

Position

# EU Regulation on Deforestation-free Products

Making a contribution against deforestation  
with a practice-oriented implementation



## Background

Regulation (EU) 2023/1115 – EU Deforestation Regulation (EUDR) – of 31 May 2023 aims to minimise the European contribution to global deforestation and forest degradation and introduces corporate due diligence obligations for trade in soya, oil palms, cattle, coffee, cocoa, rubber and wood as well as products made from them in accordance with Annex I of the regulation. The relevant commodities and products listed there may only be placed or made available on the market or exported if they are deforestation-free, not linked to forest degradation and fulfil certain legality requirements.

The German automotive industry is committed to the objective of combating deforestation and forest degradation set out in the regulation to counteract global warming and the loss of biodiversity. In order to enable a practice-oriented implementation of the EUDR that reduces avoidable bureaucracy and brings about actual improvements in line with the regulation, the automotive industry believes that numerous clarifications are needed on the application of the regulation as well as improvements to the regulation itself.

## Overarching issues

First, it is important to emphasise the challenges that the obligations set out in the regulation constitute for our industry, while at the same time the provision of documents and information essential for implementation is still pending.

On the one hand, the EU information system, which supports market participants and the competent authorities in submitting and accessing the necessary information on the relevant products placed on the market, is not technically well-engineered enough in its current form to fulfil its purpose. A go-live of the portal shortly before Christmas and thus only two weeks before the regular start of the due diligence obligations is not sufficient and not realistic, especially for downstream companies: Since the system is based on the upstream chain and the upstream companies must first enter their data into the information system in order to obtain a reference number, the companies at the end of the supply chain will probably have to wait longer than the end of 2024 for the required reference numbers from their upstream companies.

At the same time, the publication of the guidance document announced by the Commission, which is intended to provide practical guidance on the application of the regulation, is still pending. The same applies to the country benchmarking provided for in the regulation, which assigns risk categories to EU Member States and third countries and is to be published as an implementing act. In case this publication is not made sufficiently in advance of the due diligence obligations' start of application, there is a risk of all countries being categorised as standard risk, meaning that companies will face considerable additional bureaucratic burden without deforestation actually being restricted in countries with an already low deforestation risk such as Germany.

## Need for clarification in the implementation period

In the regulation's current implementation period, there is also a need for clarification in numerous areas with regard to the specific application of the regulation in order to enable companies to implement it with legal certainty. This concerns, among other things, the aspects listed below:

- In its current form, the regulation's provisions particularly with regard to **rubber** are problematic from the perspective of the automotive industry. According to the regulation, the point of reference for the relevant products are the HS codes, which do not allow for a distinction to be made between natural and synthetic rubber. As a result, products made from synthetic rubber, which by their very nature cannot have caused deforestation, could also be detained by customs authorities during the import process. This cannot be in accord with the legislator's pursued purpose. The Federal Office for Agriculture and Food (BLE), as the competent national authority in Germany, has made it clear to the German Association of the Automotive Industry that synthetic rubber is not covered by the scope of the regulation. However, it should also be clarified that no special proof is required in the customs procedure that the products do not contain relevant commodities in the case of relevant HS codes.
- The regulation stipulates exemptions from the due diligence obligations for **wood that is used exclusively as packaging material** (e.g. wooden pallets). However, the Commission has not yet clarified whether this exemption also applies if these materials are transferred between different legal entities (e.g. subsidiaries within a group) or returned to the manufacturer after use. This cannot be in line with the pursued purpose of the regulation, as the required due diligence labelling would make multi-way use more difficult. Clarification is needed here to ensure that reused packaging materials are completely excluded from the regulation's scope.
- The BLE is of the opinion that if a relevant product according to Annex I contains **several relevant commodities**, all of these commodities fall under the EUDR's due diligence obligations (for instance, a vehicle seat made of wood or with a wooden back panel that also contains leather). This interpretation entails considerable additional bureaucratic burden for companies. From the perspective of the automotive industry, it should instead be ensured for reasons of manageability that only the commodity under which the relevant product is listed in Annex I (in the example: the wood of the seat, but not the leather) falls under the due diligence obligations. It urgently needs to be clarified **at European level that Annex I makes this 1:1 allocation between relevant commodities and products**. Reporting obligations arise solely from this direct allocation, not from cross-links or derivative links. This also applies if **a relevant product was manufactured using another relevant product** (e.g. pneumatic tyres made of natural rubber that also contain stearic acid). A pragmatic and unambiguous solution is needed here that does not create additional due diligence obligations.
- It is also still unclear how the **customs handling of relevant commodities and products** will be **carried out for imports and exports**. However, companies must prepare appropriate processes and programmes for this, depending on how high the requirements are. In view of the time remaining until the regulations come into force and the uncertainty that still prevails, this will be challenging if information is not provided swiftly.

- At present, it is still unclear how openly accessible the **information system** will be, who can access the data stored there and what information can be retrieved with a token. This needs to be clarified by the European Commission. In addition, the information system must have an API that also allows the process to be automated.

## Need for improvements to the regulation

In addition to these needs for clarification, there are also numerous substantive concerns regarding the regulation's current form, which, from the German automotive industry's point of view, require improvements, particularly on the aspects mentioned below.

