

SWEDISH NON PAPER AND ANNEX NON PAPER

Swedish non-paper for Omnibus amendments to EUDR

Since entering into force in June 2023, the Commission, competent authorities and companies, both within and outside the Union, have experienced challenges in interpreting and implementing the legal text of the EU Deforestation Regulation¹ (EUDR) in practise. In December 2024 the European Union granted a 12-month additional phasing-in period, making the law applicable on 30 December 2025 for large and medium companies and 30 June 2026 for micro and small enterprises. Large efforts have been made to resolve outstanding issues and find workable simplifications within the legislative framework. However major concerns and uncertainties still remains to be resolved. Leading to that Sweden sees an urgent need to include the EUDR-legislation in an upcoming Omnibus package.

Whilst maintaining the important objectives of the regulation, there is a need to significantly cut red tape and paper trails for economic operators and competent authorities. The focus of the EUDR legislation should be laid on where the risk of placing non-compliant products on the single market is the highest whilst at the same time reducing the overall regulatory burdens. Therefore, Sweden suggests that the EUDR should:

- **Focus on products that are placed on the market for the first time.** The highest risk for non-compliance occurs when products are placed on the market for the first time. This should be reflected in the legislation and on the obligations for the companies in the various part of the value chain.
- **Clarify the obligations for companies and competent authorities.** Remove excessive and redundant due diligence requirements for operators only handling relevant product or products derived from products already covered by a submitted due diligence statement. The regulation should allow downstream operators to rely on their suppliers' due diligence. Obligations on the level of assertion should be based on risk and administrative capacities of companies without leading to excessive and unnecessary documentation requests, safeguarding the competitiveness of SMEs and the attractiveness of the union market. Further the quantitative 1 Regulation (EU) 2023/1115 2 (2) targets for annually conducted checks by the competent authorities should be based on Due diligence statements

¹ Regulation (EU) 2023/1115

submitted in the information system, making the checks risk based and cost effective.

- **Remove reporting in excess and focus on the information needed to secure traceability.** Without a significant improvement with added functionalities to the information system, a clarification on the use of mass-balance systems for compliant commodities or products, and digital tools for secure information sharing in various value chains without risking competitiveness or information breaches, downstream operators and traders should only be asked to document information regarding its suppliers and to whom the product is supplied to. The obligation for all actors in a value chain to report reference numbers in excess that cannot be directly linked to the relevant product is not proportional and will lead to undue administrative burden for both companies and competent authorities.

- **Reformulate the penalties of the EUDR so that they align with the Environmental crime directive.** There is a need to improve harmonisation between the different legal acts within the EU.

In conclusion to achieve the important objectives to stop deforestation and forest degradation, we need an effective functional risk-based EUDR legislation that enable the growth of deforestation free products. At the same time positions the EU as a leading market for sustainable products.

Sweden welcomes discussions on further simplifications but suggest changes and/or additions in the following articles: 2; 4; 5; 6; 9; 16; 18; 19; 20; 21; 22; 24; 25; 27; 28; 31; 33. For more details see Annex X. Due to material changes in the articles, the preamble might also need to be reviewed and adjusted.

Suggested amendments to EUDR

Article 2

To address the first placing of a relevant commodity or product on the market, a new definition is introduced and the current definition (22) is modified. The suggested changes aim to safeguard that no non-deforestation free relevant commodities or product enters the EU market, at the same time omitting the obligations for non-SME operators and nonSMEs traders to submit due diligence statement for products already subject to due diligence.

(X) – New

‘downstream operator’ means any natural or legal person who, in the course of a commercial activity, places relevant products that have already been subject to due diligence and is covered by an already submitted due diligence statement in accordance with Article 33 on the market or exports such products;

(22) modified

‘authorised representative’ means any natural or legal person established in the Union who, in accordance with Article 6, has received a written mandate from an operator ~~or from a trader~~ to act on its behalf in relation to specified tasks with regard to the operator’s ~~or the trader’s~~ obligations under this Regulation.

Article 4

Obligations of operators and downstream operators

To separate between operators and downstream operators, the latter which are not under the obligations to perform due diligence on products already subject to due diligence. The paragraphs .5 – 8 has been updated and paragraph 4.9 has been omitted. The obligations in paragraph 7 have been aligned with the information that can be taken form the information system, Article 33. Paragraph 10 has been replaced by two new suggested paragraphs 11 and 12 that has been added to align better with Article 5 paragraph 2 and 3.

