

Proposal for due diligence on forest risk commodities

The UK Department for the Environment, Food and Rural Affairs (Defra) has begun a consultation on proposals aimed at reducing illegal deforestation and its impacts on climate change. The proposals implement one of a number of recommendations made by the Government's Global Resource Initiative Taskforce in March 2020 aimed at greening UK supply chains. Deforestation causes 11% of all greenhouse gas emissions and is considered to be the second most significant contributor to climate change after fossil fuel burning. Forests (and rainforests in particular), are also considered to be globally important in the conservation of biodiversity.

New legislation is proposed that would seek to prevent commodities that are the product of illegal deforestation and degraded ecosystems from coming onto the UK market by obliging in scope businesses to conduct due diligence of their supply chains. The legislation has important considerations from both an environmental and human rights perspective; if adopted, it would be the first piece of domestic UK legislation to require supply chain due diligence, a much debated topic globally.

Forest Risk Commodities

Under the proposals, it would become unlawful for certain businesses to use, either in production or by trading, 'forest risk commodities' that have not been grown in compliance with local laws where they were produced (and not, it is to be noted, international standards). Commodities likely to be covered include beef and leather, cocoa, palm oil, pulp and paper, timber, rubber and soya, each of which has huge global markets that can encourage deforestation or damage to habitats and other ecosystems to enable land to be turned over to agriculture. It is possible other commodities may be added to this list through the consultation process. A separate obligation would require those businesses to carry out due diligence to ensure that no illegally produced forest risk commodities have entered their supply chain. Non-compliance with the new rules could lead to fines and other civil sanctions.

The Government wants to target larger businesses which are likely to have sufficient purchasing power to influence producers. For that reason (and to limit the impact from onerous due diligence requirements on smaller businesses) only businesses exceeding certain employee and turnover thresholds would be obligated under the proposals. The thresholds have yet to be decided; the major global commodities traders and many international manufacturers will no

Key issues

- New proposal by UK Government for a law aimed at preventing commodities associated with illegal deforestation/degraded ecosystems from coming onto UK market
- Law would require businesses to conduct supply chain due diligence to confirm "forest risk commodities" have been grown in compliance with local laws
- Commodities likely to be covered include beef and leather, cocoa, palm oil, pulp and paper, timber, rubber and soya
- New law would apply to larger businesses – size thresholds are yet to be decided
- Part of an emerging trend in environmental and human rights supply chain due diligence legal requirements

doubt be included but it remains to be seen how many other businesses are caught.

Reporting Obligations

Obligated businesses would have to report publicly on their due diligence exercise. Given the linkages between deforestation and climate change, it is not surprising that Defra is looking into aligning this reporting requirement with other reporting frameworks, including reporting under the Task force on Climate-Related Financial Disclosure (TCFD) Recommendations. Although reporting under the TCFD in companies' annual reports is still voluntary at present, the Financial Conduct Authority is currently looking at making it mandatory for premium listed issuers, and the Government would like all listed companies and large asset owners to be reporting in line with the TCFD by 2022. Depending on where the threshold is drawn for businesses to be obligated under the proposal, it might indeed make sense to tie public reporting of due diligence efforts into a business' TCFD reporting.

European Illegal Timber Regulation

The proposal is a logical extension of the European Illegal Timber Regulation regime, which follows a similar mechanism of (i) banning operators from placing illegally logged timber on the EU/EEA market, and (ii) requiring those operators to undertake due diligence to ensure that such timber has not entered its supply chain. Traders further down the supply chain are then required to ensure traceability of timber up and down the supply chain. Although little detail has been provided of the new UK proposals, they appear to go further than the traceability obligations placed upon traders under the Timber Regulation, the former placing extensive obligations on manufacturers and those businesses simply trading in relevant commodities within the UK.

It should be noted that the Timber Regulation has been criticised by commentators for inadequate implementation by a number of member states, and weak enforcement with a limited number of prosecutions. Part of the concern with enforcement under the Timber Regulation has been the difficulty of demonstrating that timber was illegally logged, and authorities are increasingly resorting to technological means to provide necessary evidence. While it might be easier to demonstrate that crops have been grown on illegally deforested land under the new proposal, the new regime is likely to throw up similar difficulties. It will be interesting to see how the Government plans to overcome them.

A Growing Due Diligence Trend

If adopted, the UK legislation would join a growing number of supply chain due diligence frameworks developed in recent years. For example, in 2017 France introduced its Vigilance Law, requiring companies to take adequate measures to identify both human rights and environmental risks within their supply chains and to prevent violations. More recently, in July 2020 the German Government announced similar plans to pass its own Due Diligence Act. Two pieces of legislation which, no doubt, will have a significant influence on a proposed EU-wide scheme (imposing mandatory due diligence requirements for businesses to respect human rights and prevent environmental harm across their global supply chains), a draft of which is expected by 2021. The EU-wide scheme will supplement existing protections afforded under the European Illegal Timber Regulation (discussed above) and the Conflict Minerals Regulation (coming into force on 1 January 2021).

By comparison to its European cousins, the UK's proposal is narrower in scope, focusing on one particular form of environmental harm. It does not touch on wider human rights issues addressed by both the French and German laws, such as child labour, freedom of association or occupational safety. It remains to be seen whether the UK Government will try to introduce its own comprehensive due diligence regime, akin to its European counterparts.

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