

TFA EU DEEP DIVES

SESSION ON COUNTRY BENCHMARKING & LANDSCAPES

Country benchmarking criteria and implications on operations and enforcement for each risk level

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To support the implementation and enforcement of the regulation, the European Commission has proposed the use of a country benchmarking system that will categorise countries taking into account deforestation and forest degradation linked to the relevant commodities alongside criteria related to the countries’ engagement in fighting deforestation and forest degradation (Article 27 in the Regulation)¹.

There will be three categories of countries — low, standard and high risk. The obligations for operators and Member States’ authorities will vary according to the level of risk that the country of production represents, with simplified due diligence duties for low risk and enhanced scrutiny for high-risk countries.

It should be highlighted that at the entry into force of the Regulation, all countries will be assigned a standard level of risk. Therefore, the above obligations will arise for competent authorities as soon as a high-risk country or parts thereof will feature in the list to be published by the Commission, and as long as relevant commodities and products produced in a high-risk country or parts thereof are placed or made available in their market.

The objective of the country benchmarking system is to incentivise countries to ensure stronger forest protection and governance, to facilitate trade and to better manage enforcement efforts by helping Member States’ competent authorities to focus resources where they are most needed, and to reduce companies’ compliance costs.

This document lays out the details laid out in the latest version of the proposed EU Regulation on deforestation-free products relating to the proposed country benchmarking system, its attached set of criteria, as well as the implications for operators and enforcement authorities, which are also summarised here in Table 1.

¹ [Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation \(EU\) No 995/2010](#)

	Requirements for operators – Due diligence process			Levels of enforcement (checks) performed by local authorities
	(a) Collection of information and documents	(b) Risk assessment measures	(c) Risk mitigation measures	
Low risk	✓	✗ Unless identification of risk of non-compliance during step (a)	✗ Unless identification of risk of non-compliance during step (a)	cover at least 5% of the operators as well as 5% of the quantity of each of the relevant commodities
Standard risk	✓	✓	✓	cover at least 5% of the operators as well as 5% of the quantity of each of the relevant commodities
High risk	✓	✓	✓	cover at least 15% of the operators as well as 15% of the quantity of each of the relevant commodities

Table 1. Summary of key variations in the due diligence process for operators and levels of enforcement by competent authorities depending on the country risk levels identified through the benchmarking process.

1. COUNTRY BENCHMARKING CRITERIA

As the regulation currently stands, the identification of low and high-risk countries shall take into account information provided by the country concerned and be based on the following assessment criteria:

- a. rate of deforestation and forest degradation,
- b. rate of expansion of agriculture land for relevant commodities,
- c. production trends of relevant commodities and products,
- d. whether the nationally determined contribution (NDC) to the United Nations Framework convention on Climate Change covers emissions and removals from agriculture, forestry and land use which ensures that emissions from deforestation and forest degradation are accounted towards the country's commitment to reduce or limit greenhouse gas emissions as specified in the NDC (c.f. Box 1. for more information);
- e. agreements and other instruments concluded between the country concerned and the Union that address deforestation or forest degradation and facilitates compliance of relevant commodities and products with the requirements of this Regulation and their effective implementation;
- f. whether the country concerned has national or subnational laws in place, including in accordance with Article 5 of the Paris Agreement, and takes effective enforcement measures to avoid and sanction activities leading to deforestation and forest degradation, and in particular whether sanctions of sufficient severity to deprive of the benefits accruing from deforestation or forest degradation are applied.

NATIONALLY DETERMINED CONTRIBUTIONS (NDCS) - UNFCCC

NDCs embody efforts by each country to reduce national emissions and adapt to the impacts of climate change.

As part of the Paris Agreement, each Party is required to prepare, communicate and maintain successive nationally determined contributions (NDCs) that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

Parties were requested to submit their respective NDCs (new NDCs or updated NDCs) by 2020 and every five years thereafter (e.g. by 2020, 2025, 2030), regardless of their respective implementation time frames.

NDCs are recorded in the NDC registry which is publicly available and maintained by the secretariat:

<https://unfccc.int/NDCREG>

Note that many NDCs do not include targets for emissions from agriculture, forestry and land use (hence why this is being specified in (d) above).

In cases where the Commission plans to make changes to a country's existing risk category – for example when the first round of risk levels will be identified – it shall open a consultation with the country and allow them to provide any information deemed useful in this regard (e.g. information on measures taken by the country to remedy the situation in case its status might be changed to a higher risk category).

2. REQUIREMENTS FOR OPERATORS BASED ON RISK LEVEL

For commodities and products sourced from standard and high-risk countries, prior to placing relevant commodities and products on the market or before exporting them, operators shall exercise due diligence with regard to all relevant commodities and products supplied by each particular supplier.