5. Operators **including downstream operators** that obtain or are made aware of relevant new information, including substantiated concerns, indicating that a relevant product that they have placed on the market is at risk of not complying with this Regulation shall immediately inform the competent authorities of the Member States in which they placed the relevant product on the market, as well as traders to whom they supplied the relevant product. In the case of exports, the operators shall inform the competent authority of the Member State which is the country of production.

6. (a) Operators shall offer all necessary assistance to the competent authorities to facilitate the carrying out of the checks under Article 18, including access to premises and the making available of documentation and records.

(b) Downstream operators shall offer all necessary assistance to the competent authorities to facilitate the carrying out of the checks under Article 18 paragraph 3, including access to premises and the making available of documentation and records.

7. Operators shall communicate to downstream operators and/or to traders further down the supply chain of the relevant products they placed on the market or exported ~~all information necessary to demonstrate that due diligence was exercised and that no or only a negligible risk was found, including reference numbers of the due diligence statements~~ associated to those products.

8. By way of derogation from paragraph 1 of this Article, **downstream** operators ~~that are SMEs ('SME operators')~~ shall not be required to exercise due diligence for relevant products contained in or made from relevant products that have already been subject to due diligence in accordance with paragraph 1 of this Article and for which a due diligence statement has already been submitted in accordance with Article 33. ~~In such cases, SME operators shall provide the competent authorities with the reference number of the due diligence statement upon request.~~ For parts of relevant products that have not been subject to due diligence, the SME operators shall exercise due diligence in accordance with paragraph 1 of this Article.

~~9. Operators that are not SMEs ('non-SME operators') may refer to due diligence statements that have already been submitted in accordance with Article 33 only after having ascertained that the due diligence relating to the relevant products contained in or made from the relevant products was exercised in accordance with paragraph 1 of this Article. They shall include the reference numbers of such due diligence statements that have already been submitted in accordance with Article~~

~~33 in the due diligence statements that they submit under paragraph 2 of this Article. For parts of relevant products that have not been subject to due diligence, non-SME operators shall exercise due diligence in accordance with paragraph 1 of this Article.~~

~~10. Any operator referring to a due diligence statement that has already been submitted in accordance with Article 33 shall retain responsibility for the compliance of the relevant products with Article 3, including that no or only a negligible risk was found, prior to placing such relevant products on the market or exporting them.~~

11. (New) By way of derogation from paragraph 1 downstream operators shall place relevant products on the market only if they are in possession of the information required under paragraph 12.

12. (New) Downstream operators shall collect and keep the following information relating to the relevant products they intend to place on the market:

(a) the name, registered trade name or registered trade mark, the postal address, the email address and, if available, a web address of the operators and/or the traders who have supplied the relevant products to them;

(b) the name, registered trade name or registered trade mark, the postal address, the email address and, if available, a web address of the operators and/or the traders to whom they have supplied the relevant products...]

13. (New) Downstream operators shall keep the information referred to in paragraph 12 for at least five years from the date of the placing on the market and shall provide that information to the competent authorities upon request.

Article 5

Obligations of traders

Traders independent of size cannot place products on the market for the first time, in such a case they would be under the obligations of an operators. As only operators obligated to perform due diligence on products placed on the market for the first time and non-SME traders would have a similar role as downstream operators that are not obligated to perform due diligence for products already subjected to due diligence Article 5 paragraph 1 has been omitted. Paragraphs 2 to 6 has been subsequently modified as the suggestion is that there is no longer a difference in the obligations between SME and non-SME traders.

~~1. Traders that are not SMEs ('non-SME traders') shall be considered as non-SME operators and shall be subject to obligations and provisions in Articles 3, 4 and 6, Articles 8 to 13, Article 16(8) to (11) and Article 18 with regard to the relevant commodities and relevant products that they make available on the market.~~

2. Traders ~~that are SMEs ('SME traders')~~ shall make available relevant products on the market only if they are in possession of the information required under paragraph 3.

3. ~~SME~~ Traders shall collect and keep the following information relating to the relevant products they intend to make available on the market:

(a) the name, registered trade name or registered trade mark, the postal address, the email address and, if available, a web address of the operators **including downstream operators** or the traders who have supplied the relevant products to them ~~as well as the reference numbers of the due diligence statements associated to those products;~~

(b) the name, registered trade name or registered trade mark, the postal address, the email address and, if available, a web address of the operators **including downstream operators** or the traders to whom they have supplied the relevant products.

