Coalition letter

Mrs Zakia Khattabi
President of the Council for Environment
Minister for the Climate, the Environment, Sustainable Development and the Green Deal
of Belgium

Brussels, 28 March 2024
24ENV116

Joint cross-commodity call to EU Commission and Member States to provide urgent clarifications and workable solutions for EUDR implementation

Dear Minister,

We, the undersigned organisations, are active in preparing for the implementation of the EU Deforestation Regulation (EUDR) with our member companies and across our respective supply chains.

As part of our commitment to support a successful implementation of this regulation, considering the significant adjustments that are needed from suppliers, operators and traders, we would like to express serious concerns regarding the pace of preparation of EUDR-related legislative acts, the mandatory systems (i.e. Information System), and the guidance and clarifications required for implementation by operators and traders and enforcement by competent authorities.

Operators and traders are working hard to prepare their supply chains and adapt their systems and due diligence processes for compliance with the EUDR. They try to develop workable solutions, compatible with the EUDR provisions, but implying less administrative burden. However, these efforts are impeded by large gaps in information, lack of appropriate technical solutions and by misconceptions as to the functioning of our complex chains. We therefore call for the following actions:

- **Urgently resolve legal uncertainty/lack of clarity of essential provisions -** We appreciate the efforts of the Commission to provide some clarity in its FAQs and upcoming guidance document; however, many questions are still pending, the pace with which they are addressed is too slow, and the clarifications insufficient. This generates further red tape and greater operational challenges, revealing legal inconsistencies or contradictions, and leading to further confusion. Since the entry into force of the Regulation, operators have called for practical guidance, but eight months away from the implementation date, they are still left to wonder about essential parts of the Regulation. This results in supply and investment risks related to compliance. We urge the Commission to actively include all stakeholders along value chains in elaborating the guidance to make the implementation practically feasible.
- **Make the Information System quickly up to operational standard** – This is central to the implementation of the EUDR by operators and traders. However, the pilot test revealed fundamental flaws and gaps that, if unaddressed, will constitute an important

hurdle, if not an obstacle, for compliance and unnecessarily exhaust human resources with no added value to meeting the goals of the Regulation. Furthermore, the current timeline for training trainers and for opening the Information System for registrations will not give companies time to adapt. The planning of the development of the system should allow the necessary time for companies to ensure connection with their own data management systems and organise appropriate training of relevant staff. Finally, we strongly urge the Commission to organise a second round of testing and to involve companies under the EUDR scope in the design of the Information System.

- **No "gold plating" of the Regulation -** Solutions promoted in the FAQs and in the upcoming guidance document need of course to be in line with the regulation's provisions, but in some cases, they are more restrictive than the text of the Regulation. Practical guidance should be workable and avoid unnecessarily restrictive approaches.
- **Necessary connection with existing traceability and CAP-related systems for EU produced commodities -** Data collected under the CAP should be used and made available for EUDR compliance. In particular, the EUDR information system must be able to link with the existing traceability systems to avoid doubling the burden for traceability data that is already available**.**
- **Clarity on the timeline of the Country Benchmarking System -** We are highly concerned that the announcement regarding the benchmarking system effectively implies that all countries will be classified as standard risk until the benchmarking system will be ready. Such a situation will prevent making use of simplified rules for operators sourcing commodities in countries or regions with no or very low evidence of deforestation and forest degradation, as per Article 13. This will increase the burden on all operators and prove detrimental to all commodities and operators sourcing from countries or regions that will classify as low risk. More generally, it will also prolong the state of business uncertainty under which operators are currently operating.
- **Pending harmonised approach to enforcement -** The lack of clarity on various essential provisions may lead to different interpretations and different approaches to enforcement. This adds a further layer of legal uncertainty and costs for actors in the supply chain. Not all Member States have nominated their Competent Authority yet, increasing our concerns as to whether a common understanding on the enforcement will be achieved before the date of entry into application.
- **Guarantee data protection -** The large scope of data required to be shared under the EUDR causes concerns among many stakeholders. While there is an emerging number of public-private initiatives around the globe offering to facilitate due diligence statements' submissions, hence having access to critical data information, it is still unclear who will have access to what information and to what extent data protection will be ensured.
- **Care for commodity-specific issues -** Commodity-specific differences in structure and functioning of supply chains have not been addressed appropriately so far. However, they could help avoiding unnecessary additional burden.
- **Add a functionality for transitional arrangements in the Information System –** The existence of transitional arrangements needs to be reflected in the Information System. A functionality for the optional creation of due diligence Statements of type "transition" should be added for commodities or semi-finished products already placed on the market before the entry into application. Operators should be allowed to provide

supporting evidence, such as bills of lading or customs declarations. This would give more clarity during the initial phase of the EUDR implementation.