This due diligence process for standard and high-risk levels this shall include:

- a. the collection of information and documents needed to fulfil the requirements set out in Article 9 (C.f. Box 2. for more information);
- b. risk assessment measures as referred to in Article 10 (C.f. Box 3. for more information);
- c. risk mitigation measures as referred to in Article 10 (C.f. Box 4. for more information).

ARTICLE 9 – COLLECTION OF INFORMATION

The operator shall collect the following information relating to the relevant commodities or products:

- a. description, including the trade name and type of relevant commodities and products as well as, where applicable, the common name of the species and its full scientific name;
- b. quantity (expressed in net mass and volume, or number of units) of the relevant commodities and products;
- c. identification of the country of production;
- d. geo-localisation coordinates, latitude and longitude of all plots of land where the relevant commodities and products were produced, as well as date or time range of production;
- e. name, email and address of any business or person from whom they have been supplied with the relevant commodities or products;
- f. name, email and address of any business or person to whom the relevant commodities or products have been supplied;
- g. adequate and verifiable information that the relevant commodities and products are deforestation-free;
- h. adequate and verifiable information that the production has been conducted in accordance with relevant legislation of the country of production, including any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity;

ARTICLE 10 – RISK ASSESSMENT MEASURES

The risk assessment shall take special account of the following risk assessment criteria:

- a. the assignment of risk to the relevant country or parts thereof in accordance with Article 27;
- b. the presence of forests in the country and area of production of the relevant commodity or product;
- c. prevalence of deforestation or forest degradation in the country, region and area of production of the relevant commodity or product;
- d. the source, reliability, validity and links to other available documentation of the information referred to in Article 9(1);
- e. concerns in relation to the country of production and origin, such as level of corruption, prevalence of document and data falsification, lack of law enforcement, armed conflict or presence of sanctions imposed by the United Nations Security Council or the Council of the European Union;
- f. the complexity of the relevant supply chain, in particular difficulties in connecting commodities and/or products to the plot of land where they were produced;
- g. the risk of mixing with products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring;
- h. the conclusions of the relevant Commission expert group meetings published in the Commission's expert group register;
- i. substantiated concerns submitted under Article 29;
- j. complementary information on compliance with this Regulation, which may include information supplied by certification or other third-party-verified schemes, including voluntary schemes recognised by the Commission under Article 30(5) of Directive (EU) 2018/2001³⁴, provided that the information meets the requirements set out in Article 9;

ARTICLE 10 – RISK MITIGATION MEASURE

Operators shall have in place adequate and proportionate policies, controls and procedures to mitigate and manage effectively the risks of non-compliance of relevant commodities and products identified.

These shall include:

- a. model risk management practices, reporting, record-keeping, internal control and compliance management, including for operators that are not SMEs, the appointment of a compliance officer at management level;
- b. an independent audit function to check the internal policies, controls and procedures referred to in point (a) for all operators that are not SMEs.

For commodities and products sourced from low-risk countries, operators are still under the obligation foreseen in Article 9 of due diligence procedure (step (a) above), i.e. to collect information, documents and data demonstrating that the relevant commodities and products are compliant with Article 3 of the Regulation.

However they are exempted from carrying out the second and third step of the due diligence process, i.e. the risk assessment and risk mitigation (steps (b) and (c) above).

Therefore, in this case operators are in principle not required to demonstrate that the risk of non-compliance is negligible. However, should the operator be made aware, for example through the collection of information, of any information regarding specific risk of non-compliance, all obligations of Article 8, and therefore all the three steps of due diligence procedure, have to be fulfilled.

This **simplified due diligence** process for low-risk countries shall therefore include only point a) (vs. points a), b) and c) required for standard and high-risk levels):

- a. the collection of information and documents needed to fulfil the requirements set out in Article 9;
- b. ~~risk assessment measures as referred to in Article 10;~~
- c. ~~risk mitigation measures as referred to in Article 10.~~

Figure 1 below summarises the due diligence process based on the risk level identified through the country benchmark:

