SATELLIGENCE

Your guide to...

The EU Proposed Regulation for Deforestation-Free Products

The Journey So Far

Where did it come from?

There's a new day rising for companies trading on the EU market, and those who are used to the usual order of business are bound to get lost on the road to compliance.

For us at Satelligence, there's nothing more important than seeing our clients comply and flourish sustainably. So we will walk you through the EU's latest anti-deforestation proposal, what it means, where it's come from and how to navigate the road to compliance.

The anti-deforestation law is one of two key pieces of ESG related EU legislation.

The other is the controversially delayed proposal on sustainable corporate governance and due diligence.

The two pieces of legislation might need to be considered together to be properly understood.

The aim of the Commission's Proposal for a Regulation on Deforestation-free Products is to **"minimise consumption of products coming from supply chains associated with deforestation or forest degradation".**

In light of events like COP26, numerous NGO criticisms of traditional compliance schemes, and the fact EU consumption of key commodities is responsible for 10% of global deforestation, the Commission has decided that it's time to dam the flood of deforestation linked commodities that make their way onto the EU market.

The EU is the world's second largest driver of tropical deforestation.

1.2 million EU citizens called on the EU to do more to restrict entry of products related to deforestation.

"To succeed in the global fight against the climate and biodiversity crises we must take responsibility at home as well as abroad... Our deforestation regulation answers citizens' calls to minimise the European contribution to deforestation."
Frans Timmermans, European Commission Vice-President.

How will it be implemented?

Six commodities and derived products are concerned, identified as the primary FERCs (Forest and Ecosystem Risk Commodities), but there are some notable products that haven't been included.

Therefore the law will concern deforestation associated with the conversion of land for agricultural use.

Palm Oil

Cocoa

Soy

Coffee

Beef & Leather

Wood

Furniture

01

The law requires traders of FERCs on the EU market to ensure these commodities comply fully with local laws in the countries of origin of those commodities.

Furthermore, 'traders' and 'operators' will be required to identify the exact geo-coordinates of where commodities are produced. EU officials will use satellite data to check those coordinates in the European Information System.

02

High, standard and low-risk benchmarks will be applied to countries (and/or sub-national regions) based on producer countries' anti-deforestation laws and their efforts to tackle illegal land-use.

The steps companies need to take will vary according to the designated risk benchmark.

03

Companies dealing in commodities falling under standard or high-risk designations need to conduct a risk assessment.

They have to prove that their products were not produced, grown or raised, on land that had been deforested or degraded after 31 Dec 2020.

04

Companies that can't prove that the risk of placing non-compliant products onto the EU market is "negligible" are obliged to take mitigating measures until the risk is deemed so.

If they can't do that, they can't trade those products in the EU.

Looking Ahead: The Political Atmosphere

To say that the European Parliament is concerned about deforestation is a bit of an understatement.

Take, for example, Brazilian meat giant JBS' purchase of European vegan food manufacturer Vivera.

JBS has an historic association with deforestation in the Amazon, and the purchase was scrutinised in a Parliamentary written question to the Commission in December.

JBS was labelled a socially and environmentally destructive force in the Amazon, and was criticised for not monitoring their Scope 3 emissions or indirect suppliers.

The European Parliament namechecked the Global Witness 'Deforestation Dividends' Report which is alleged to show that European banks have been using opaque subsidiaries to invest in deforestation-related products while maintaining a front of sustainability targets.

Greenpeace's Sabotage Report details the extent to which Europe's big industry players are gearing up for a lobbying battle over the final terms of the law, which is currently in the negotiation phase.

The proposal needs to be ratified by the European Parliament and the EU heads of state, which the Commission hopes will happen in 2023. Following that, large companies will be given a 24-month grace period to prepare for compliance, with smaller ones receiving 12-months.

One thing that is for certain, however, is that the scope of the law will be reviewed two years after its ratification, meaning there will shortly be a further opportunity for stakeholders to make their interests known.

You can be sure NGOs will make their voices heard, lobbying for the inclusion of fragile grasslands, savannahs, wetlands, peatlands, rubber, and maize, not to mention soy for animal feed.

Companies looking to trade in the EU will be subject to a nexus of public, political and institutional pressure to clean up their supply chains and show the world they're ready to step up and help the EU with its commitment to halt global deforestation by 2030.

The Road to Compliance

Here's where we dive into the nitty-gritty of compliance. There'll be forms to fill, geo-coordinates to verify, declarations to complete, labels to affix, authorities to placate, licences to issue and risks to assess.