Enclosed you will find a number of issues on which clarification is urgently needed with a view to lifting uncertainties and allowing necessary investments and implementation across our supply chains (annex).

We wish to underline the sense of urgency: the still pending clarifications and missing tools have to be provided by Q2 2024. We cannot adjust our complex supply chains and established business practices and systems with last minute recommendations or discover, under short notice, that the companies' API systems need a complete change for lack of interconnectivity. Unless timely and adequate responses are provided, we cannot exclude serious disruptions in all commodity supply chains, with potential unintended negative effects on the supply of essential goods for the European market, such as food, feed, chemicals, packaging, hygiene products, tyres and other automotive components, construction products, furniture, bioenergy, printed media and more.

We thank you for your attention and your follow up in this critical matter for our sectors.

Yours faithfully,

Signatories :
APAG – Oleochemichals Europe
Beveragecartons – Alliance for Beverage Cartons and the Environment
Bioenergy Europe
CEI-Bois – The European Confederation of Woodworking Industries
Cepi – Confederation of European Paper Industries
CELCAA - European Liaison Committee for Agricultural and Agri-Food Trade
CESIO – European Committee of Organic Surfactants and their Intermediates
COCERAL - European association of trade in cereals, oilseeds, rice, pulses, olive oil, oils and fats, animal feed and agrosupply
COPA-COGECA – European Farmers and European Agri-Cooperatives
Cotance – European Leather
ECA - European Cocoa Association
EDANA – European Nonwoven Industries
EFIC – European Furniture Industries Confederation
EOS - European Organisation of the Sawmill industry
EUSTAFOR - The European State Forest Association
FEDIOL – Vegetable oil and proteinmeal industry
FEFAC – European Feed Manufacturers' Federation
FEP – European Parquet Federation
EPF – European Panel Federation
ETRMA – European Tyre and Rubber Manufacturers' Association.
ETTF – European Timber Trade Federation
INTERGRAF - Printing Industry
UECBV - The European Livestock and Meat Trades Union

Letter sent to:

Virginijus Sinkevičius, European Commissioner Environment, Oceans and Fisheries
Maroš Šefčovič, Executive Vice-President, European Green Deal, Interinstitutional Relations, Foresight
Valdis Dombrovskis, Executive Vice-President, and European Commissioner for Trade
Janusz Wojciechowski, European Commissioner for Agriculture
Thierry Breton, European Commissioner for Internal Market, Industry, Entrepreneurship and SMEs
EU Agriculture and Fisheries Council
EU Environment Council


APAG
Oleochemicals Europe
CEI-Bois
THE ALLIANCE FOR BEVERAGE CARTONS AND THE ENVIRONMENT
Bioenergy EUROPE
Cepi
RENEWABLE
RECYCLED
RESPONSIBLE
EUROPEAN
celcaa
cesio
SURFACTANTS EUROPE
COCERAL
copa cogeca
european farmers
european agri-cooperatives
eca
european cocoa association
COTANCE
EFIC
European Furniture Industries Confederation
edana
The voice of NONWOVENS
EUROPEAN PANEL FEDERATION
WOOD-BASED PANELS
ETRMA
EUROPEAN TYRE & RUBBER manufacturers' association
EOS
EUROPEAN ORGANISATION OF THE SAWMILL INDUSTRY
FEDIOL
European Timber Trade Federation
eustafor
MANAGING STATE FORESTS RESPONSIBLY
FEFAC
Experts in Animal Nutrition
FEP
European Parquet Federation
INTERGRAF
UECBV
European Livestock and Meat Trades Union

Annex

A. Examples of provisions applying to all commodities that need urgent clarification

These are cross-commodity questions. Concerns that are more commodity-specific have been submitted by the different sectors separately.

