

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND
NORTHERN IRELAND PROTOCOL**

14151/21 + ADD 1, COM(2021)706 with annexes 1&2

14151/21 ADD 2, SWD(2021)325

14151/21 ADD 3 + 4, SWD(2021)326 parts 1&2

14151/21 ADD 5, SWD(2021)327

14151/21 ADD 6, SWD(2021)328

14151/21 ADD 7, SWD(2021)329

**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**

- **COMMISSION STAFF WORKING DOCUMENT: SUBSIDIARITY GRID**
- **COMMISSION STAFF WORKING DOCUMENT: IMPACT ASSESSMENT
MINIMISING THE RISK OF DEFORESTATION AND FOREST
DEGRADATION ASSOCIATED WITH PRODUCTS PLACED ON THE EU
MARKET**
- **COMMISSION STAFF WORKING DOCUMENT: EXECUTIVE SUMMARY OF
THE IMPACT ASSESSMENT REPORT MINIMISING THE RISK OF
DEFORESTATION AND FOREST DEGRADATION ASSOCIATED WITH
PRODUCTS PLACED ON THE EU MARKET**
- **COMMISSION STAFF WORKING DOCUMENT: FITNESS CHECK ON
REGULATION (EU) NO 995/2010**
- **COMMISSION STAFF WORKING DOCUMENT: EXECUTIVE SUMMARY OF
THE FITNESS CHECK ON REGULATION (EU) NO 995/2010**

Submitted by the Department for Environment, Food and Rural Affairs

12th April 2022

SUBJECT MATTER

1. The EU has proposed a new Regulation on commodities and products associated with deforestation and forest degradation. The proposed new regulation would apply to timber products currently regulated under Regulation (EU) No 995/2010, known as the EU Timber Regulation (EUTR), which has applied in Northern Ireland under the Northern Ireland Protocol since the end of the transition period on 1 January 2021. The EUTR prohibits the placing of illegally harvested timber products on the EU and Northern Ireland markets, requiring those first placing such products on the market to exercise due diligence, thereby enabling timber and timber products to be traced. The EU intends to revoke this regulation.
2. The EU proposal has emerged after a Fitness Check on the regulations that fall under the Forest Law Enforcement Governance and Trade (FLEGT) Action Plan 2003, which is the key EU policy to combat illegal logging and associated trade. The EU report that this Fitness Check¹ identified challenges in design and enforcement relating to EUTR.
3. The proposed EU Regulation lays down rules regarding the placing and making available on the EU market, as well as exporting from the EU market, relevant commodities which are cattle, cocoa, coffee, palm oil, soy and wood, and products that contain, have been fed with, or have been made using those commodities. The desired purpose is to minimise the EU's contribution to deforestation and forest degradation worldwide and reduce greenhouse gas emissions and global biodiversity loss. This is a broader range of commodities than is covered by the EUTR, which only covers timber. The proposed regulation does not apply to the finance sector.
4. The Explanatory Memorandum (EM) published on the EU Commission website² for the proposed EU Regulation notes that the main driver of deforestation and forest degradation is the expansion of agricultural land to produce commodities such as those listed above. The EU's position is that a shift to sustainable production is required to ensure that the production of these commodities does not contribute to further deforestation and forest degradation.
5. The proposed regulation aims to minimise the EU's consumption of products from supply chains associated with forest degradation and to increase the EU's trade in legal and 'deforestation free' commodities and products. 'Deforestation free' refers to commodities and products that were produced on land that has not been subject

¹ Staff Working Document – Fitness Check on the EU Timber Regulation and the FLEGT Regulation - [Proposal for a regulation on deforestation-free products \(europa.eu\)](#)

² [Proposal for a regulation on deforestation-free products \(europa.eu\)](#)

to deforestation or forest degradation after 31 December 2020. Used commodities and products that have completed their lifecycle are excluded from the regulation.