Countries and sub-national regions will be rated as either low risk, standard, or high-risk.

We'll cover all of the above and more as we walk, diligently, along the road to compliance.

Due diligence checks

Low • Standard • High risk

Information-gathering stage.

Compile all the relevant **documents, data and geo-coordinates** to demonstrate that your commodity is compliant.

Risk assessment

Standard • High risk

Using the information gathered in Step 1, demonstrate that the risk of deforestation-associated, non-compliant products being placed on the EU market is **"negligible",** ie. the threat of environmental harm is as close to non-existent as possible.

Mitigation measures

Standard • High risk

Should the risk of non-compliant products be considered "non-negligible", carry out and demonstrate **mitigation measures** to reduce the likelihood of non-compliant products being placed on the EU market.

Customs Declaration

Low • Standard • High risk

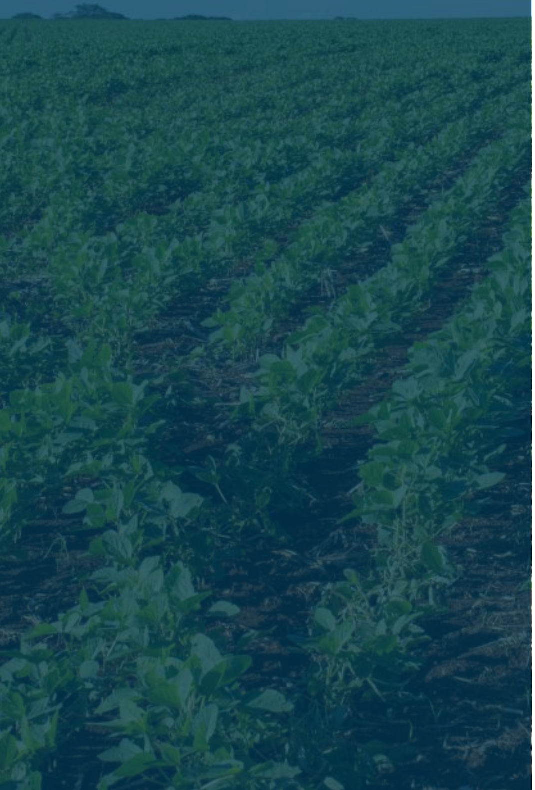
Fill in a Custom Declaration that links back to the relevant due diligence statement.

Congrats!

If you comply, you will receive a **"deforestation-free" label!**

If the risk cannot be negated, then the product may not be traded on the EU market.

Key takeaways



1.
Stakeholder Categories

The Regulation categorises stakeholders into four groups:

- **SMEs**
- **Traders**
- **Operators**
- **Competent authorities**

How the regulation applies to you is going to depend on which stakeholder category you're in.

The definitions for Competent Traders and authorities are set in stone, but what's classified as an SME remains foggy.

It's going to be a significant distinction as though the risk assessments, due diligence criteria and mitigation obligations will apply to Operators, there are exemptions for SMEs.

Large Traders will be treated the same as Operators given their perceived ability to influence the supply chain with their trading power.

2.
Risk Ratings

Countries and sub-national regions will be rated as either low risk, standard, or high-risk..

Products imported from low-risk areas won't be scrutinised as intensely as the standard or high-risk ones.

How are risk ratings determined?
An independent Implementing Regulation will allocate risk rating.

Criteria include:

- Overall rates of deforestation;
- The strength of legal frameworks in the area;
- The inclusion of agricultural emissions in the country's contribution to the Paris Climate Agreement;
- Equivalence with EU deforestation laws

3.
Who's Responsible?

There's no easy answer, because the responsibility to carry out checks on imports lies with government agencies in each member state.

There will be up to 27 different national authorities involved, which may lead to different interpretations of the rules.

Crucially, the Operators and Traders will also be responsible for ensuring compliance.

Competent Authorities will be obliged to check at least 5% of goods from low-risk areas, moving up to 15% of goods from high-risk areas.

What's the penalty for failing to comply?
Significant fines (max 4% of company annual turnover), confiscations, suspensions of economic activity and potential exclusion from public contracts. Compliance will soon be the cost of doing business.

4.
Risk Assessment

The risk assessment criteria uses the EU Timber Regulation (EUTR) as a boilerplate.

The most important ones being:

- The presence of forests in the country and area of production of the relevant commodity or product;
- The prevalence of deforestation or forest degradation in the country, region and area of production of the relevant commodity or product.

