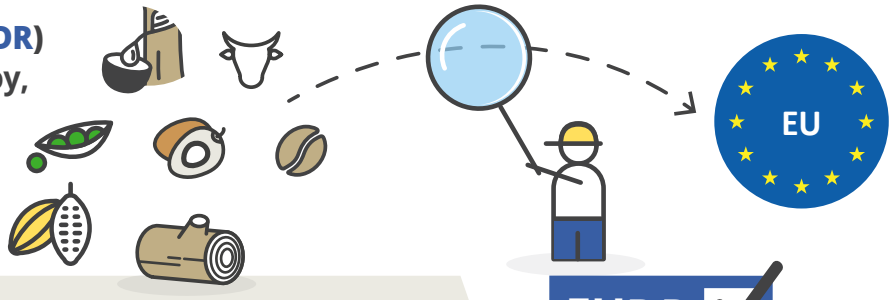
EFI | **Deforestation-free value chains** Technical facility

Unpacking legality requirements under the EU Deforestation Regulation

The **EU Deforestation Regulation (EUDR)** requires that **palm oil, coffee, cocoa, soy, cattle, timber and rubber** (and some derived products) entering the EU **be produced legally and without causing deforestation**



Operators wishing to place these products on the EU market **must conduct due diligence to demonstrate that these criteria are met**

Information about the legality of the products, along with evidence that they are traceable and deforestation free, **must be compiled by operators**

EU competent authorities will conduct checks to **determine compliance**

Understanding the legality criteria under the EUDR

The legality of the products is determined according to the 'relevant legislation' of the producing country

This 'relevant legislation' is defined according to two criteria:

1 It must relate to the legal status of the land where the commodities are produced

2 For agricultural commodities, it covers **seven areas of law:**

1. **Land use:** such as the recognition of customary, private or public land rights; rules on protected areas and national land-use planning
2. **Environment:** such as the requirements on biodiversity protection, waste disposal, impact assessments, use of soil and water, and safe handling of pesticides and fertilisers
3. **Third-party rights:** such as communities' right to access environmental information and to participate in related decision making
4. **Labour rights:** such as obligations on equal treatment and non-discrimination, limits on working hours, rest and leave, workplace health and safety, minimum wages, and protection from forced labour
5. **Free, Prior and Informed Consent:** such as communities' right to receive information, take part in land decisions, and to give or withhold consent
6. **Human rights:** such as prohibitions on child and forced labour, guarantees for gender equality and non-discrimination, and protection from violence or harassment on farms
7. **Tax, trade, customs & anti-corruption:** such as obligations to pay taxes, follow trade and export rules, and ensure ethical conduct and transparency

** The European Commission published non-binding guidance that offers an interpretation of the legality criteria*

How to identify relevant legal requirements?

Legality must be measured based on the existing national legal framework

To determine the legality of their products, operators must first identify which legal requirements are relevant

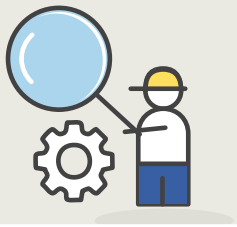
This involves:

- **Knowing the country's laws:** Which international treaties, laws, regulations, decrees, etc., are applicable in the producing country in the seven areas listed in the EUDR?
- **Focusing on the commodity:** Which requirements are specifically relevant to the commodity?
- **Focusing on the appropriate scale:** Which requirements apply to the area of production?

! *If one area of law is not regulated in a country, then there is no legal requirement to be complied with*

How to demonstrate legal compliance?

To demonstrate compliance, the EUDR requires operators to have a **due diligence system** in place to collect and verify information on their products



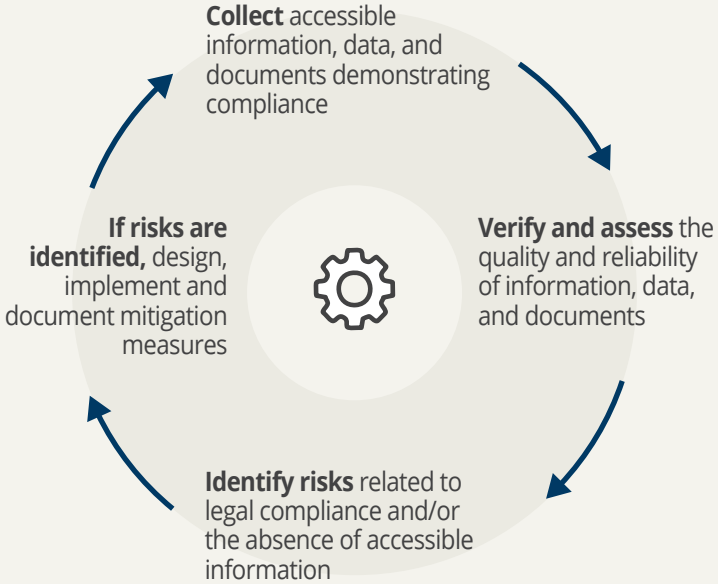
What is due diligence?

Due diligence is a continuous and dynamic process aimed at identifying, assessing and mitigating risks associated with procurement activities

Due diligence is not a fixed checklist, but a mechanism that is:

- **Dynamic:** Evolves in line with new information or changes in risks — e.g. changes in the supply chain
- **Contextual:** Varies by operator, product type, suppliers, intermediaries, sourcing area, etc.
- **Systematic:** Must be carried out by the operator for each shipment

How does a due diligence system work?



Can certification help operators demonstrate compliance?

European importers can **take into account information from certification schemes** to conduct risk assessments

However, **no certification provides a 'green lane' to the EU market:** operators must be able to explain how certification helps in their due diligence

Disclaimer. This factsheet has been produced by the European Forest Institute with the financial assistance of the European Union. The contents of this factsheet are the sole responsibility of the author and can under no circumstances be regarded as reflecting the position of funding organisations. The information presented in this factsheet comes from the EUDR published in the EU Official Journal on 9 June 2023.

Explore tools for due diligence on cocoa legality in different producing countries

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