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Communication to the Commission

**Approval of the content of a draft Commission Notice on the Guidance Document for
Regulation (EU) 2023/1115 on Deforestation-Free Products**

ANNEX

Draft Commission Notice on the Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products



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COMMISSION NOTICE

Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products

GUIDANCE DOCUMENT¹
FOR REGULATION (EU) 2023/1115 ON DEFORESTATION-FREE PRODUCTS²

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¹ Nothing in this guidance document either replaces or substitutes direct reference to the instruments described and the Commission does not accept any liability for any loss or damage caused by errors or statements made in it. Only the European Court of Justice can make final judgments on the Regulation’s interpretation.

² OJ L 150, 9.6.2023, p. 206–247. ELI: <http://data.europa.eu/eli/reg/2023/1115/oj>

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INTRODUCTION

Article 15(5) of Regulation (EU) 2023/1115 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (hereinafter referred to as EUDR) sets out that the Commission may develop guidelines in order to facilitate harmonized implementation of the Regulation.

This guidance document is not legally binding; its sole purpose is to provide information on certain aspects of the EUDR. It does not replace, add to or amend the provisions of the EUDR, which establishes the legal obligations. This guidance document should not be considered in isolation; it must be used in conjunction with the legislation and not as a ‘stand-alone’ reference.

This guidance document is, however, useful reference material for anyone who must comply with the EUDR as it further clarifies dedicated parts of the legislative text, meaning it can guide operators and traders. It can also guide national competent authorities and enforcement bodies as well as national courts in the process of implementing and enforcing the EUDR.

The issues addressed in this document were discussed and developed in cooperation with designated representatives of the Member States. Additional issues can be addressed once there is more experience in applying the EUDR, and in this case the guidance document would be revised accordingly.

For all issues addressed in this guidance document it should be noted that in accordance with Recital (43) the definitions of the Regulation build on the work of the Food and Agriculture Organization of the United Nations (FAO), the Intergovernmental Panel on Climate Change (IPCC), the United Nations Environment Programme (UNEP), and the International Union for the Conservation of Nature (IUCN).

The principle of proportionality is one of the general principles of Union law which applies to the interpretation and enforcement of Union legislation³. The responsibility for the enforcement of the provisions lies with the Member States.

1. DEFINITIONS OF ‘PLACING ON THE MARKET’, ‘MAKING AVAILABLE ON THE MARKET’ AND ‘EXPORT’

Relevant legislation: EUDR – Article 2 – Definitions

The obligations on operators that apply under Article 4 come into play when relevant products are intended to be or are ‘placed on the market’ or ‘exported’. The obligations on traders that apply under Article 5 come into play when relevant commodities or relevant products are intended to be or are ‘made available on the market’ (see also Chapter 4 c) of this Guidance document).

An overview of scenarios, explaining the obligations which SME and non-SME operators and traders are under when placing or making available on or exporting relevant products from the Union market is provided in Annex I of this Guidance document. The scenarios also demonstrate the modifications of obligations for SME operators further down the supply chain (Article 4(8)) and for non-SME operators and traders (Article 4(9)).

³ For further details related to the implementation, please refer also to the Frequently Asked Questions which are available here: [Deforestation Regulation implementation - European Commission \(europa.eu\)](https://european-commission.europa.eu/deforestation-regulation-implementation).

a) Placing on the market

Under Article 2(16), a relevant commodity or relevant product is ‘placed on the market’ if it is made available on the Union market **for the first time**. Relevant commodities or relevant products that have already been placed on the Union market are not covered here. The concept of ‘placing on the market’ refers to each individual relevant commodity or product, not to a type of product, irrespective of whether it was manufactured as an individual unit or a series.

b) Making available on the market

Under Article 2(18), a relevant product is ‘made available on the market’ if it is **supplied**:

- **on the Union market for distribution, consumption, or for use** – this means that the relevant product or commodity must be physically present in the EU, having been either harvested or produced in the EU, or imported into the EU and placed under the customs procedure ‘release for free circulation’. As regards relevant products imported into the EU, they do not acquire the status of ‘Union goods’ before they have been brought into the customs territory of the Union and released for free circulation by customs. Relevant products placed under other customs procedures than the ‘release for free circulation’ (e.g. customs warehousing, inward processing, temporary admission, transit) are not considered to be placed on the market under the EUDR; and
- **in the course of a commercial activity** – this means an activity taking place in a business-related context. Commercial activities may be in return for payment or free of charge. Supply to non-commercial consumers and activities where there is no payment made in return are both within the scope of the EUDR (e.g. for donation or pro bono activities). The Regulation does not impose requirements on non-commercial consumers, as private use and consumption are outside of the scope of the EUDR.