Remember, this stage will only apply to countries that are benchmarked as standard or high-risk. There's no such thing as too much vigilance when talking about due diligence.

For companies used to working with the EU Timber Regulation and FLEGT, Client Earth has a handy guide on what changes are expected, and how to fulfil them.

5.
Data

Companies will need to provide the exact geo-coordinates of their commoditiy's origin.

They will also need to know:

- The commodity
- The quantity
- The supplier
- The country of production of the goods they sell.

Gathering this information is going to require a deep dive into long-tail supply chains.

It sounds like an insurmountable task, but it'll bring companies closer to their stakeholders and the business opportunities therein.

6.
Certification isn’t Enough

Though certifications can form part of a given company’s risk assessment or due diligence information gathering, certification is now considered redundant in the face of full supply-chain traceability.

This does not come as a surprise given that certification schemes have been mired in controversy.

Real-time, targeted, scientific and satellite based deforestation monitoring services are now commonplace in the market.

It’s implied in the regulation that satellite-based monitoring through services that utilise data from the EU’s Copernicus and EGNOS/Galileo programmes will likely be part of the process of checking compliance at the EU level.

So, best not bring a knife to a gunfight.

7.
Commitments and Compliance
What’s the Difference?

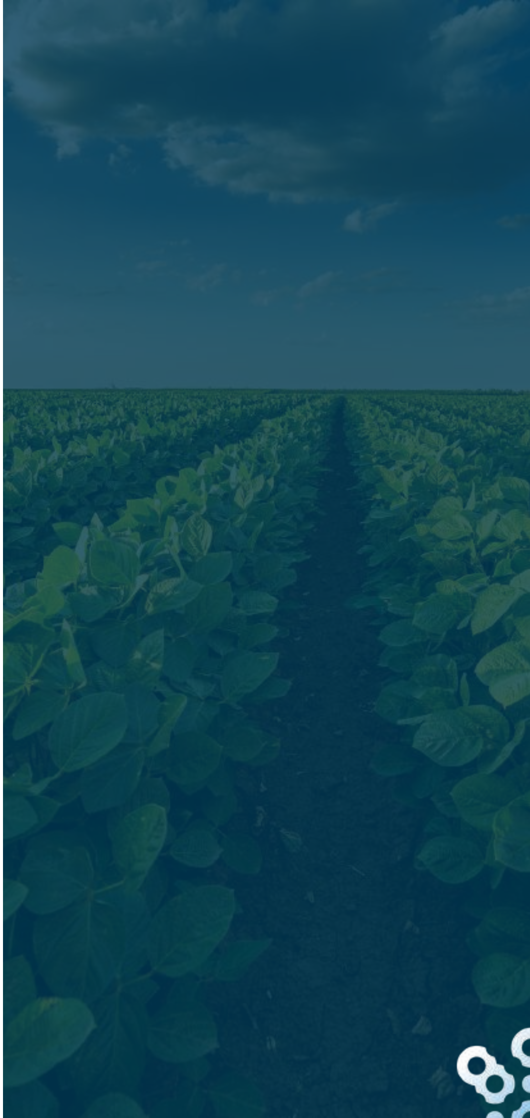
Companies that are utilising voluntary reporting tools such as the NDPE IRF (in the palm oil sector), are already tracking their progress towards zero deforestation across their supplier base.

Part of this process involves collecting longitude and latitude coordinates of mill parent companies.

Many producers and traders in the palm oil sector are also investing in verified deforestation free supply chains, utilising satellite data to monitor deforestation across their sourcing landscapes. For these companies, the EU regulation is one step further, tracing FFBs down to the plantation or smallholder farm.

For companies in the beef, soy, timber, cocoa, and coffee sectors the progress towards full traceability is not as advanced as the palm oil sector.

With more than 20 year of combined experience in tropical forest management and satellite monitoring across all major agricultural commodities, Satelligence is well positioned to provide the required services to enable them to meet EU regulatory requirements.



