

The EUDR and Forest Protection at the Crossroads



by Lorenzo Colantoni



Co-funded by
the European Union

When, on 29 June 2023, the EU Deforestation-free Regulation (EUDR) entered into force, it was like a small earthquake – at least for whoever was dealing with EU agricultural imports. Never before, neither in the EU nor in the rest of the world, such an ambitious anti-deforestation piece of legislation has ever been enacted. Perhaps more importantly, it was the first to directly address the leading cause of global deforestation: agriculture. The EUDR indeed completely forbids the entry into the EU market of key agricultural commodities¹ whose production

caused deforestation after a cut-off date (identified as 31 December 2020).

As the EU is one of the leading importers of tropical deforestation (through agricultural commodities), the Regulation has indeed the potential to become one of the most important tools to protect global forests, and to be successful where other plans and initiatives have failed (as in the case of the UN's REDD+² and the EU's FLEGT).³

¹ The EUDR covers the seven commodities that are more responsible for global deforestation: soy, coffee, cocoa, palm oil, rubber, beef and timber.

² See UNFCCC REDD+ Web Platform, <https://redd.unfccc.int>.

³ On the 2005 Forest Law Enforcement, Governance and Trade (FLEGT) Regulation, see Fredy D. Polo Villanueva et al., "Effects of EU Illegal Logging Policy on Timber-Supplying Countries: A Systematic Review", in *Journal of Environmental Management*, Vol. 327 (1

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This Commentary has been produced under the PRODIGEES project, which has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No 873119.

However, its approval has triggered significant protests first from key partner countries (Indonesia and Brazil in particular), which then extended to a larger share of the Global South in 2023⁴ and even reached EU member states, the US and Australia in 2024.⁵ Opposition has been so significant that, despite having entered into force more than a year ago, its future is still unclear and there are growing chances its application will be even delayed by one or two years – the Regulation is structured in a way that it should be applied at a later stage than its entry into force, currently set for December 2024. A mix of political support and fine-tuning of the tools available for implementation will be required to guarantee the EUDR's now uncertain success.

Agriculture and deforestation

Agriculture is by far and large the leading cause of deforestation worldwide, accounting for approximately 90 per cent of all clearings.⁶ Yet, despite decades of international efforts, it has been only indirectly addressed by initiatives and policies aimed at

February 2023), Article 116874, DOI 10.1016/j.jenvman.2022.116874.

⁴ Isabel Marques da Silva, "Why the Global South Is Against the EU's Anti-Deforestation Law", in *Euronews*, 20 September 2023, <https://www.euronews.com/my-europe/2023/09/20/why-the-global-south-is-against-the-eus-anti-deforestation-law>.

⁵ Sofia Sanchez Manzanaro, "Agriculture Ministers Push to Weaken Anti-Deforestation Rules for EU Farmers", in *Euractiv*, 25 March 2024, <https://www.euractiv.com/?p=2067436>.

⁶ UN Food and Agriculture Organization (FAO), "FRA 2020 Remote Sensing Survey", in *FAO Forestry Papers*, No. 186 (2022), p. xii, <https://doi.org/10.4060/cb9970en>.

protecting forests. The 2010 EU Timber Regulation (EUTR)⁷ exclusively applied to timber imports and so did the 2008 US Lacey Act and the 2019 Chinese Forest Law. The UN REDD+ framework instead has only focused on land-use-related emissions, aiming at compensating countries that decide to adopt forest-positive practices. Agriculture was left in the background, despite soy farming or palm oil production having been the most evident cause of deforestation respectively in the Amazon and in Borneo, for instance.

There are many reasons for this, and the first is that regulating agriculture to prevent deforestation is no easy task. National legislations can greatly vary between producing countries (Indonesia, Malaysia, Brazil, etc.) and buyers (the EU), so that forest clearings and cultivations can be illegal for one side, but perfectly legal for the other. In several cases, agricultural exports represent such a significant share of the national economy that governments are very keen to turn a blind eye and allow illegal and destructive practices (as in the case of the forest fires for new palm oil plantations in Indonesia). Corruption, involvement of organised crime groups and lack of governance, among other issues, tend to further hide the environmental impact of agriculture.

