

Regulation's Legal Production Requirement

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Technical Perspective

Topic **Forests** *Region* **Europe**

The [EU Deforestation Regulation \(EUDR\)](#), which entered into force in June 2023, marks a step-change in demand-side efforts to reduce deforestation by requiring that commodities placed on, or exported from, the EU market are deforestation-free. While much attention has been given to the EUDR's [deforestation-free and traceability requirements](#), there is another important clause that has not been as widely discussed: the legal production requirement. This clause offers opportunities for producing countries to bolster their own environmental and sustainable development priorities and position themselves favorably for trade in commodities covered by the EUDR.

The legal production requirement mandates that, in addition to being deforestation-free, relevant products placed on or exported by the EU must have been grown, harvested or obtained in accordance with the relevant legislation of the country of production.

While this requirement is new for most agricultural commodities covered by the EUDR, past experience from similar provisions directed at wood products shows how such requirements can drive forest governance reforms in producer countries to

empower vulnerable groups, improve legal certainty — particularly for land tenure and use rights — and strengthen legal frameworks for sustainable forests and land management, restoration and conservation.

What Is the Legal Production Requirement and What Are its Implications?

The EUDR requires that commodities placed on, or exported from, the EU market that are covered under the regulation — cattle, cocoa, coffee, palm oil, soy, timber and rubber, as well as derived products such as beef, furniture and chocolate — don't come from land deforested or degraded after December 31, 2020.

In addition, the EUDR requires companies to conduct due diligence to ensure that the production of commodities placed on the EU market complies with laws in the country of origin. To do so, companies must understand the relevant laws in producing countries.

While the producer country regulates the specific harvesting and production requirements of these commodities, the EU has defined areas of law to be considered in the due diligence process. Note, however, that for some commodities in some countries, there may be no legal framework for all areas of law identified by the EUDR.

Areas of Law Covered by the Legal Production Requirement of the EUDR

"Relevant legislation of the country of production" means the [national and sub-national] laws applicable in the country of production concerning the legal status of the area of production in terms of:

- (a) land use rights
- (b) environmental protection
- (c) forest-related rules, including forest management and biodiversity conservation, where directly related to wood harvesting
- (d) third parties' rights
- (e) labor rights
- (f) human rights protected under international law

(g) the principle of [Free, Prior and Informed Consent \(FPIC\)](#), including as set out in the UN Declaration on the Rights of Indigenous Peoples

(h) tax, anti-corruption, trade and customs regulations

Source: Direct quote, [Regulation \(EU\) 2023/1115 of the European Parliament and the Council](#).

This requirement carries significant implications for companies, producers and governments in producer countries that sell relevant products to the EU market:

Companies and producers must be able to show buyers that they are complying with the law.

Smallholders need to be able to and have the means to comply with laws and regulations as they often face challenges in proving ownership or legal access to their land and formal authorization for relevant economic practices.

Governments may want to support companies and producers — in particular, smallholders — in this process.

The requirement creates opportunities for governments in producer countries to improve their own forest governance and achieve other environmental policy objectives while working to support their trade with the EU market if they ensure their processes and tools are adequately prepared. [Indonesia](#) and [Vietnam](#), for instance, have already been designing national measures to align with the requirements in the EUDR.

Lessons from the Timber Sector

The timber sector can provide valuable lessons for implementing the legal production requirement, given that major consumer markets have had laws in place mandating due diligence for illegal logging and associated trade for over a decade.¹ Legality requirements from major timber markets like [the Lacey Act](#), the [European Union Timber Regulation](#) and others have spurred various efforts to clarify legal requirements and communicate them effectively to private sector actors — for example, the legality definition agreed upon as part of the [Voluntary Partnership Agreements](#) (VPAs) and tools and resources to gather and assess information about legal frameworks and company compliance.

Three valuable lessons that producer country governments can learn from the timber sector in supporting due diligence for the legal production requirement include:

Developing clear legal frameworks. Laws can at times be complex, unclear or contradictory. Language barriers often add more difficulty for importers to understand the regulations. Governments in producing countries can lead multi-stakeholder processes (see below) to assess legal frameworks relevant to the EUDR and develop plans for closing loopholes, removing duplicative regulations and clarifying legislative hierarchies, as well as developing indicators and means of verification to guide risk assessment and risk mitigation. Tools developed for timber can be adapted for the commodities covered by the EUDR.

Though challenging, it is crucial that producer countries clarify what the legal requirements are for smallholders to legally register their production, and for producers to legally claim and demonstrate land tenure or land use rights, depending on the national legal framework.

Ensuring involvement from different types of stakeholders in the assessment and review processes so the resulting legal framework will be widely accepted and to ensure that all groups can comply with the laws. The multi-stakeholder process should consider the needs of all supply chain actors in a way that addresses power imbalances and enables them to participate. It also fosters broader buy-in among relevant actors including smallholders, workers, unions, trade associations, local communities, civil society organizations and any other non-commercial stakeholder groups.