4. ~~SME~~ Traders shall keep the information referred to in paragraph 3 for at least five years from the date of the making available on the market and shall provide that information to the competent authorities upon request.

5. ~~SME~~ Traders that obtain or are made aware of relevant new information, including substantiated concerns, indicating that a relevant product that they have made available on the market is at risk of not complying with this Regulation shall immediately inform the competent authorities of the Member States in which they made the relevant product available on the market as well as traders to whom they supplied the relevant product.

6. Traders, whether or not they are SMEs, shall offer all necessary assistance to the competent authorities to facilitate the carrying out of the checks under Articles ~~18~~ and 19, including access to premises and the making available of documentation and records.

Article 6

Authorised representatives

The changes in paragraph 1 and 3 is subsequent to the omitted obligation for non-SME traders to submit due diligence statements.

1. Operators or traders may mandate an authorised representative to submit the due diligence statement pursuant to Article 4(2) on their behalf. In such cases, the operator ~~or trader~~ shall retain responsibility for the compliance of the relevant product with Article 3.

3. An operator that is a natural person or a microenterprise may mandate the next operator ~~or trader~~ further down the supply chain that is not a natural person or a microenterprise to act as an authorised representative. Such next operator ~~or trader~~ further down the supply chain shall not place ~~or make available~~ relevant products on the market or export them without submitting the due diligence statement pursuant to Article 4(2) on behalf of that operator. In such cases, the operator that is a natural person or a microenterprise shall retain responsibility for compliance of the relevant product with Article 3, and shall communicate to that next downstream operator or trader further down the supply chain all information necessary to confirm that due diligence was exercised and that no or only a negligible risk was found.

Article 9

The change in paragraph 1 is subsequent to the omitted obligation for downstream operators and non-SME traders to submit due diligence statements.

Information requirements

1. Operators ...each relevant product:

..

(f) the name, postal address and email address of any business, operator **including downstream operators** or trader to whom the relevant products have been supplied;

Article 16

In order to clarify the obligations of the competent authority the quantitative targets for the percentage of operators that shall be checked annually will be based on the submitted due diligence statements in the information system.

Obligation to carry out checks

1. The competent authorities shall carry out checks within their territory to establish whether operators **including downstream operators** and traders established in the Union comply with this Regulation. The competent authorities shall carry out checks within their territory to establish whether the relevant products that the operator **including downstream operators** or trader has placed or intends to place on the market, has made available or intends to make available on the market or has exported or intends to export comply with this Regulation.

8. Each Member State shall ensure that the annual checks carried out by its competent authorities pursuant to paragraph 1 of this Article cover at least 3 % of the operators **that in accordance with Article 4.2** ~~placing or making available~~ on the market or exporting relevant products that contain or have been made using relevant commodities produced in a country of production or parts thereof classified as standard risk in accordance with Article 29.

9. Each Member State shall ensure that the annual checks carried out by its competent authorities pursuant to paragraph 1 of this Article cover at least 9 % of the operators **that in accordance with Article 4.2** ~~placing or making available~~ ~~placing or making available~~ on the market or exporting relevant products that contain or have been made using relevant commodities as well as 9 % of the quantity of each of the relevant products that contain or have been made using relevant commodities produced in a country or parts thereof classified as high risk in accordance with Article 29.

10. Each Member State shall ensure that the annual checks carried out by its competent authorities pursuant to paragraph 1 of this Article cover at least 1 % of the operators **that in accordance with Article 4.2** ~~placing~~ on the market or exporting relevant products that contain or have been made using relevant commodities produced in a country or parts thereof classified as low risk in accordance with Article 29.

13. Checks shall be carried out without prior warning of the operator **including downstream operators** or trader, except where prior notification of the operator, **including downstream operators** or trader is necessary in order to ensure the effectiveness of the checks.

Article 18

Subsequent change after the suggested deletion of Article 4. paragraph 9 and the suggested addition of the term downstream operator Article 2. (X).

Checks on operators and non-SME traders

1. The checks on operators ~~and non-SME traders~~ shall include:

(a) examination of their due diligence system, including risk assessment and risk mitigation procedures, and of documentation and records that demonstrate the proper functioning of the due diligence system;

(b) examination of documentation and records that demonstrate that a specific relevant product that the operator has placed or intends to place on the market or intends to export ~~or that the non-SME trader has made available or intends to make available on the market~~ complies with this Regulation, including, when applicable, through risk mitigation measures, as well as examination of the relevant due diligence statements.