The key to regulating agriculture is indeed tracing, i.e. the ability to follow the commodity in each different step

⁷ European Parliament and Council of the EU, *Regulation (EU) No 995/2010 of 20 October 2010 Laying Down the Obligations of Operators Who Place Timber and Timber Products on the Market*, <http://data.europa.eu/eli/reg/2010/995/oj>.

of the supply chain, from production to consumption. This allows for a full understanding and visibility of the impact of cultivations – also and particularly on forests. Tracing mechanisms are however scarce and have been so far only applied for timber in the EU as a consequence of the EUTR (with scarce success),⁸ and by certification organisations for other agricultural commodities. These include schemes such as Fairtrade (for coffee) or the Forest Stewardship Council (FSC, for timber and rubber), and similarly have had a limited impact especially because of their voluntary nature and of complications in gathering information – FSC in particular has been accused of certifying well-known environmental offenders.⁹

The turn of the EUDR

While in recent years technological developments and growing global environmental awareness have increased the reach of certification schemes, the share of certified production has remained scarce – for coffee, the most covered sector, this is around 30 per cent.¹⁰ Most of the

players indeed have had very little interest in changing the situation; traced, deforestation-free agricultural commodities are generally more expensive, and neither European and international buyers nor local producers have historically wanted to pay the additional sustainability price. The EUDR has marked perhaps the most significant change to this situation: it has introduced a “due diligence” requirement on companies importing the seven commodities covered by the Regulation into the EU, so that they would have to trace all their batches back to the original producer, to prove that they did not cause deforestation. By imposing traceability, not only has the EUDR delivered the tool mostly needed for its main objective (that is, reducing EU-related deforestation), but it also hopes that this will stimulate producers to expand traced production beyond EU demand – a sort of Brussels effect, which leads EU regulations to have a *de facto* impact that is larger than its *de jure* scope.

While such an approach has definitely more chances for success than the much milder one adopted in the past by the EUTR and other policies, it contains all the elements needed to upset producing countries – and it has. Indonesia, a country with a long history of unregulated deforestation and a major exporter of palm oil to the EU, has been one of the first to oppose the EUDR only a few days after its entry into force¹¹

⁸ Michael Munk Sørensen, Lorenz Carl Wähler and Malene Sand Jespersen, *Impact Assessment Study for the Revision of the Product Scope of the EU Timber Regulation. Final Report*, Brussels, European Commission, May 2019, <https://op.europa.eu/s/zOdq>.

⁹ Earthsight, “FSC Hall of Shame: The Ethical Wood Label’s Long Line of Scandals”, in *Earthsight Blog*, 25 October 2021, <https://www.earthsight.org.uk/news/blog-fsc-hall-of-shame-the-ethical-wood-label-long-list-of-scandals>.

¹⁰ Sjoerd Panhuysen and Frederik de Vries, *Coffee Barometer 2023*, Coffee Barometer Consortium, September 2023, p. 12, <https://>

coffeebarometer.org/documents_resources/coffee_barometer_2023.pdf.

¹¹ “Indonesia Invites Affected Countries to Oppose EUDR Policy: Minister”, in *ANTARA*, 13 July 2023, <https://en.antaranews.com/news/288156>.

and was rapidly followed by Malaysia, Brazil and other countries, which ultimately became a sort of informal coalition of 17 countries which sent a letter to the European Commission in September 2023.¹² In June 2024 also the US joined the opposition¹³ and were followed by Australia shortly thereafter. Reasons for oppositions are generally of two kinds: all countries, Brazil, Australia and the US in particular, complain about the unfeasibility of the Regulation, which they lament will be just too complicated to be successfully applied. Most of the countries in the Global South also object that they have been imposed EU rules, without having a say. While these countries' primary interest clearly lies in maintaining access to the European market without paying this sustainability price, the complaints are reasonable: building a traceability system for sectors that had limited to no attempts in the past will be very hard and very expensive, considering especially how convoluted global agricultural supply chains still are (in terms of number of intermediaries, lack of transparency, etc.). Equally, the EUDR saw very little debate with third countries and a great

¹² Indonesia Ministry of Foreign Affairs, *17 Like-Minded Countries Convey Official Concern Regarding the EUDR*, 8 September 2023, <https://kemlu.go.id/portal/en/read/5234/berita/17-like-minded-countries-convey-official-concern-regarding-the-eudr>.