- Art. 2(4) - Is already the conversion of 1 m² of forest to agricultural area seen as deforestation, if the total area of the forest concerned is > 0,5 ha? Meaning that only if the total area of a forest (=> i.e. forest area encircled by agricultural area) that is converted to agricultural use is < 0,5 ha, this does not constitute deforestation?
- Art. 2(14) - Do we understand Art. 2 (14), (24) and (40) correctly that the Art. 3 (b) and Art. 9(1)(h) requirements only apply to the area of production of the cattle, cocoa, coffee, oil palm, rubber, soya and wood (i.e. the commodities), but does not apply to the production of the relevant products derived from the aforesaid commodities, listed out in Annex I ?
- Art. 2(19) – To what extent will relevant products which are used solely for business purpose (e.g. using the rubber wheels or pallets for transporting traded goods, or using printing paper or toilet paper in the business), need to undergo the full due-diligence process? Could the EC include a scenario in the upcoming guidance document for such cases?
- Art. 2(40) - What do 'third parties' rights' refer to exactly? Does this refer to 'community rights' for example? If so, what will be the concept of 'community rights'? Will it be indigenous people, as mentioned in Article 2, (40), 'g' for FPIC?
- Art. 2(40) – The 'relevant legislation of the country of production' means the laws applicable in the country of production concerning the legal status of the area of production. How is the area of production to be understood? Does it correspond to 'plot of land'?
- Art. 2(40) - If the illegality was in the past, how far of a lookback is required for reasonable EUDR compliance? When looking at "produced in accordance with the relevant legislation", can you confirm that the goods in question must be directly linked to the illegality? For example, if a farmer has a tax case against him, which is not specific to the goods to be exported to the EU but more general, or a labour case specific to another farm, would that farmer be disqualified under Article 3(b)?
- Art. 4(2) – In order to limit the number of DDSs, is it possible for operators to file a DDS, on a periodic basis, covering several shipments (provided that the DDS contains all the geolocation of the parcels of the relevant commodity or product concerned)?
- Art. 4(7) - How should goods from the warehousing business be handled? In the warehouse, a distinction is only made by product, not by supplier. But also, bulk commodities or products are not handled by batch, they can be subject to continuous in-coming/outgoing handling or processes.
- Art. 4(9) - To what extent do operators that are not SMEs have to redo the due diligence relating to relevant products that are covered by previous upstream due diligence statements being referred to by the operator? Could a yearly certificate by a third-party auditor, or through a system providing equivalent assurance, provide a sufficient basis for downstream operators to ascertain that due diligence was carried out in accordance with Art. 8? And how will it be ensured that competitive information remains confidential across the supply chain?
- Art. 9(1) points (e) and (f) and Art. 8(2) point (a) and Art. 3(c) - Does the EUDR really say that a relevant commodity/product shall not be placed or made available on the market or exported,

unless all the information Art. 9 (1) is available, The information of Art. 9(1) is a mandatory element of the due diligence (Art. 8(2) point (a)), which needs to lead to the conclusion that no or negligible risk has been found as stated in the due diligence statement to avoid a prohibition according to Art. 3.

- Art. 6(1) - Is the authorised representative solely allowed to submit the due diligence statement pursuant to Art. 4 (2) on behalf of an operator/trader or is he also allowed to collect the information, documents, and data of the information requirements of Art. 9 on behalf of an operator/trader?
- Art. 7 – Who is “the first natural legal person established in the EU who makes such products available”, in cases where the product is imported by a company, including customs that is based outside the EU?
- Art. 9(1) point (a) – Do all relevant resources in products that contain several relevant resources (e.g. chocolate pralines – containing cocoa and palm-oil) need to undergo the full due diligence process? And will the information for all relevant resources included in the product be required to handed over to the next trader? What about imported products with a custom code associated with a single relevant resource but which may (or may not) contain other relevant products?
- Art. 9(1) point (h) - Regarding the evidence that can be used to show compliance with the relevant laws of the country of production, what documents or type of information would qualify as sufficient evidence, especially regarding points (e) labour rights; (f) human rights protected under international law; (h) tax, anti-corruption, trade and customs regulations. How can absence of infringement be proven?
- Art. 9(1) point (h) - If the information (documents and data) must be collected for the purpose of risk assessment (Article 10) and should not be viewed as an independent requirement, does this mean that operators sourcing from low risk countries or regions thereof (including EU cattle and soy farmers) and placing products on the European market, will not have to collect documentation proving compliance with Art. 3(b).
- Art.11 (2) b - Are there any requirements (e.g. qualification) applicable to the independent auditor?
- Art. 38 (3) – During the first six months after entry into application, on what basis should Operators or Traders carry out due diligence and file their DDS, when they source from an SME in the middle of the supply chain which does not have to comply until June 2025?
- Annex 1 - How should we deal with the scenario of importing a non-EUDR scope product/raw material which after transformation in the EU becomes in scope for EUDR. How does one comply/fulfil DDS & related obligations?
- Transition - Can volumes placed on the EU market during the transition period be mixed with EUDR-compliant volumes placed on the EU market after the transition period if it can be proven that each batch within was either placed on the EU market during the transition period, or EUDR-compliant? If so, how is this going to be reflected in the Information System?
- Transition – Commodities purchased during the transition period may physically arrive on the EU market after the implementation date because of logistics. Can these enter under the simplification awarded for products made during the transition period?
- Transition (Ref FAQ question 80) – Can products made during the transition period outside the EU be imported and placed on the European market after the implementation date if they can prove their production during the transition period?