Comply and Flourish

As the EU Commission sees it, the argument for compliance is clear:

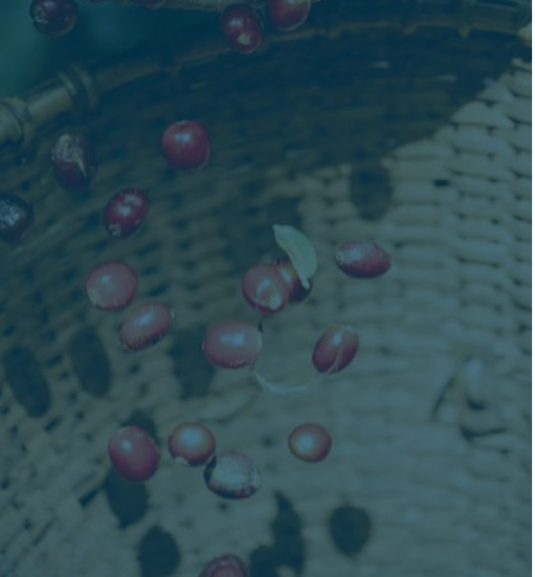
“[the legislation] will go hand in hand with creating incentives for a transition toward more sustainable use of the natural resources, contributing to preserving more intact forests, boosting market opportunities for sustainable products, and eliminating unfair competition from unsustainable producers exporting to the EU market.”

It’s all in there, responsible stewardship of our planet, keeping the lungs of the world healthy, ensuring fair treatment of indigenous populations and giving sustainable products a fair chance in European markets.

Do Better, Be Better:

The Why of Compliance

In an open letter to the EC, key players in the rubber industry called for inclusion in the proposal. The letter demonstrates a desire for industry-wide cooperation and proves that parts of the private sector are willing to participate and lead in this area, with or without legislation, to improve trust, transparency, data quality, and prosperity.



Stand Out in the Portfolio

For savvy investors, adoption of the law is a no-brainer because of the ESG-flaunting, market-stimulating opportunities it presents.

With the financial clout of the investment industry behind the proposal, the private sector is primed to move quickly.

On the whole, they're welcoming of new due diligence criteria so long as it doesn't deter imports, but rather builds a level playing field.

Unilever were one of many multinationals that called for such due diligence criteria to be brought forward in September 2020.

Be Decisive

The private sector is primed to take decisive action, so tarrying until the legislation comes into force won't do anyone any favours. Compliance isn't just a legal requirement, it's an opportunity to do better for the environment and for your stakeholders.

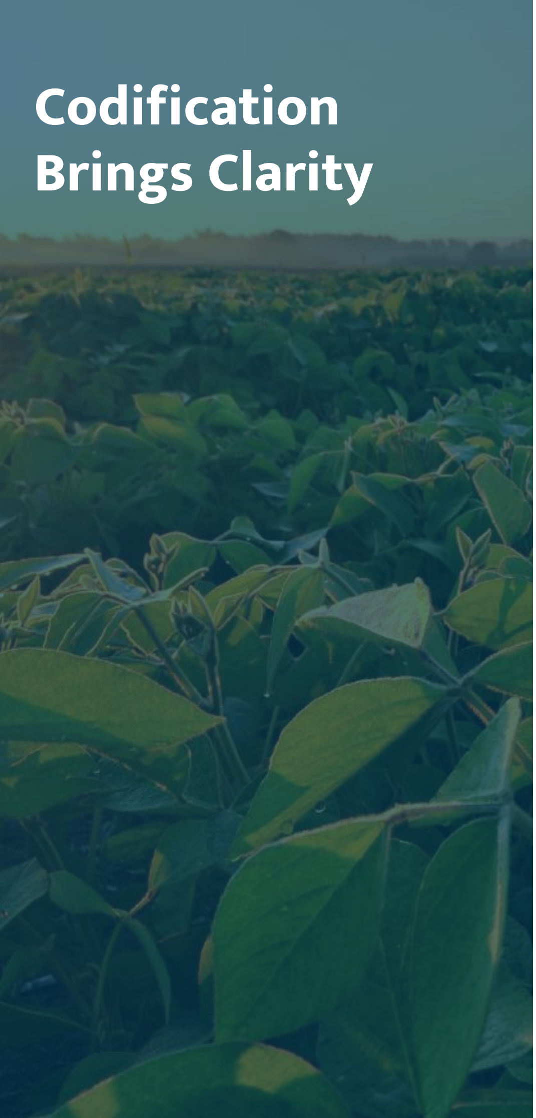
Learning Lessons

We'd be remiss if we didn't point out that the current proposal uses the EUTR as a template, but that groundbreaking law was hurt by scandals that prompted severe NGO scrutiny of its reliance on flawed certification schemes.

Focusing on policies of association makes certification somewhat arbitrary, as it doesn't hold companies accountable for indirect supply-chain deforestation risks.

