



**Independent
Retail Europe**

**PROPOSAL FOR A REGULATION ON
DEFORESTATION AND FOREST DEGRADATION**

COMMENTS OF INDEPENDENT RETAIL EUROPE

15 MARCH 2022



EXECUTIVE SUMMARY

The many efforts that need to be made by all actors along supply chains for the green transition, with regard to, energy efficiency, storage, transport, packaging, consumer health, etc. requires legislators to opt for the most effective -including cost-effective- and efficient approach, to avoid any unnecessary, even sharper rises in costs for supply chain actors and consequently, in consumer prices. Unnecessary burdens and costs will also negatively affect the competitiveness of EU companies and EU products abroad.

Groups of independent retailers are making significant efforts towards fighting deforestation by, for instance, participating in certification schemes such as FSC® or the Rainforest Alliance, or offering consumers alternative products in the framework of meat-free diets or participating in projects of reforestation. You can find many initiatives of our members on our “Retailers for sustainability” [webpage](#) and in their sustainability reports linked to that page.

We therefore welcome the ambition of the European Commission, and regret all the more that the Commission has opted for a solution that may appear to fairly distribute the responsibilities to curb deforestation among supply chain partners but that, by going counter to the proven effective EU product legislation acquis, **will lead to unnecessary additional price increases for consumers**. This, not only because of the unnecessary costs entailed with an **unnecessary duplication of tasks, loss of supply chain- and cost-efficiency** but also because of, probably underestimated, **disproportionate burdens on operators at the end of the supply chain**. For all supply chain actors, a better solution would have been found in the existing EU Timber Regulation (EU) No 995/2010, paired with a chain of custody approach.

The existing EU legislative acquis on the Internal Market, allocates each type of actor his responsibility in function of his role in the supply chain, in a logical, feasible, and proportionate manner. This approach has proven its effectiveness and is recognised and appreciated by all supply chain actors as it avoids unnecessary duplication of efforts, disproportionate burdens and brings legal certainty. It also ensures that consumer goods supply chains can function efficiently, which is essential for **the competitiveness of EU companies and the prices of EU food abroad**. We therefore believe that the most effective and efficient solution against deforestation, would have been **to verify and certify conformity immediately at the point of entry into the internal market, with different due diligence obligations for supply chain actors, further down the chain, including participation in a chain of custody, which would enable information associated with a product or production characteristics to be shared, checked, and passed down along the supply chain**.

The first importers of commodities and products **already encompasses many operators and traders in the chain, including all large ones, and there would be no need for a repetition of research, requests for information and reporting**.

The absence of a chain of custody in the proposal entails that every operator is responsible for collecting and registering information, but no one has to provide it to the operator next in line. **This means that producers and suppliers abroad would receive the same requests for information from many EU operators and large traders**, such as for geolocation data, verifiable information that the

product is deforestation-free, or any other requirements that the Commission may still mandate by delegated act. In addition, national authorities would obtain a huge number of supply chain Due Diligence Statements **containing essentially the exact same information. This would thus also constitute an unnecessary burden for authorities. As the information provided by operators is the same that is subsequently provided by traders, it is not clear what additional information could be provided by large distributors or, conversely, what information would be missing if distributors were not included in the scope of supply chain due diligence requirements.**

In addition, and in a different vein, we regret that the proposal does not recognise the purpose of the -in the food retail sector- widespread business model of groups of independent retailers. **Again, with the objective of reducing unnecessary price increases through unnecessary efforts and costs, we propose dispensing the independent member retailers of these groups of any duplication of obligations that are already undertaken for their groups by the central wholesale organisations.**

In this position paper, you will find more detail on this aspect and other challenges we perceive with respect to the Commission's proposal on the Deforestation Regulation, as well as some recommendations on how to improve it.

