooded land.

During the legislative procedure, the Parliament approved several amendments aiming to further broaden the scope of the Regulation as to affected products and protected natural ecosystems, with emphasis on (i) inclusion of other commodities such as maize, pork and poultry, (ii) inclusion of wooded land besides forests among the protected areas, such as Savannah and Brazilian Cerrado, (iii) inclusion of specific due diligence responsibilities for financial institutions, (iii) shifting one year back the cut-off date serving as basis for the evaluation of whether the relevant area has been subject to deforestation or forest degradation (from 12/31/2020 to 12/31/2019).

The middle ground to reach a consensus between the European Council, the European Commission and the European Parliament was obtained by including a specific provision that the European Commission would review, based on technical evidence, the need to extend the scope of the Regulation in the terms proposed by Parliament in its first reading. The timeframe and scope of this review is found in the Regulation itself, namely:

(i) wooded lands other than forests, in one year;

(ii) other land with high carbon stocks and with a high biodiversity value such as grasslands, peatlands and wetlands, in two years;

(iii) other commodities and related products, including maize, in two years;

(iv) obligations for financial institutions to prevent financial flows that contribute to deforestation or forest degradation, in two years.

The Regulation still needs endorsement by the European Council which is expected any day now. The Regulation will effectively be implemented 18 months after it comes into force. During this period, the European Commission will adopt implementing acts enabling member states and their respective customs authorities to apply the Regulation, and also initiate country risk benchmarking procedures.

The risk associated with each country or parts thereof will be a crucial criterion in the design of compliance system by operators and audits by customs authorities in a manner consistent with the obligations imposed by the Regulation. Operators will have to sign due diligence statements for each imported product and will be held liable for their statements The higher the risk assigned to a given country or parts thereof, the greater the annual checks of the cargo entering the market (low: 1%; high: 9%). Consequently, national authorities will require a higher standard of evidence which translates into more strict requirements as to the importers' due diligence systems in place.

Non-compliance with the prohibitions set by the Regulation may result in the following penalties: (i) confiscation of the relevant products, (ii) confiscation of revenues obtained from the transaction, (iii) prohibition of commercial activities on the EU market and (iv) fines up to 4% of the revenue obtained by the operator on the EU market.

The new rules, which are part of the European Green Deal – the EU's ambitious plan to address climate change – will greatly impact producing countries and European importers of agricultural commodities. They will have to adopt consistent mechanisms to monitor the entire supply chain (both indirect and indirect suppliers) in order to avoid having their products banned at the borders of the EU market. With the ban expected to effectively apply as of December 2024, stakeholders will have a year and a half to adapt their production and distribution systems in order to comply to this new legal framework. What seems a challenge – taking into account the complexity of ensuring traceability of the entire supply chain – can also become an opportunity. Suppliers implementing robust due diligence systems will be able to provide the comfort needed by European dealers to avoid liability. Since the switching costs under this scenario tend to be higher, there is an opportunity for compliant suppliers to build more stable commercial relationships with importers in the EU. Also, for EU importers this will grant a higher level of comfort that the imported products not only have no links to deforestation, but that important legislation related to human-rights are also being respected within its supply chain, the latter being an ever-growing demand from consumers.

BLOMSTEIN and its ESG team will continue to closely follow developments related to the EU Regulation on deforestation-free products. We are at your disposal at any time to answer questions on the practical implementation as well as on the scope of application of these measures. Please do not hesitate to contact Anna Huttenlauch, Roland Stein, Bruno Galvão, Jasmin Mayerl or Carolina Vidal.