

The new EUDR benchmarking system and its implications



Sustainability

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On 22 May, the European Commission published the long-awaited benchmarking system according to Article 29 of the Regulation (EU) 1115/2023 (hereinafter '**EUDR**') as well as its underlying methodology. Under the benchmarking system, countries of production are categorized into low, standard, and high-risk countries, according to the level of risk of deforestation for the harvest or production of commodities covered by the scope of the EUDR.

1. The Benchmarking System

According to Article 29 of the EUDR, the European Commission shall classify countries or parts thereof as high or low risk. All other countries are assigned a normal (standard) level of risk. According to Article 2 No 24 of the EUDR, the country of production always refers to the country in which the relevant commodity used in a relevant product was harvested, or, in the case of cattle, where the cattle were raised. This means that the benchmarking system affects the risk of products based on the origin of the commodities and not based on the location of an immediate supplier.

Article 29(3) EUDR then sets forth the criteria of the risk classification under the benchmarking system. The criteria include the rate of deforestation and forest degradation, the rate of expansion of agriculture land for relevant commodities, as well as the production trends of relevant commodities and of relevant products. For this assessment the European Commission relied on the Food and Agricultural Organization - Global Forest Resources Assessment dataset (FAO FRA) as well as on the Food and Agriculture Statistics (FAOSTAT). From the methodology published by the European Commission it becomes clear that the European Commission did not directly and conclusively consider tenure rights, human rights or information about rights of indigenous peoples as provided for by Article 29(4) EUDR. Only in relation to the classification of high-risk countries did the European Commission take into account measures "imposed by the UN Security Council or the Council of the European Union on imports or exports of the relevant commodities and relevant products". The European Commission also emphasizes that due to existing sanctions it is "impossible to conduct due diligence along the value chains in these [high risk] countries". Given this statement, it seems unfeasible that goods using timber from these countries can be imported in compliance with the EUDR. In any case, a strict case-by-case assessment would always have to be carried out if the geolocation data indicates an origin from a high-risk country.

A first review of the benchmarking system by the European Commission is envisaged in 2026.

2. High-Risk, Standard-Risk and Low-risk Countries

As it had already been leaked from Brussels last week, only four countries are ranked as high-risk countries: Belarus, Myanmar North Korea and Russia. 140 countries are listed as low-risk countries. This means that all other countries remain standard-risk countries, including Brazil, Argentina, Belize, Columbia, Côte d'Ivoire, Ethiopia, Indonesia, Malaysia, Mexico and Peru, i.e. important growing areas for the relevant commodities cocoa, coffee, and wood. In contrast to what Article 29(1) and (2) EUDR suggest, the European Commission decided to classify only countries and not regions or parts of countries.

3. Consequences of the Categorization

The classification brings with it several simplifications for low-risk countries, or stricter rules for high-risk countries.

Categorization as a low-risk country results in simplified due diligence obligations for operators when placing relevant products containing relevant commodities produced in such a country on the market or exporting them, Artikel 13 EUDR. This means that operators need to collect information demonstrating that relevant products comply with Article 3, but they are not obliged to conduct a risk assessment or adopt risk mitigation procedures and measures. Additionally, they must assess the complexity of the relevant supply chain and the risk of circumventing the EUDR as well as the risk of mixing compliant and non-compliant products.

If a country is categorized as a standard-risk country, there are no direct implications for operators. Operators must meet the full requirements of Article 8 EUDR regarding due diligence obligations.

Categorization as a high-risk country does not have any direct consequences either. However, it has several indirect impacts. Firstly, operators should expect higher scrutiny of products containing relevant commodities from high-risk countries by the competent authorities. According to Article 16 EUDR, the competent authorities must carry out checks to establish whether operators and traders comply with the EUDR. For these checks the authorities use a risk-based approach, which is defined by the risk classification: 1% for 'low-risk', 3% for 'standard-risk' and 9% for 'high-risk'. This means that at least 9% of all operators sourcing from high-risk countries will be subject to compliance checks. Additionally, Article 17(3) EUDR gives the authorities the right to hold supply chains for up to 72 hours if they identify a product that is at high risk of non-compliance.

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