2. The checks on operators **including downstream operators** ~~and non-SME traders~~ may also include, where appropriate, in particular where the examinations referred to in paragraph 1 have raised questions:

(a) on-the-ground examination of relevant commodities or of the relevant products with a view to ascertaining their correspondence with the documentation used for exercising due diligence;

(b) examination of corrective measures taken under Article 24;

(c) any technical and scientific means adequate to determine the species or the exact place where the relevant commodity or relevant product was produced, including anatomical, chemical or DNA analysis;

(d) any technical and scientific means adequate to determine whether the relevant products are deforestation-free, including Earth observation data such as from the Copernicus programme and tools or from other publicly or privately available relevant sources; and

(e) spot checks, including field audits, including where appropriate in third countries, provided that such third countries agree, through cooperation with the administrative authorities of those third countries.

Checks on downstream operators

3.(NEW) The checks on downstream operators shall include the examination of documentation and records that demonstrate compliance with paragraph 11 and 12.

Article 19

Subsequent change after the suggested deletion of paragraph 9 Article 4.

Checks on SME traders

1. The checks on **SME** traders shall include the examination of documentation and records that demonstrate compliance with Article 5(2), (3) and (4).
2. The checks on **SME** traders may also include, where appropriate, in particular where the examinations referred to in paragraph 1 have raised questions, spot checks, including field audits.

Article 20

Subsequent change after the suggested addition of the term downstream operator in Article 2.

Recovery of costs by competent authorities

1. Member States may authorise their competent authorities to reclaim from the operators **including downstream operators** or traders the totality of the costs of their activities with respect to instances of non-compliance.

Article 21

Subsequent change after the suggested addition of the term downstream operator in Article 2.

Cooperation and exchange of information

3. Competent authorities shall exchange information necessary for the enforcement of this Regulation, including through the information system referred to in Article 33. That shall include giving access to and exchanging information on operators **including downstream operators** and traders, including due diligence statements, and on the nature and results of the checks carried out, with other Member States' competent authorities to facilitate the enforcement of this Regulation

Article 22

Subsequent change after the suggested addition of the term downstream operator in Article 2.

Reporting

1. By 30 April of each year, Member States shall make available to the public and to the Commission information on the application of this Regulation during the previous calendar year. That information shall include:

(a) the plans of checks and the risk criteria on which those plans were based;

(b) the number and the results of the checks carried out on operators **including downstream operators** ~~non-SME traders~~ and ~~other~~ traders in relation to the total number of operators **including downstream operators** ~~non-SME traders~~ and ~~other~~ traders, including the types of noncompliance identified;

(c) the quantity of relevant products checked in relation to the total quantity of relevant products placed on the market or exported **covered by a due diligence statement in the information system referred to in Article 33**, the countries of production; for relevant products entering or leaving the market, the quantity is to be expressed in kilograms of net mass and, where applicable, in the supplementary unit set out in Annex I to Regulation (EEC) No 2658/87 against the indicated Harmonised System code, or, in all other cases, the quantity is to be expressed in net mass or, where applicable, volume or number of items; a supplementary unit is applicable where it is defined consistently for all possible subheadings under the Harmonised System code referred to in the due diligence statement;

Article 24

Subsequent change after the suggested addition of the term downstream operator in Article 2.

Corrective action in the event of non-compliance

1. Without prejudice to Article 25, where competent authorities establish that an operator including downstream operator or trader has not complied with this Regulation or that a relevant product placed or made available on the market or exported is non-compliant, they shall without delay require the operator or trader to take appropriate and proportionate corrective action to bring the non-compliance to an end within a specified and reasonable period of time.

2. For the purposes of paragraph 1, the corrective action required to be taken by the operator **including downstream operator** or trader shall include at least one of the following, as applicable:

(a) rectifying any formal non-compliance, in particular with the requirements of Chapter 2;

(b) preventing the relevant product from being placed or made available on the market or exported;

(c) withdrawing or recalling the relevant product immediately;

(d) donating the relevant product to charitable or public interest purposes or, if that is not possible, disposing of it in accordance with Union law on waste management.

3. Irrespective of the corrective action taken under paragraph 2, the operator **including downstream operators** or trader shall address any shortcomings in the due diligence system with a view to preventing the risk of further non-compliance with this Regulation.