B. Examples of provisions applying specifically to cattle that need urgent clarification.

- Art. 2(16) - Does the first placing on the market of bovine animals refer to the time of birth of the calf, the sale of the calf, the sale of an animal from one holding to another holding irrespective of the rearing phase or only to slaughter?
- Art. 2(29) - What does “establishment“ in case of cattle that is grazing on pastures during vegetation period (=> demanded by EU RL for Organic Farming 218/848) mean in detail? Is the “establishment” solely the stable or the superior plot of land of the IACS of CAP on which you can find the pasture or the inferior plot of land of the IACS of CAP or the plot of land as defined in national law?
- Art. 2(29) - Is a pasture already an “establishment” even if the cattle grazes on it for only one single day?
- Art. 2(29) - What is the difference between “plot” and “establishment” if it seems that each plot that is touched by cattle, is earmarked as “establishment”?
- Art. 2(29) – When referring to: “*For relevant products that consist of or have been made from cattle, the geolocation requirement refers to all establishments associated with raising the cattle, encompassing the birthplace, farms where they were kept - in case of open-air farming, any environment or place, where livestock are kept, on a temporary or permanent basis-, and slaughterhouses*”, does it mean, the geolocation of all pastures on and stables in which the cattle has been raised, need to be provided via the due diligence statement ? Example: if the cattle has been on 3 different farms (from birthplace, to the alpine farm for summer grazing and fattening farm until age of 2 years before reaching the dairy farm) and with these farms on a total of 18 different pastures (different IACS-plots according to CAP), has the farmer that sells the cattle to a slaughterhouse to provide the geolocation of all 18 pastures or solely the 3 farms?
- Art. 4(9) - How can a non-SME-operator ascertain that the due diligence of a relevant product (e.g. soy) contained in the relevant product (e.g. cattle) was exercised in accordance with paragraph 1 of Article 4?
- Art. 4(8 and 9) - Could the EC include in the guidance document the following case: A farmer in the EU (SME) buys soy produced in South America for feeding his cattle from an EU agricultural trader of his own member state (non-SME) and later sells the cattle to a slaughterhouse (non-SME). What do the farmer (SME) and the slaughterhouse (non-SME) have to do do/keep in mind in terms of due diligence according to Art. 4 (8 and 9)?
- Art. 9(1) point (d) - What is the exact meaning of the sentence „*for relevant products that contain or have been made using cattle, and for such relevant products that have been fed with relevant products, the geolocation shall refer to all the establishments where the cattle were kept*“? Is there a necessity in the due diligence statement for the geolocation of the plot of land where the soy/soy for the soy cake that was fed to the cattle? Or is it sufficient to add in the list of the relevant commodities/products contained in a relevant product (e.g. live cattle) the relevant commodities/products which have been feed to the cattle?
- In general - Is farmer B who buys a calf (cattle) from farmer A which he afterwards fattens and later on sells to a slaughterhouse a trader according to Art. 5 because farmer A placed it already on the market as a calve (Art. 2(16))? If yes, is farmer B therefore subject to the obligations under Art. 5 (trader) and not to the obligations under Art. 4 (operator)

- Transition – In the case of cattle, what is the actual date to be considered for subjecting, in particular live animals to the EUDR, considering possible longer time laps between birth and placing on the market and the difficulties for obtaining geolocation data?
- In general - What requirements does the regulation impose on dairy producers, and does it impact grazing practices for dairy cattle?
- In general – How can NRL (NRL demands restoration of Natura 2000 habitat types like “6520 mountain hey meadow”) be reconciled with EUDR (EUDR prohibits the conversion of forest) and EU Regulation on organic farming (RL 2018/848 demands grazing of cattle but EUDR would be easiest implemented if cattle never ever leave the stable between birth and slaughtering?
- In general - Regarding cattle, can geolocation be done on a batch-by-batch basis, or should it be done animal by animal, if there is certainty that all livestock related to each batch come from non-deforested areas (although different/multiple)?”