“**Making available on the market**” should therefore be understood as occurring when a trader supplies relevant products on the Union market both (i) for distribution, consumption or for use and (ii) in the course of its commercial activity.

“**Placing on the market**” should therefore be understood as occurring when an operator makes a relevant product available on the Union market (i) for distribution, consumption or use, (ii) for the first time, and (iii) in the course of its commercial activity.

The combined definitions of “operator” (Art. 2(15) EUDR) and of ‘in the course of a commercial activity’ (Art. 2(19) EUDR) imply that any person which places a relevant product on the market

- a) for distribution to commercial or non-commercial consumers, meaning for example for selling or free of charge (for instance as a sample),
- b) for the purpose of processing, or
- c) for use in its own business

will be subject to the due diligence requirements and needs to present a due diligence statement, unless a simplification applies (see Art. 4(8), 4(9) EUDR).

“**Relevant products entering the market**” should therefore be understood as occurring when relevant products are simultaneously:

- declared to be placed under the customs procedure ‘release for free circulation’ which are intended to be placed on the Union market. Only products released for free circulation by customs are considered placed on the Union market. Other customs procedures than the ‘release for free circulation’ (e.g. customs warehousing, inward processing, temporary admission etc.) are not within the scope of the EUDR.
- and
- are not intended directly for private use or consumption within the customs territory of the Union. Products intended for private use or consumption (e.g. by individual bringing such products from a trip outside the EU for his private use or consumption) are not subject to EUDR.

c) Export

Under Article 2(37), ‘export’ refers to the customs export procedure as laid down in Article 269 of Regulation (EU) No 952/2013⁴ and refers to Union goods to be taken out of the customs territory of the Union.

Article 269 of Regulation 952/2013 states that the export procedure shall not apply to: (a) goods placed under the outward processing procedure; (b) goods taken out of the customs territory of the Union after having been placed under the end-use procedure; (c) goods delivered, VAT or excise duty exempted, as aircraft or ship supplies, regardless of the destination of the aircraft or ship, for which a proof of such supply is required ; (d) goods placed under the internal transit procedure; (e) goods moved temporarily out of the customs territory of the Union in accordance with Article 155 of Regulation 952/2013.

Re-export as laid down in Article 270 of Regulation 952/2013 is not within the scope of the EUDR. Re-export in this regard means, that the relevant commodity or relevant product has not acquired ‘Union goods’ status and is taken out of the customs territory of the Union after lodging e.g. re-export declaration.

“Relevant products leaving the market’ should therefore be understood as occurring when relevant products are declared to be placed under the customs procedure ‘export’ in the course of a commercial activity.

The relevant product loses its customs status of ‘Union good’ when exported from the customs territory of the Union, therefore that relevant product is considered as a new product when subsequently entering the Union market again, even if the HS code remains the same.

Annex I of this guidance includes examples of how the interpretation of the terms ‘placing on the market’, ‘making available’ and ‘export’ works in practice.

2. DEFINITION OF ‘OPERATOR’

Relevant legislation: EUDR – Article 2(15) – Definitions; Article 7 – Placing on the market by operators that are established in third countries

Under Article 2(15) an **operator** is a natural or legal person who

⁴ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- places relevant products on the market or exports them
- in the course of a commercial activity.

To make it possible to consistently identify operators, one can distinguish their roles according to how their relevant products are placed on the Union market, which varies depending on whether they are produced inside or outside the EU.

- For relevant products produced according to Article 2(14) **within the EU**, the operator is usually the person that distributes or uses them in the course of commercial activity once they have been produced; this may be the producer or manufacturer.
- A person that transforms a relevant product into another relevant product (new HS code according to Annex I of the Regulation) and places it on or exports from the market is an operator further down the supply chain.
- For relevant commodities or relevant products produced **outside the EU**:
 - the operator is the person acting as the importer when the relevant commodities or relevant products are declared to be placed under the customs procedure ‘release for free circulation’. The importer is the person indicated in the relevant data element of the customs declaration, where applicable:
 - the "importer" in data element 13 04 000 000 (Annex B of Delegated Regulation 2015/24465)
 - data element DE 3/15 in a previous release of EU Customs Data Model (EUCDM)
 - the "Consignee" in box 8 of the Single Administrative Document
 - where the person acting as the importer when the relevant commodities or relevant products are declared to be placed under the customs procedure ‘release for free circulation’ is not established in the EU, the first natural or legal person to make the relevant products available on the market is also deemed to be an operator, i.e. although it is not an operator pursuant to the definition laid down in Article 2(15), it is subject to the obligations of an operator. This requirement comes on top of the normal obligation of the operator established outside the Union and aims at ensuring that there is always one responsible actor established in the EU.
- For relevant products **imported** into the EU, the definition of ‘operator’ is independent of the change of ownership of the product and of other contractual arrangements. In the case of a domestic product being placed on the market, the operator is normally the person that owns the commodity or product at the point of selling, however this may depend on the individual circumstances of the contractual agreement.
- For relevant products **exported** from the Union, the operator is usually the person acting as the exporter when the relevant products are declared to be placed under the customs export

⁵ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code

procedure. The exporter is the person indicated in the relevant data element of the customs declaration, where applicable:

- o the "exporter" in data element 13 01 000 000 (Annex B of Delegated Regulation 2015/2446);
- o Data element DE 3/1 in a previous release of EU Customs Data Model (EUCDM);
- o the "Consignor/Exporter" in box 2 of the Single Administrative Document.