COMMENTS WITH RESPECT TO SCOPE AND SUPPLY CHAIN REQUIREMENTS

1. Recognising the purpose of the business model of groups of independent retailers.

Groups of independent retailers are cooperations of legally independent SME retailers. By creating a group, independent retailers are able to compete with large integrated chains in the highly competitive food market, by pooling resources, reducing burdens and maximising efficiency. The central organisation of the group is responsible for the joint purchasing activities, the quality control of goods, and other shared tasks, such as financing, marketing, or communications.

In many EU Member States, the cooperative values are deeply rooted in the countries' societies, and independent member retailers of groups of independent retailers play an important role in their local communities: They use local service providers, invest in local infrastructure and sustainability efforts, and in sports and community activities. Particularly in rural areas, the stores of independent retailers are an important component of the life of local villages and towns as a place of contact and exchange for local communities. The stores are usually operated as family businesses.

The Commission proposal unfortunately fails to recognise the purpose of cooperative retailer groups in two ways, by requiring an unnecessary repetition of efforts from the independent member retailers, which need already be carried out by the central organisation of the group which are responsible for purchasing for and service provision to the members.

First of all, because the Commission equates the legal status of "traders" to the one of "operators", larger independent retailers would have to provide the exact same information as their central organisations.

Secondly, Article 6 of the proposal, requires SME traders (which includes retailers) to: *“collect and keep information relating to the relevant commodities and products they intend to make available on the market (...) for at least 5 years and shall provide that information to the competent authorities upon request”*. Furthermore, *“traders which are SMEs that have received new information, including substantiated concerns, that the relevant commodity or product that they have already made available on the market is not in conformity with the requirements of this Regulation shall immediately inform the competent authorities of the Member States”*.

The products targeted by this Regulation are sourced by the groups’ central organisation. Data on the sourcing of products, including contact details and information on the supplier are with the central organisation of the group which already has to comply with the requirements in relation to these products. The retailers are not in the possession of the data of suppliers that they have no direct contract with. Therefore, requiring retailers that are members of groups of independent retailers to store relevant data on suppliers, or to notify substantiated concerns to competent authorities, defies the very purpose of our members’ collaborative business model and constitutes an unnecessary and disproportionate burden as it will not provide any additional information to regulators. In an integrated chain, these checks would also have to be carried out only once by the group for all its stores, and would not have to be repeated in each store.

We therefore suggest that the following be included in the Regulation: *“Due diligence obligations in regard to the products and commodities covered by this Regulation supplied by central purchasing organisations of groups of independent retailers need not be repeated by members of groups of independent retailers.”*

2. Defining large traders as operators leads to disproportionate burdens, unnecessary costs and, consequently unnecessary price increases for EU consumers.

The division of tasks along the supply chain is a principle that has been enshrined in EU Product Policy for many years, and was clarified in the EU Commission Notice [“the Blue Guide”](#) from 2016: It clearly distinguishes between different obligations for actors that are *“placing products on the market”* and those that are *“making products available on the market”*. This guiding principle is systematically applied in EU law, and for good reasons: logic, legal certainty, efficiency, and the avoidance of unnecessary and disproportionate burdens.

The Commission’s proposal on deforestation also provides a clear assignment of responsibilities to different actors in the supply chain, rooted in EU Product Policy, which determines the obligations of each actor irrespective of his size. Indeed, the responsibilities linked to *“placing”* on the market and *“making available”* on the market should be different, as operators, who are the first to place a commodity or product on the EU market, have most knowledge about the content, qualities and origin of the product.

However, the proposal departs from this principle by stipulating that *“large traders”* (a category which includes distributors) should be legally considered as *“operators”* (importers) for the purpose of the

Regulation. This means that large distributors will have to fulfil the same obligations as those who place new products on the market, when only making products imported or manufactured by others, available on the market.