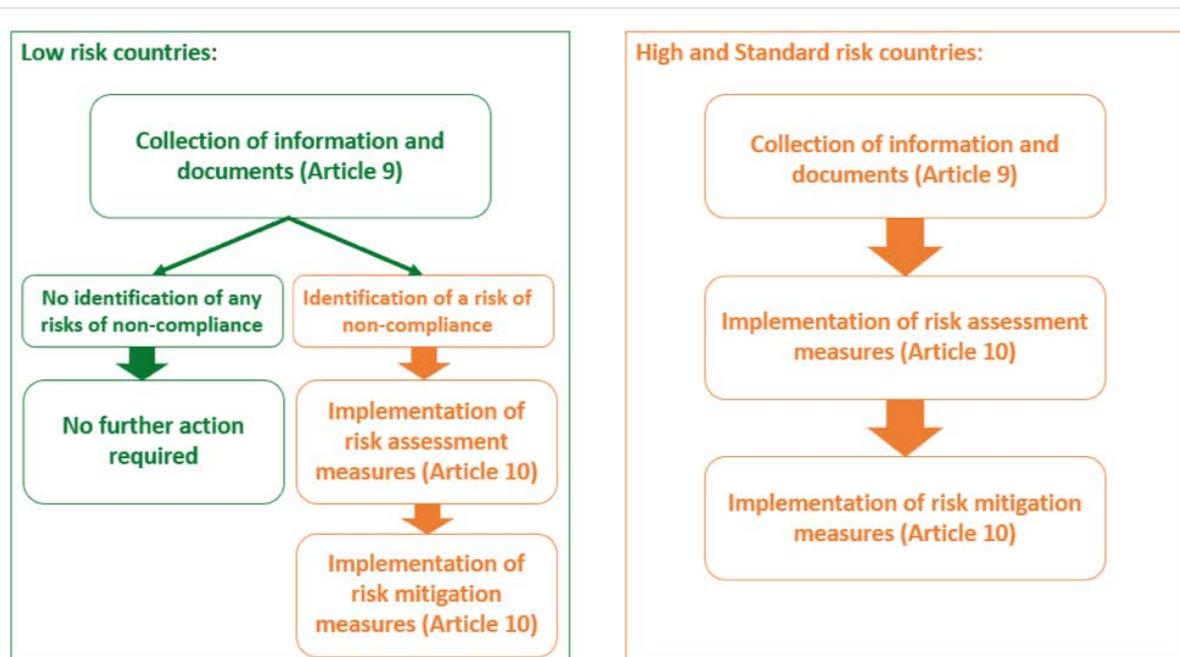


Figure 1. Summary of the due diligence process based on producing country's risk level

3. DIFFERENT LEVELS OF ENFORCEMENT OF THE REGULATION BASED ON RISK LEVEL

Member States' authorities are responsible for the enforcement of the present Regulation. For that purpose they shall draw up inspection plans based on a risk-based approach, taking into account the risk level assigned through the country benchmarking system.

Regardless of the risk level identified through the country benchmarking system, authorities shall assess the history of compliance of an operator or trader with this Regulation and any other relevant information supplied as part of the due diligence process (c.f. step (a) in section above) to determine the level of checks required.

As such, **for commodities and products sourced from low and standard risk countries**, each Member State shall ensure that the annual checks carried out by their competent authorities cover at least 5% of the operators placing, making available on or exporting from the Union market each of the relevant commodities on their market as well as 5% of the quantity of each of the relevant commodities placed or made available on or exported from their market.

Based on the results of the checks and the experience on implementation of the plans, the competent authorities shall review those plans and risk criteria on a regular basis in order to improve their effectiveness. When reviewing the plans, the competent authorities shall establish a reduced frequency of checks for those operators and traders who have shown a consistent record of full compliance with the requirements under this Regulation.

Enhanced scrutiny for commodities and products sourced from high-risk countries

When relevant commodities and products are sourced from a country or parts thereof that has been assessed as high risk according to the country benchmarking system they are subject to enhanced scrutiny by the relevant competent authorities. Unlike Article 12, Article 20 does not qualify a different set of due diligence obligations for operators or traders.

Each Member State shall ensure that the **annual checks** carried out by their competent authorities **cover at least 15% of the operators** placing, making available on or exporting from the Union market each of the relevant commodities on their market as well **as 15% of the quantity of each of the relevant commodities** placed or made available on or exported from their market from high-risk countries or parts thereof.

4. SUMMARY OF PROPOSED AMENDMENTS FROM THE EU COUNCIL AND PARLIAMENT

Article 27

The Council has also put forward the following amendment with regards to country benchmarking:

- » Assessment to be carried out on countries or 'parts of countries' / 'sub-national jurisdictions'
- » Review of low and high-risk status at least every two years
- » Addition of requirement on Commission to engage in dialogue with high-risk countries or potential high-risk countries, to help them reduce risk level.

Article 12

- » The European Parliament has put forward the following additional amendment relating to the simplified due diligence for low-risk countries:
- » Obligation on competent authorities to check commodities from higher-risk sources not being laundered through low-risk countries.

Article 20

- » The Council has also put forward the following amendment with regards to enhanced scrutiny for high-risk countries:
- » Annual checks on at least 5% of operators and traders that are not SMEs. The exact quantified objective of the checks shall depend on how many commodities operators in member state trade in.

The **European Parliament** has put forward the following amendment with regards to enhanced scrutiny for high-risk countries:

- » Annual checks cover at least 20% of the operators as well as 20% of the quantity of each of the relevant commodities.

As of October 2022, it is not yet clear what the final wording of the country benchmarking requirements will exactly entail.