The role of operators is further explained with the help of the scenarios contained in Annex I of this Guidance document.

3. DATE OF EFFECT AND TIME-FRAME FOR APPLICATION

Relevant legislation: EUDR – Article 1(2) Subject matter and scope; Article 37 – Repeal; Article 38 – Entry into force and date of application

The EUDR entered into force on 29 June 2023. Most obligations on operators and traders, as well as on competent authorities including those in Articles 3 to 13, Articles 16 to 24, Articles 26, 31, and 32, apply from **30 December 2024**.

For operators that were established as **micro-undertakings or small undertakings** by 31 December 2020 (in accordance with Article 3(1) or (2) of Directive 2013/34/EU, respectively) the obligations in Articles 3 to 13, Articles 16 to 24, Articles 26, 31 and 32, apply from **30 June 2025**, except as regards the products covered in the Annex of the Regulation No 995/2010 laying down the obligations of operators who place timber and timber products on the market⁶ (EUTR). This means that there is a **transitional period** between the entry into force of the Regulation (29 June 2023) and the entry into application (30 December 2024, deferred to 30 June 2025 for small undertakings or micro-undertakings established by 31 December 2020) that exempts operators and traders placing or making available on or export from the Union market relevant commodities and products in the transitional period from the main obligations under the EUDR.

The following rules apply for all commodities and associated relevant products **with the exception of timber and timber products covered by the Annex of the EUTR**:

- if a relevant commodity or a relevant product is placed on the market during the transitional period applying to the respective operator, the obligations of the EUDR do not apply to the operator.
- Furthermore, any relevant product placed or made available on the market after the entry into application that is made entirely from commodities or products placed on the market during the transitional period will not be subject to the obligations of the EUDR. This means that the deferred entry into application for **small and micro enterprise operators** (30 June 2025) will, in cases of them placing or making available on the market, also exempt medium and large operators and traders further down the supply chain that are trading with these products or their derived products.

⁶ OJ L 295, 12.11.2010, p. 23–34, ELI: <http://data.europa.eu/eli/reg/2010/995/oj>

- In the cases described above, the obligation of the operators further down the supply chain (or traders making the relevant product which has been placed on the market in the transitional period available subsequently) will be limited to gathering adequately conclusive and verifiable evidence to prove that the relevant product was originally placed on the market before the (deferred) entry into application of the Regulation.
- For **parts of a relevant derived product** that have been produced with other relevant products placed on the market from 30 December 2024 (or from 30 June 2025 by a micro or small undertakings), the operators further down the supply chain placing on the market and the traders will be subject to the standard obligations of the Regulation notwithstanding that some other parts may fall into the transitional period.

According to **Article 1(2) EUDR**, the EUDR does not apply if relevant products were **produced** before 29 June 2023. The time and place of production refers to the production date and production place of the relevant commodity, this applies both for the commodities and the derived products. In most cases, the production date will be the time of harvest of the commodity, with the exception of **cattle products** in which case the relevant time of production starts on the date on which the cattle is born.

For **timber and timber products** as defined in Article 2(a) of the EUTR, special rules apply, pursuant to Article 37(3) of EUDR:

For timber and timber products produced before 29 June 2023 and:

- placed on the market before 30 December 2024, such products must comply with the rules of the EUTR;
- placed on the market from 30 December 2024 until 31 December 2027: the rules of EUTR continue to apply;
- placed on the market from 31 December 2027, such products shall comply with Article 3 of the EUDR.
- For timber and timber products produced from 29 June 2023 until 30 December 2024 and:
 - placed on the market before 30 December 2024, such products must comply with the rules of the EUTR;
 - placed on the market from 30 December 2024, such products must comply with the rules of the EUDR.
- Timber and timber products produced from 30 December 2024 must comply with the rules of the EUDR.

4. DUE DILIGENCE AND DEFINITION OF ‘NEGLIGIBLE RISK’

<p>Relevant legislation: EUDR – Article 2(26) - Definitions; Article 4 – Obligations of operators, Article 8 – Due diligence; Article 9 – Information requirements; Article 10 – Risk assessment</p>