Neither the proposal nor the Fitness Check of the Timber Regulation provide any reasoned explanation or demonstrated need as to why it departs from the logic and established practice of EU Product Policy. It merely refers to large traders having “*a significant influence on supply chains*” and “*playing an important role in ensuring that relevant commodities and products are deforestation free*”. Even though this may be the case, this it is not sufficient to justify an equation of operators with large traders, all the more since this is not only entirely **disproportionate** and **unfair** towards large traders, and will inevitably lead to **unnecessary price increases for consumers**. When operators who first import or place commodities and products on the market have complied with the necessary due diligence obligations to ensure these do not contribute to deforestation, it is **unnecessary** and **disproportionate** to require distributors at the end of the chain to **repeat this exercise with regard to the same commodities or products**. Disproportionate, because:

1. Distributors would need to check **hundreds of thousands of products that accumulate at the end of the supply chain that contain cocoa, coffee, palm oil, soy, meat or wood** that can potentially lead to deforestation - even before actually trade in those products- to ensure that the products they decide to trade are compliant.
2. They would have to unnecessarily repeat the same reporting exercise as previous operators in the same supply chain with regard to the product they actually trade in.
3. It is much more complicated for distributors at the end of the chain to go to the source to obtain the required information.
4. The high number of products that distributors deal with, as well as their exposure, exponentially increases their risk of being fined.

Finally, equating large distributors with operators could have the following, probably unintended, consequences: Large distributors could become reluctant to operate with new operators, particularly SMEs, if these are excluded from due diligence requirements. Likewise, if for some reason any operator down the supply chain would not provide the distributor with the required information, the distributor could prefer to sever his ties with that operator for the concerned products, because of the significant legal, and financial risk he would otherwise be running. This could lead to a reduction in the availability of products in stores. Furthermore, the proposal could lead to increased verticalisation by retailers, whereby retailers source and manufacture their own products.

For the above reasons, large traders should not be considered operators, their due diligence responsibility should consist in checking that the product is compliant, pass this information further down the chain, and report to the authorities in case of doubt. Naturally, where large traders import themselves, they are operators who first place on the market and have to comply with the more extensive due diligence requirements for these operators to ensure that the commodity or product is compliant.

3. The advantages of a single conformity verification point at the first placing on the market and respect of the Chain of Custody for all supply chain operators.

As mentioned above, we believe that the proposal should also follow the logic of a chain of custody model. Chain of custody models are an important element of certification schemes for food safety, sustainable agriculture, forestry and other sectors. They allow information associated with a product or production characteristics to be shared and passed down along the supply chain. Although these models differ in scope and purpose, they are based on the same range of chain of custody models which have been standardized in ISO22095/2020 Chain of custody — General terminology and models. An example of a single conformity verification point at the very first placement on the market of a commodity or product and a chain of custody can be found in the EU Timber Regulation (EU) No 995/2010. Like the products covered by the proposal for a Deforestation Regulation, many timber products undergo numerous processes after they are placed on the internal market for the first time. Yet, the Timber Regulation stipulates that **only operators that place timber or timber products on the internal market for the very first time have the due diligence requirement to verify the conformity and report the conformity of the product. The due diligence requirement on economic actors further down the chain is to check the conformity and respect a chain of custody by providing basic information on their suppliers to buyers, to enable the traceability of timber and timber products.**

This system can also be easily applied by SMEs for the products concerned, and there would therefore be no need to exclude SMEs from the system.

Without a chain of custody, every operator would be responsible for collecting the information, but no one would have to provide it to the operator next in line. **Producers and suppliers abroad would receive the same requests for information from both EU operators and large traders**, such as for geolocation data, verifiable information that the product is deforestation-free, or any other requirements that the Commission may still mandate by delegated act. In addition, national authorities would obtain a huge number of supply chain Due Diligence Statements containing essentially the exact same information! **This would thus also constitute an unnecessary burden for authorities. As the information provided by operators is the same that is subsequently provided by traders, it is not clear what additional information could be provided by large distributors or, conversely, what information would be missing if distributors were not included in the scope of supply chain due diligence requirements.**

4. Include SMEs before the final distribution stage

To ensure a smooth working of a chain of custody model, it is important that all actors in the supply chain play their part. Commodities or products that are placed on the EU market can still go through numerous steps of processing before reaching the retail stage. It is therefore very important to ensure that every actor in the supply chain, including SMEs, transmits the relevant information guaranteeing the product is deforestation-free down the supply chain. Buyers would only have to check this information and have a reporting obligation in case they fear that a commodity or product is not in conform. The EU food industry is for 99% composed of SMEs. Exempting SMEs, including SME traders,

from these responsibilities could therefore lead to the omission of important information and unnecessarily burden operators further down the chain.