- The **use of HS codes as a point of reference** for the EUDR is difficult to handle in practice and not always known along the entire supply chain. Customs classification is a manual process that is only carried out by larger companies, often as a process shortly before the customs declaration. For a proactive implementation of the EUDR, customs classification should be carried out in advance for all products. The high administrative effort associated with that is no longer technically up to date. One possible solution would be for the EU to provide a list of trade names that fall under the respective HS codes, which would be updated annually by the EU. An alternative would be to reform the HS codes to enable more precise labelling and content information and also to differentiate between organic, inorganic and recycled substances.
- When **products are transferred within groups and to subsidiaries**, the due diligence obligations need to be simplified in order not to burden companies with additional bureaucracy. Furthermore, bureaucratic burdens on due diligence statements must also be alleviated for **trade within the EU** in cases where a due diligence statement has already been submitted upon import into the EU. One example of this is the import of rubber by a tyre manufacturer: After a due diligence statement has already been submitted when the rubber is imported into the EU, the current requirement to provide further proof for the tyres made from it does not create any added value. In these cases, requesting a further due diligence statement only causes additional administrative burden without making an additional contribution to protecting against deforestation, meaning that re-uploading a due diligence statement must also become obsolete.
- The **merely confirmatory due diligence obligation** for non-SME traders and the associated obligation to upload a corresponding statement must be discarded, as in the current version, the confirmatory due diligence obligation creates a high bureaucratic burden along the supply chain, especially for products with a long supply chain in the EU. With regard to SMEs, the same also applies to the repeated uploading of the same due diligence statements if, for instance, larger companies purchase relevant products from SMEs whose suppliers have in turn already declared the products' EUDR compliance. At the very least, the European Commission's announced guidance document needs to clarify that for non-SME traders, a reference to the due diligence carried out by the operator (e.g. by a supplier) is sufficient to fulfil the obligations of the regulation.
- In addition, it must be ensured that the **placing on the market of spare parts for vehicles** does not trigger any due diligence obligations. With a period of use of often more than 20 years, vehicles are one of the most long-lasting consumer products.



This long period of use also significantly reduces the pressure on the consumption of natural resources. The regulation should take this fact into account and exempt spare parts that enable longer use from the due diligence obligations accordingly.

- In order to reduce avoidable bureaucracy, a **minimum share of relevant commodities in relevant products** should be defined – if this share is not exceeded, the due diligence obligations are not triggered. For the same reason, an exception should be made for **very small quantities of relevant commodities**. The regulation defines for "operators" and "traders" (Art. 2 No. 15/17 EUDR) that their activities covered by the regulation must be "commercial activities". In order to ensure the practice-oriented application of the regulation, it is necessary to create options for exemptions (de minimis limits) from the obligation to provide evidence for very small quantities in the case of **imports for testing and development purposes** (e.g. imports of test tyres made of rubber) **and samples**, in line with the regulation setting up a community system of reliefs from customs duty.
- There are also **legal concerns about the current design of the legality check** as a second requirement to be examined besides deforestation. On the one hand, this is too vague to be handled with legal certainty by companies and, on the other hand, it is not necessary as these requirements are already covered by other regulations. From the perspective of the automotive industry, the regulation should therefore focus on its core regulatory area of deforestation, as corporate due diligence obligations in supply chains, for example with regard to compliance with human rights standards, are already established by other regulations such as the German Act on Corporate Due Diligence Obligations in Supply Chains and the European Corporate Sustainability Due Diligence Directive. Double regulations that create additional bureaucracy without any added value should absolutely be avoided. An alternative would be for the European Commission to take into account the legality checks according to Art. 2 No. 40 EUDR directly in the country benchmarking in order to reduce the burden on companies in a legally secure manner.

Ultimately, it must be noted that the regulation will lead to a **significant competitive disadvantage for the European automotive industry**. While the end products of non-European manufacturers do not fall under the scope of the regulation (cars are explicitly named in the Commission's FAQ as not being in scope), European manufacturers are subject to the requirements of the EUDR for relevant products made from relevant commodities. In the current tense economic situation, European companies will be further burdened by this and, as a result, their competitiveness will be impaired.

In view of the lack of information on the EU information system, the not yet published guidance document and implementing act on the country benchmarking system as well as numerous unresolved issues regarding customs classification and declaration, the implementation deadlines currently provided for in the regulation are ambitious. In case the European Commission does not provide the aforementioned information and documents on time, the automotive industry believes that an **extension of the deadlines for implementation of the EUDR** should also be considered. It would have to be ensured, with the participation of the stakeholders concerned, that efforts already undertaken, and the associated additional costs are reconciled with a possible extension of the deadline. In addition, a potential **simplification of the regulation** should be examined regarding the aforementioned points. This can ensure that the companies concerned are able to implement the comprehensive due diligence obligations in a practical, legally compliant and less bureaucratic manner and that deforestation is stopped effectively.

## Summary

The German automotive industry is committed to the goal of combating deforestation and forest degradation set out in the regulation. In view of the current lack of information from the European Commission, including on the EU information system and the country benchmarking system, which are essential for an application of the regulation that also provides legal certainty, the set implementation deadlines are ambitious. If the aforementioned information is not made available in time, an extension of the implementation deadlines should also be considered. Furthermore, improvements to the regulation itself are also necessary. In order to reduce bureaucratic burdens, a simplification of the regulation should be examined, consistency in terms of methodology and content should be ensured and double regulations should be avoided.

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The German Association of the Automotive Industry (VDA) consolidates around 620 manufacturers and suppliers under one roof. The members develop and produce cars and trucks, software, trailers, superstructures, buses, parts and accessories as well as new mobility offers.

We represent the interests of the automotive industry and stand for modern, future-oriented multimodal mobility on the way to climate neutrality. The VDA represents the interests of its members in politics, the media, and social groups.

We work for electric mobility, climate-neutral drives, the implementation of climate targets, securing raw materials, digitization and networking as well as German engineering. We are committed to a competitive business and innovation location. Our industry ensures prosperity in Germany: More than 780,000 people are directly employed in the German automotive industry.

The VDA is the organizer of the largest international mobility platform IAA MOBILITY and of IAA TRANSPORTATION, the world's most important platform for the future of the commercial vehicle industry.

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