Additionally, governments, companies and others can support monitoring and traceability technologies and tools, which enhance the capacity of different groups participating in the multi-stakeholder process. For example, cell phone-based mapping and tracking tools in supply chains, such as [PemPem](#) and [INATrace](#), can be expanded to assist small farms in complying with land tenure and business registration requirements.

Enhancing information accessibility by assessing whether information about the legal framework is available and understandable, and what relevant supply chain information is accessible to support compliance with the legality requirements. If information is not easily available to companies placing products on the EU market, governments should identify concrete steps to increase transparency from point of production to point of export. Industry associations and cooperatives can play a role in communicating with their members about what information is

most relevant.

Useful information can include legal hierarchies that explain how different laws and regulations relate to each other, providing texts of the laws and regulations online and establishing portals where companies can verify the legitimacy of registered businesses, official permits and documents.

These measures would promote a shared understanding about the scope of laws and regulations to consider. Clarifying what lies within and outside the scope of the legal framework in producing countries is critical so that companies conducting due diligence do not interpret and apply the legal production requirement in inconsistent ways. It is also vital that governments proactively and comprehensively inform smallholder farmers about the relevant legislation and the related responsibilities and support mechanisms.

Examples of Processes and Tools from the Timber Sector

Category	Example	Summary	Geographic scope
Clear Legal Frameworks	APEC Timber Legality Guidance Template	A collection of individual guidance documents provided by APEC member economies including forest management framework as well as timber legislations or regulations.	Australia, Chile, China, Chinese Taipei, Indonesia, Japan, Malaysia, New Zealand, Papua New Guinea, Korea, Thailand and the United States.
Multi-Stakeholder Involvement	Voluntary Partnership Agreements (VPAs) Annex on the Legality Definition	Description of national laws a VPA partner country will use to assess the legality of timber and the process for gathering evidence to monitor compliance with the laws.	Cameroon, Central African Republic, Côte d'Ivoire, Democratic Republic of Congo, Gabon, Ghana, Guyana, Indonesia, Honduras, Laos, Liberia, Malaysia, Republic of Congo, Thailand and Vietnam.

Category	Example	Summary	Geographic scope
Enhanced Information Accessibility	Open Timber Portal (WRI)	Compilation of concession boundaries and the list of registered timber producers from the government, documents on forest management, harvest and trade by timber producers and observations of suspected noncompliance by third-party forest monitors in the Congo Basin.	Cameroon, Central African Republic, Democratic Republic of Congo, Republic of Congo and Gabon.
	Common Framework for Assessing Legality of Forestry Operations, Timber Processing and Trade (WWF and TRAFFIC)	A checklist of the legal requirements covering forestry operations, corresponding processing and timber trade relating to timber origin, production, transportation, processing and trade and legislation safeguarding agreed-upon standards in relation to environmental, conservation and social issues.	Brazil, Cameroon, Central African Republic, China, Democratic Republic of Congo, Republic of Congo, Gabon, India, Indonesia, Lao PDR, Myanmar, Peru, Russia, Vietnam and Colombia.

Sources: APEC Compendium of Resources for the Facilitation of the Trade and Distribution of Legally Harvested Forest Products and authors' summary.

How Producer Countries Can Leverage the Legal Production Requirement

While the timber sector can offer valuable lessons, it is important to note differences between existing processes to support legal compliance for timber and the new requirements outlined in the EUDR. [Client Earth's recent analysis](#) of legal compliance pathways in the cocoa sector in West Africa highlights these differences, emphasizing the necessity for tailored strategies aligned with specific contexts. Notably, the VPA Process has exemplified a context-specific approach in the timber sector. Therefore, while EUDR focuses on standardized obligations for covered products in the EU market, targeted support for individual countries remains critical.

Preparatory Steps for Producer Countries Based on Experiences from the VPAs

- 1) Understand and analyze the requirement.
- 2) Identify relevant state actors (ministries/agencies) concerned by the requirement.
- 3) Review of the legal framework and existing relevant national and international approaches initiatives to guarantee compliance.
- 4) Develop strategies to consolidate and harmonize legal frameworks especially through participatory approaches.
- 5) Define indicators for legal compliance.
- 6) Sensitize local farmers about the content of the legislation and how to comply with it.
- 7) Develop legality assurance systems through auditing, certification and chain of custody requirements.
- 8) Strengthen compliance with the legal frameworks' standard operating procedure/strategy of law enforcement.
- 9) Support independent forest monitoring to verify compliance.

Source: Authors

While the EUDR's legal production requirement may not have grabbed headlines, its significance should not be overshadowed by other requirements in the regulation.

By reviewing country legal frameworks, communicating and clarifying the scope of legality production requirements, involving all relevant stakeholders and making information about the legal framework more accessible, governments in producing countries can take advantage of this less prominent clause in a way that advances their own forest and natural resource policy priorities, supports national and international goals for nature and people, and at the same time positions them to be important suppliers to the EU market.

¹Major consumer markets that have introduced legality requirements for timber products include the European Union, the United States of America, Australia, the Republic of Korea and Japan.