5. Clarify obligations between operators and traders with respect to own brands

Putting operators and traders on the same legal footing also creates avoidable challenges with respect to own brand (private label) products sold by retailers. Generally, own brand products are produced by manufacturers, or purchased by importers for distributors, who then sell these products to consumers under their own brand name. Where distributors merely package these products and add their brand identity, it should be made clear that the responsibility to provide the distributor with a deforestation-free product, should lie with the manufacturer as the operator as established in Regulation (EU) No 1169/2011 on food information to consumers.

6. Eliminating potential loopholes left by third country operators and online platforms

It is important that the Deforestation Regulation establishes clear rules with respect to products and commodities placed on the market by third country operators. This is often the case with products sold through online third party platforms. Third country operators need to be compliant with the obligations of the EU's internal market and therefore need to provide a compliant Due Diligence Statement with their products, to ensure that there is a level playing field between EU operators and third country operators that place products on the market, and that these products do not undermine EU standards. This could be solved by undertaking one of two steps:

- The obligatory establishment of a legal representative of a third country operator in the EU, who would be responsible for the submission of the Due Diligence Statement.
- The application of the same rules for online third party platforms that place products on the market as for EU importers.

➔ **The Deforestation Regulation should recognise the purpose of the cooperative business model of groups of independent retailers; We suggest that the following be included in the Regulation: *“Due diligence obligations in regard to the products and commodities covered by this Regulation supplied by central purchasing organisations of groups of independent retailers need not be repeated by members of groups of independent retailers.”***

➔ **The Regulation should respect the logic of the existing EU Product Policy acquis and the “EU Blue Guide” and not include large traders in the definition of operators to avoid unnecessary duplication and disproportionate burdens for distributors at the end of the chain.**

➔ **The Regulation should follow the due diligence approach of the Timber Regulation paired with a chain of custody approach to avoid unnecessary duplication.**

➔ **The Regulation should apply to all actors, including SMEs in the supply chain so as to prevent information gaps.**

➔ **This coherence should also be maintained for retailers “own brands”, when the operator is the producer as established in Regulation (EU) No 1169/2011.**

➔ **The Regulation should eliminate potential loopholes in the proposal with regard to online platforms and make it mandatory for third party platforms and third country operators, that place goods on the internal market, to have a legal representative in the EU.**

COMMENTS WITH RESPECT TO SPECIFIC CHALLENGES IN THE SUPPLY CHAIN

1. Extension of third country risk benchmarking

Overall, we welcome the Commission's approach to introduce a benchmarking system with respect to the classification of deforestation risks in the countries of origin of the targeted raw materials or products. This allows for a more efficient and reliable process for sourcing these commodities. A further step would be to adapt the benchmarking so that it also takes regional differences within countries into consideration.

A review of the benchmarking approach should be undertaken regularly (on a yearly basis), and not only when new evidence with respect to the level of risk arises. This is important because it will provide actors in the supply chain with a more reliable tool to assess risks. The risk rankings should be valid for a fixed period of time (one year), so that supply chain actors do not have to suddenly readapt their entire approach, as adapting to changes in the supply chain is a lengthy and often costly process for retailers.

Finally, it is important that the EU provides countries with sufficient guidance as to which steps would help mitigate risks of deforestation, and thereby incite them to improve their position in the risk assessment.

