Machine Translated by Google

Nord Ovest Consulting
Partnering Solutions

EU Regulation 2023/1115

The EU's fight against deforestation and forest degradation and the reduction of greenhouse gas emissions, in order to meet the commitments undertaken by the Union with the European Green Deal of 11/12/2019 and the agreement of Paris adopted under the United Nations Framework Convention on Climate Change, continues with the entry into force of Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 (so-called "Deforestation Regulation").

The Regulation we are dealing with today establishes obligations and prohibitions relating to raw materials and commercial products that have the greatest impact on the phenomena of deforestation and forest degradation (expressly listed in Annex I of the Regulation), trying to restore the balance between environmental protection and economic development of EU countries, which by express regulatory provision, must submit to legislation that aims to reduce greenhouse.

A clear example of this is Regulation (EU) 2021/1119, which imposes a binding obligation on countries to achieve climate neutrality by 2050 at the latest and to reduce greenhouse gas emissions by at least 55% by 2030 to 1990 levels.

With some exceptions, the Regulation in question will apply from 30 December 2024.

Objective of the Regulation.

According to recital No. 2 of the Regulation *"Deforestation and forest degradation are pressing at an alarming rate. According to estimates by the Food and Agriculture Organization of the United Nations (FAO), 420 million hectares of forests disappeared between 1990 and 2020, or about 10% of the total remaining forests on the planet, equivalent to an area larger than that of the European Union. Deforestation and forest degradation, in turn, contribute significantly to global warming and biodiversity loss, two of the greatest environmental challenges of our time."*

And again *"Deforestation alone is responsible for 11% of greenhouse gas emissions, as declared in the special report on climate change and soil of the Intergovernmental Panel on Climate Change (IPCC) of 2019."*

Therefore, *"This Regulation should contribute in particular to the achievement of the objectives relating to the sustainable use of the earth's ecosystem (SDG 15), climate action (SDG 13), responsible consumption and production (SDG 12), to eradicating hunger (SDG 2) and to health and well-being (SDG 3).*
Target 15.2 of halting deforestation by 2020 has not been achieved, reflecting the urgency of ambitious and effective action."

Machine Translated by Google

The prohibitions provided for by the Regulation.

The Regulation establishes, in general terms, the prohibition of placing and making available on the Union market as well as exporting from the Union certain products specifically identified by their respective customs headings in Annex I, which contain or which have been manufactured or fed (in the case of animal derivation) using some raw materials which are also prohibited, i.e. cattle, cocoa, coffee, oil palm, rubber, soy and wood.

Economic operators (even non-SME traders) who want to continue placing or exporting such goods on the market will therefore have to make sure that the products covered by the standard meet all the following conditions:

1. must be “deforestation-free”, i.e. products that contain or have been fed or manufactured using raw materials produced on land that has not been deforested after 31 December 2020 and, in the case of products that contain or have been manufactured using wood, the latter must have been harvested without causing degradation of the forest of origin after 31 December 2020;

2. they must have been manufactured in compliance with the legislation of the country of production (reducing the EU's contribution to global greenhouse gas emissions and biodiversity loss);
3. must be the subject of a due diligence statement. This declaration must be made available to the competent authority according to an information system which must be set up by 12/30/2024.

Obligations set out in the Regulation for SME operators and traders.

Pursuant to art. 4 of the Regulation, operators intending to import and export the products covered by the legislation will be required to enter a declaration in a European information system in which they will certify that they have carried out the required due diligence.

The PMI Merchant collects and maintains the following information regarding the affected products it intends to make available on the market:

a) the name, registered trade name or registered trademark, postal address, e-mail address and, if available, the web address of the operators or traders who supplied him with the products concerned, as well as the numbers reference of the due diligence statements associated with such products;

b) the name, registered trade name or registered trademark, postal address, e-mail address and, if available, the web address of the operators or merchants to whom it has supplied the products concerned.

The PMI trader shall keep the information referred to in paragraph 3 for at least five years from the date of making it available on the market and provide it to the competent authorities upon request.

Where an PMI trader obtains or becomes aware of new relevant information, including substantiated claims, which indicates a risk of non-compliance with this Regulation of an affected product which he has made available on the market, he shall immediately inform the competent authorities of the Member State in which the product was made available on the market, as well as the traders to whom it supplied the product concerned.

Machine Translated by Google

The trader, whether or not an SME, shall offer the competent authorities all necessary assistance to facilitate the execution of the checks referred to in Articles 18 and 19, including access to the premises and the provision of documentation and registers.

Sanctions

Pursuant to art. 25 of the Regulation in question, the member countries will have to provide for effective, proportionate and dissuasive sanctions at national level to ensure the application of the Regulation.

States will be able to decide the amount of financial penalties, commensurate with the environmental damage and the value of the raw materials or products concerned, but these penalties must not be less than 4% of the operator's or trader's annual turnover in the year preceding that of the decision on the sanction.

Furthermore, the States will also have to provide for the confiscation of the products and proceeds, as well as other ancillary sanctions, such as, for example, the temporary ban on placing or making available on the market or exporting the raw materials concerned and the products concerned, in the event of serious infringement or recidivism.

A serious impact is also foreseen on the company's image vis-à-vis the PA, since the final sentences against legal persons for violations of the Regulation will have to be notified to the EU Commission.

For assistance, write to consulting@nord-ovest.com