4. If the operator **including downstream operator** or trader fails to take corrective action as referred to in paragraph 2 within the period of time specified by the competent authority under paragraph 1, or where noncompliance as referred to in paragraph 1 persists, after that period of time competent authorities shall secure application of the required corrective action referred to in paragraph 2 by all means available to them under the law of the Member State concerned.

Article 25

Suggested changes are to align with updated environmental crime directive.

Penalties

1. Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament and of the Council (23), Member States shall lay down rules on penalties applicable to infringements of this Regulation by operators **including downstream operators** and traders and shall take all measures necessary to ensure that they are implemented. Member States shall notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendments affecting them.

2. The penalties provided for in paragraph 1 shall be effective, proportionate and dissuasive. Those penalties ~~may~~ **shall** include:

(a) fines proportionate to the environmental damage and the value of the relevant commodities or relevant products concerned, ~~calculating the level of such fines in such way as to ensure that they effectively deprive those responsible of the~~

~~economic benefits derived from their infringements, and gradually increasing the level of such fines for repeated infringements; in the case of a legal person, the maximum amount of such a fine shall be at least 4 % of the operator's or trader's total annual Union-wide turnover in the financial year preceding the fining decision, calculated in accordance with the calculation of aggregate turnover for undertakings laid down in Article 5(1) of Council Regulation (EC) No 139/2004 (24), and shall be increased, where necessary, to exceed the potential economic benefit gained; Member States shall take the necessary measures to ensure that the maximum level of such fines is not less than:~~

- i. **5 % of the total worldwide turnover of the legal person, either in the business year preceding that in which the offence was committed, or in the business year preceding that of the decision to impose the fine, or**
- ii. **an amount corresponding to EUR 40 000 000;**

(b) confiscation of the relevant products concerned from the operator, **downstream operators** and/or trader;

(c) confiscation of revenues gained by the operator, **downstream operators** and/or trader from a transaction with the relevant products concerned; 9.6.2023 Official Journal of the European Union L 150/233 EN (23) Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28). (24) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

Article 27

Subsequent change after the suggested addition of the term downstream operator in Article 2.

Cooperation and exchange of information among authorities

3. The customs authorities may communicate, in accordance with Article 12(1) of Regulation (EU) No 952/2013, confidential information acquired by the customs authorities in the course of performing their duties, or provided to the customs authorities on a confidential basis, to the competent authority of the Member State in which the operator including **downstream operator**, trader or authorised representative is established.

Article 28

Subsequent change after the suggested deletion of paragraph 9 Article 4.

Electronic interface

2. The Commission shall develop an electronic interface in accordance with Article 12 of Regulation (EU) 2022/2399 to enable:

(a) operators ~~and traders~~ to comply with the obligation to submit the due diligence statement of a relevant commodity or relevant product pursuant to Article 4 of this Regulation, by making it available through the national single window environment for customs referred to in Article 8 of Regulation (EU) 2022/2399 and receive feedback thereon from competent authorities; and...

Article 31

Subsequent change after the suggested addition of the term downstream operator in Article 2.

Natural or legal persons' substantiated concerns

1. Natural or legal persons may submit substantiated concerns to competent authorities when they consider that one or more operators, **including downstream operators** or traders are not complying with this Regulation.

2. Competent authorities shall, without undue delay, diligently and impartially assess the substantiated concerns, including whether the claims are well-founded, and take the necessary steps, including carrying out checks and conducting hearings of operators **including downstream operators** and traders, with a view to detecting potential non-compliance with this Regulation and, where appropriate, taking interim measures under Article 23 to prevent the placing or making available on the market and export of relevant products under investigation.

4. Without prejudice to the obligations pursuant to Directive (EU) 2019/1937 of the European Parliament and of the Council (26), Member States shall provide for measures to protect the identity of the natural or legal persons who submit substantiated concerns or who conduct investigations with the aim of verifying compliance by operators **including downstream operators** or traders with this Regulation.

Article 33

Subsequent change after the suggested deletion of paragraph 9 Article 4.

Information system

1. By

(a) registration of operators ~~and traders~~ and their authorised representatives in the Union; for operators placing relevant products under the customs procedure 'release for free circulation' or 'export', the Economic Operators Registration and Identification (EORI) number established pursuant to Article 9 of Regulation (EU) No 952/2013, shall be included in their registration profile;

(c) making available the reference number of existing due diligence statements pursuant to Article 4(8) and (9);