2. Geolocation

For distributors, which distribute tens of thousands of products containing, cacao, coffee, palm oil, soy, meat or wood, it is impossible to report on the exact geolocation of these products, as this does simply not reflect the reality of the market, particularly because they usually do not have any direct relations with the farmers and producers situated at the other end of the supply chain.

Moreover, it is unclear what the Commission actually means with geolocation in practice, as the proposal merely puts forward that the operator needs to designate the "plot of land" from which relevant commodities were sourced. This does not reflect the reality on the ground, particularly in countries where cooperative production is predominant, and particularly for bulk raw materials. This risks leading to supply chain actors having to sever their ties with these supply chain partners, at the detriment of local communities in these countries.

To remedy to this problem, we recommend the following solutions:

- To allow for a sufficiently long transition period to set up segregated supply chains (for bulk materials)
- In low risk countries in the EU's benchmarking: use the proof of country of origin instead of geolocation data.

3. Enforcement and control

Sanctions and fines should always be proportionate to the environmental harm caused. Imposing flat-rate sanctions, such as the maximum fine of 4% of yearly turnover put forward in the proposal does not constitute a proportionate approach. The level of the fine should always be both relative to the share of the margin that the particular commodity represents, and to the extent of the environmental harm caused.

4. Lacking consideration of existing supply chain certification and verification schemes

It is unfortunate that in Article 10 on "risk assessment and risk mitigation", the Commission does not take private standards and certification systems into account. Private standards have the advantage

that they rely on the sectoral experience of producers, importers or retailers with supply chain due diligence. It would be very helpful if the Commission would select a set of criteria and standards, and officially recognize them as part of the risk assessment and mitigation criteria.

5. Challenge with respect to meat products

The Annex to the Deforestation Regulation stipulates that products, which are constituted by the commodities targeted, also fall into the scope of the Regulation. This would lead to a situation, where a Due Diligence Statement, including data on the geolocation would be required for all feed products given to cattle linked to imported beef sold on the EU internal market. This would require a major effort from stakeholders that are required to submit a Due Diligence Statement, because animal feed products are mixes from various sources and locations. Furthermore, it should be clear that any animal feed that has been placed on the EU internal market, can be fed to cattle. There should be no subsequent supply chain responsibility requirements with respect to the beef that has been fed with animal feed from a third country.

6. Extension of the scope to further commodities and products

The Commission suggests to review the scope of the Regulation, in terms of what raw materials and products fall under its scope. The Commission should review these, basing themselves on the experiences made with products already falling under the scope of the Regulation at the time of its adoption, and adapt it to potentially challenging materials and products encountered in practice.

- **Country risk benchmarking should take place at the regional rather than country level. A review of risk assessments should take place cyclically (1 year), so as to allow countries to improve their position in the ranking as well as to give market actors sufficient time to adapt to changes.**
- **The definition of geolocation should be clarified. Solutions should be found for situations where a clear determination of a “plot of land” cannot be made, due to local particularities such as the organization in farming cooperatives. In this case, the Regulation should use alternatives such as country benchmarking instead.**
- **Sanctions and fines should be reviewed to be proportionate to the extent of the harm, as well as what the commodity represents in terms of share of a company’s margin.**
- **The Regulation should better reflect existing private certification and verification schemes, which come with considerable sectoral experience.**
- **It should not be required to trace animal feed linked to the production of beef as this is disproportionate.**



Established in 1963, **Independent Retail Europe** (formerly UGAL – the Union of groups of independent retailers of Europe) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors.

Independent Retail Europe represents retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer.

Our members are groups of independent retailers, associations representing them as well as wider service organizations built to support independent retailers.

Independent Retail Europe represents 23 groups and their over 403.900 independent retailers, who manage more than 759.000 sales outlets, with a combined retail turnover of more than 1,314 billion euros and generating a combined wholesale turnover of 484 billion euros. This represents a total employment of more than 6.620.000 persons.

Find more information on [our website](#), on [Twitter](#), and on [LinkedIn](#).