¹³ Andy Bounds and Alice Hancock, "EU's Use of Incorrect Deforestation Data 'Risks Blocking Imports'", in *Financial Times*, 15 July 2024, <https://www.ft.com/content/ab2aabb-8978-444b-844b-3d0d70553266>; Kate Abnett, "United States Asks EU to Delay Deforestation Law, Letter Shows", in *Reuters*, 20 June 2024, <https://www.reuters.com/markets/commodities/united-states-asks-eu-delay-deforestation-law-letter-shows-2024-06-20>.

deal of unilateralism that was to some extent aimed at avoiding the endless negotiations that undermined the effectiveness of previous initiatives and regulations (the FLEGT, for instance). Such a unilateral approach was however likely designed also to increase the control of the EU on key commodities and improve food security, at a time in which China and other players are playing an increasingly greater role in South East Asia and Latin America.¹⁴

The way forward

The situation is getting more and more complicated for the EUDR. The opposition has spread to some EU member states in March 2024¹⁵ and even to the European Parliament, with the EPP group leading calls for a two-year delay of the Regulation application in June 2024, shortly after the latest elections.¹⁶ Governments and MEPs are likely being pushed by the domestic farming sector (which will also be affected by the Regulation) and by national importers, and the recent political wave against some of the Green Deal legislation (the Nature Restoration Law in particular) probably allowed these protests to grow louder.

¹⁴ Katharina Weber, "Forests, Foreign Policy and Trade. What the EU Deforestation Regulation Means from a Foreign Policy Perspective", in *CEPS Explainers*, No. 2023-15 (November 2023), <https://www.ceps.eu/?p=41589>.

¹⁵ Austria (which leads the opposition), Finland, Italy, Slovenia, Slovakia, Poland and Sweden. See Sofia Sanchez Manzanaro, "Agriculture Ministers Push to Weaken Anti-Deforestation Rules for EU Farmers", cit.

¹⁶ Robert Hodgson, "EPP Environment Lead Calls for Delay to Anti-Deforestation Law", in *Euronews*, 27 June 2024, <https://www.euronews.com/green/2024/06/27/epp-environment-lead-calls-for-delay-to-anti-deforestation-law>.

The EU should address these concerns rapidly, or risk failing the EUDR. This will not only delay much-needed forest protection, but will also discourage other countries from taking the same direction – something the US is now trying to achieve through the FOREST Act that has been recently re-proposed.¹⁷ The EU should work on two sides: the technical and the political one.

From a technical perspective, many tools can now significantly reduce the costs of tracing, and are easily and readily available to European and non-European users: satellite images from the EU Copernicus programme can offer a free and clear view of the farms where commodities are supposedly coming from (traceability always includes coordinates), and thanks to historic series it is possible to understand how the landscape has evolved over time, for instance. Apps such as Koltitrace, by agri service provider Koltiva, allows for easier collection of information along the supply chain, since it will be the different operators (farmers, intermediate buyers, etc.) that will directly insert them step by step, and not the final operator.

However, even these advancements will have little impact without the cooperation of local and national institutions, and even of companies, in producing countries. Indeed, these will ultimately be the ones gathering and providing the information on which

EU institutions will decide whether imports will be EUDR-compliant or not. Brussels should first improve relations with producing countries, ideally through dedicated platforms such as the task force the EU launched with Indonesia and Malaysia on palm oil already in 2023.¹⁸ Engagement with the private sector should also be a priority, since companies often have the best understanding of their own supply chains, but dialogue has been very limited before and after the entry into force of the Regulation. The EU will however have the difficult task of balancing the demands of these players while maintaining the real effectiveness of the Regulation, in order not to transform one of the boldest attempts to protect global forests into just a very expensive bureaucratic exercise.

25 July 2024

¹⁷ David E. Bond, Matt Solomon and Ian Saccomanno, "US Congress Reintroduces Bill to Restrict Imports Linked to Illegal Deforestation", in *White & Case Insight Alerts*, 7 December 2023, <https://www.whitecase.com/node/120176>.

¹⁸ European External Action Service (EEAS), *Joint Press Release: The 2nd Meeting of the ad hoc Joint Task Force on the EUDR*, Putrajaya, Malaysia, 2 February 2024, https://www.eeas.europa.eu/node/438155_en.

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