6. The proposed EU Regulation will apply to importers and exporters, whereas due diligence obligations under the EUTR only apply to importers. It increases the scope from one commodity (wood) to six, and their derived products, and it includes additional risk management obligations. It also includes new 'deforestation-free' criteria, in addition to requirements for compliance with relevant local laws.
7. The proposal outlines which companies/organisations will be in scope of the regulation. It distinguishes between large traders and those which are small or medium enterprises (SMEs). The requirements for due diligence are different depending on the size of the organisation. A new requirement in the proposed regulation (not in the EUTR) would be for operators to provide geographical coordinates for the land where all relevant/in scope commodities were produced.
8. The proposal includes details of how the competent enforcement bodies should operate, the role of penalties, and market surveillance measures. The proposed EU Regulation will be enforced by border checks whereby operators will need to complete a due diligence statement before placing products on the market and provide that statement at the border. Under the EUTR compliance checks are carried out away from border.
9. The proposed EU Regulation will include new information systems and bench marking systems for countries. This will include a list of "high risk countries" where enhanced scrutiny measures are proposed. Forest Partnership Agreements will be put in place to assist countries in meeting the requirements of the Regulation.
10. A review process is proposed with the regulation initially being reviewed within 2 years after entry into force. This will result in a report and legislative proposals to amend the legislation as appropriate. The regulation applies as soon as it enters into force, however the majority of articles have a transition period of 12 – 24 months depending on the size of the operator.

SCRUTINY HISTORY

11. The Parliamentary Scrutiny History relevant to this Explanatory Memorandum is contained in the attached Annex A.

MINISTERIAL RESPONSIBILITY

12. The Secretary of State for the Department of Environment, Food and Rural Affairs has responsibility for policy associated with due diligence regulations in the Environment Act and timber regulations.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

13. The existing EUTR applies directly in Northern Ireland (NI) by virtue of the Northern Ireland Protocol. The UK government takes the position that regulation of the international trade in timber is a reserved matter. Responsibility for administering the EUTR within NI lies with the Northern Ireland Executive.

14. The proposed EU Regulation also covers areas of public policy that are regulated under the Environment Act 2021. These issues are reserved to the UK Government in Scotland and Wales but are transferred (devolved) in Northern Ireland. However, the Northern Ireland Assembly has given its consent to certain powers in the Act being exercised by the Secretary of State for Environment, Food and Rural Affairs on their behalf, allowing the provisions to be implemented on a UK-wide basis.

15. The Devolved Administrations are aware of the EU regulation and the ongoing discussions on how it will be applied, as well as the development of our own UK legislation. We are engaging with DAERA and we will continue to work with them as the details of the application of this regulation become clearer.

LEGAL AND PROCEDURAL ISSUES

16.

i. Legal basis

The EU proposal is based on the EU Treaty on the Functioning of the EU article 191/2. The existing EUTR applies in Northern Ireland by virtue of Article 5(4) and Annex 2 of the Northern Ireland Protocol. However, for the reasons set out in the policy implications section below, we are interrogating the case for the entirety of the EU's new regulation to apply automatically in Northern Ireland.

ii. Voting procedure

Not applicable.

iii. Timetable for adoption and implementation

We expect the EU regulation to be adopted in 2023. Council considered the proposed regulation on 17 March, and Parliament's consideration will follow over the summer.

POLICY IMPLICATIONS

17. The EUTR is listed in Annex 2 of the Northern Ireland Protocol and therefore continues to apply in Northern Ireland since the end of the transition period on 1 January 2021.

18. The Government's initial analysis of the EU's new proposed regulation finds that it is fundamentally different to the existing EUTR and therefore we are interrogating the case for it to automatically apply in Northern Ireland. Initial analysis suggests for example that it is broader in scope (both in terms of commodities and businesses) and it introduces new obligations. We expect this to be subject to further consideration and engagement with the EU through formal bilateral structures as needed. We will keep the EU Select Committees updated as this consideration develops.
19. We recognise the impact the Northern Ireland Protocol is having on the ground. The UK Government has been clear for some time that the Protocol has been causing serious problems. We are continuing to work with the EU to find a solution to sort out these very real issues for the people of Northern Ireland. It is perfectly possible for the United Kingdom and EU to work out a solution which delivers for the people of Northern Ireland.