From a legal and business perspective, this means that companies relying on certification can never be sure that their value-chain is free from environmental risk.

Codification Brings Clarity



The Future of Value Chains

The new regulations will address the EUTR's toothless enforcement clauses by encouraging more cooperation between EU and customs officials, and the use of satellites.

Satellites help pinpoint the exact origins of a product, or verify the location and amount of actual deforestation in near-real time - something that certification schemes cannot do.

Codified regulations mean that companies know exactly what's expected of them, what best practice means, and what compliance entails.

Build Stakeholder Relationships

Long-tail supply chains are wide as they are long, culturally diverse and notoriously difficult to manage, and deforestation risks are easy to overlook.

Under the new legislation, proactive engagement with suppliers and stakeholders will be expected, as companies won't be excused for overlooked risks.

Verified Deforestation Free

To qualify as Verified Deforestation Free (VDF), companies will need to get closer than ever to the growers, traders and suppliers that make up their value-chain, unearthing new business opportunities by doing so.

Why not take the opportunity to tame your supply chain? Satellite monitoring technology makes it easier than ever to manage risks, and verify your supply-chain as deforestation-free.

In summary...

Five Simple Steps to Compliance

01

Traders of commodities that fall under the law need to ensure the production of said commodities is compliant with the laws of the countries they were produced in.

Satelligence is a satellite remote sensing company, enabling producers, traders, FMCG companies, and financial institutions to monitor tropical forest landscapes for deforestation world wide.

Not all deforestation is equal. Unlike some providers, Satelligence adjusts its definition of deforestation in accordance with the local definitions of deforestation in each country or region that is monitored. We tailor our service in-line with country specific reporting requirements.

02

Traders & operators will need to identify the exact geo-coordinates (longitude and latitude) of where commodities are produced.

To be able to trace the origin of their product down to the farm or plantation where it was produced, traders and operators first need to identify who their suppliers are. Once this is known, they need to create awareness and understanding for the need of traceability data from their suppliers.

Satelligence understands the importance of data privacy and security. Suppliers can be assured that when they work with Satelligence, their traceability data is always shared in confidence, and will never be made available to others.

03

Entities will need to provide their company information.

Traders and operators must provide their name, address, Economic Operators Registration and Identification (EORI) number, and for each commodity, the Harmonised System Code, a free text description, and the quantity (in kg of net mass) for the Due Diligence statement.

04

Companies dealing in commodities that are sourced from medium, or high-risk countries, need to conduct a risk assessment proving products were not produced, grown, or raised on land that had been deforested or degraded after 31 December 2020.

At Satelligence, we use Landsat data from NASA, that goes back to 1984, to develop a forest cover baseline that will show whether a commodity has been produced, grown, or raised on land that was deforested or degraded after 31 December 2020. Satelligence can determine how much remaining forest is at risk of being deforested. This can be calculated for a single farm, combination of farms, or an entire sourcing area.

If you provide us with the exact geo-coordinates of your smallholder farms and plantations and the percentage volume being sourced from these areas, we also verify the proportion of your supply chain that is deforestation-free. This allows you to monitor your targets towards zero-deforestation, as well as meet EU and other trade compliance requirements.

05

If companies cannot prove that the production commodities meet the above requirements, they will be expected to take mitigation measures to ensure that risk is removed from the associated commodity before they can trade on the EU market.

Traders and operators need to build trust and dialogue with their suppliers. If risks have been identified, they need to understand the root cause of the problem, and determine whether an action plan can be developed by the supplier to mitigate the identified risks. Progress should then be monitored over time. If risks continue to persist, further action should be considered, for example, by removing them as a supplier.

Satelligence is already helping major producers, traders, and FMCG companies to proactively monitor their supply chains in near real-time for environmental risks, and ensuring that they meet both their reporting and trade compliance requirements.

About us

60+ clients and partners

20+ years of experience

6 global offices

We're a Netherlands-based remote sensing company with local offices worldwide.

We started in 2016, with a mission to drive key sustainability insights to minimize our global environmental footprint. We zoom out to zoom in.

We combine local knowledge, field trips, AI-powered predictive modelling and remote sensing to monitor what's happening on the ground.

Palm Oil | Cocoa | Soy | Coffee | Pulp & Paper

Leather | Rubber | Sugar Cane | Carbon | Coconut

We work with stakeholders in the agricultural production and partners such as Wageningen University, WRI, IIR, ESA, NASA, Sourcemap, CGF, Google, Ulula, Sourcemap, Evenflow.

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