CONSULTATION

20. No consultation is planned with outside organisations on this regulation. The EU has provided its own impact assessment (IA) for this legislation (see [Proposal for a regulation on deforestation-free products \(europa.eu\)](#)). This includes a summary of the EU-run consultation. The EU IA cannot be directly translated into policy implications at this stage but is a useful resource for further discussions with the EU and others on the next steps.

FINANCIAL IMPLICATIONS

21. We do not have a clear assessment of the financial implications at this stage. This will depend on the final shape of the EU legislation; and what is or isn't applied to NI. Discussions with Finance colleagues will need to be part of ongoing HMG considerations.



**THE RT HON THE LORD GOLDSMITH OF RICHMOND PARK
MINISTER OF STATE
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

ANNEX A

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

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

COMMISSION STAFF WORKING DOCUMENT SUBSIDIARITY GRID ACCOMPANYING THE DOCUMENT 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

COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT MINIMISING THE RISK OF DEFORESTATION AND FOREST DEGRADATION ASSOCIATED WITH PRODUCTS PLACED ON THE EU MARKET ACCOMPANYING THE DOCUMENT 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

COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT MINIMISING THE RISK OF DEFORESTATION AND FOREST DEGRADATION ASSOCIATED WITH PRODUCTS PLACED ON THE EU MARKET ACCOMPANYING THE DOCUMENT 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

COMMISSION STAFF WORKING DOCUMENT FITNESS CHECK ON REGULATION (EU) NO 995/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 20 OCTOBER 2010 LAYING DOWN THE OBLIGATIONS OF OPERATORS WHO PLACE TIMBER AND TIMBER PRODUCTS ON THE MARKET (THE EU TIMBER REGULATION) AND ON REGULATION (EC) NO 2173/2005 OF 20 DECEMBER 2005 ON THE ESTABLISHMENT OF A FLEGT LICENSING SCHEME FOR IMPORTS OF TIMBER INTO THE EUROPEAN COMMUNITY (FLEGT REGULATION) ACCOMPANYING THE DOCUMENT 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

COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE FITNESS CHECK ON REGULATION (EU) NO 995/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 20 OCTOBER 2010 LAYING DOWN THE OBLIGATIONS OF OPERATORS WHO PLACE TIMBER AND TIMBER PRODUCTS ON THE MARKET (THE EU TIMBER REGULATION) AND ON REGULATION (EC) NO 2173/2005 OF 20 DECEMBER 2005 ON THE ESTABLISHMENT OF A FLEGT LICENSING SCHEME FOR IMPORTS OF TIMBER INTO THE EUROPEAN COMMUNITY (FLEGT REGULATION) ACCOMPANYING THE DOCUMENT 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

EM 11449/19: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: STEPPING UP EU ACTION TO PROTECT AND RESTORE THE WORLD'S FORESTS

DATE EM SIGNED: 08/08/2019

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT IMPORTANT CLEARED (AGENDA FOR REPORT NO 74; 2/10/2019)	CLEARED BY HOL LETTER 31/1/2020 NOT CLEARED, SIFTED FOR EXAMINATION TO ENERGY AND ENVIRONMENT (CHAIRMAN'S SIFT 1752 - 5/09/2019)

EM 13228/18, COM(668): REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL REGULATION (EU) NO 995/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 20 OCTOBER 2010 LAYING DOWN THE OBLIGATIONS OF OPERATORS WHO PLACE TIMBER AND TIMBER PRODUCTS ON THE MARKET (THE EU TIMBER REGULATION)

DATE EM SIGNED:23/10/2018

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
COMPLETED SCRUTINY ON 14/11/2018 IN REPORT 44, 17/19 AS NOT RAISING SUFFICIENT ISSUES OF INTEREST TO WARRANT A SUBSTANTIVE REPORT TO THE HOUSE	COMPLETED SCRUTINY AT CHAIR'S SIFT 1712 ON 7/11/2018

EM 14482/08: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN THE OBLIGATIONS OF OPERATORS WHO PLACE TIMBER AND TIMBER PRODUCTS ON THE MARKET

DATED: 03/11/2008

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED POLITICALLY IMPORTANT 14/10/2009	CHAIRMAN SIFT 1339 ON 11/11/08 CLEARED BY MINISTERIAL CORRESPONDENCE 11/11/2009