

# OPEN LETTER ON THE PROCEDURE AND CRITERIA FOR “COUNTRY BENCHMARKING” UNDER ARTICLE 29 OF THE EU DEFORESTATION REGULATION AND THE ROLE OF TRADE AGREEMENTS

Executive Vice-President **Maroš Šefčovič**  
Executive Vice-President **Valdis Dombrovskis**  
Commissioner **Virginijus Sinkevičius**  
Commissioner **Jutta Urpilainen**

14th November 2023

Dear Executive Vice-Presidents, Dear Commissioners,

We, the undersigned organisations, call on the European Commission to ensure the correct, transparent and impartial implementation of the “country benchmarking” provided for by Article 29 of the EU Deforestation Regulation (EUDR).<sup>1</sup>

Pursuant Article 29 EUDR, in order to enact the country benchmarking, the Commission shall classify countries (or parts thereof) into three categories reflecting the risk that relevant commodities produced in their territories (and hence the relevant products that contain, have been fed or have been made using these commodities) do not comply with the deforestation-free standard provided for by the regulation. According to Article 29 EUDR, these three categories are “high”, “low” or “standard” risk.

The EUDR applies to operators or traders that place or make available relevant commodities and products on, or export them from, the EU internal market. The country benchmarking is an innovative feature of the EUDR, which has been developed to facilitate the implementation and enforcement of the regulation by indicating the risk that is associated with relevant commodities on account of their country of production.

In particular, this system will:

- **For operators and traders on the EU internal market**, inform the risk assessment that they shall conduct in the fulfillment of their due diligence obligation to guarantee European consumers that their products are deforestation-free and comply with the laws of the country of production, including those protecting human rights and land use rights. It will also determine (in the case of commodities produced in “low risk” countries or parts thereof) the possibility of carrying out a simplified due diligence as laid out in Article 13 EUDR;

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<sup>1</sup> Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, OJ L 150 of 9 June 2023.

- **For competent authorities**, have a direct impact on the identification of operators, traders and relevant products that shall be subject to checks (Article 16 EUDR);
- **For the European Commission and the Member States**, give direction to the cooperation with producer countries, in particular by requiring the Commission to “engage in a specific dialogue with all countries that are, or risk to be classified as, high risk, with the objective to reduce their level of risk” (Articles 29 and 30 EUDR)

In light of the above, the EUDR clearly prescribes that the classification of low-risk and high-risk countries (or parts thereof) “shall be based on an objective and transparent assessment by the Commission, taking into account the latest scientific evidence and internationally recognised sources” (Article 29(3), emphasis added). In particular, Article 29(3) requires the Commission to primarily rely on the following criteria:

1. rate of deforestation and forest degradation;
2. rate of expansion of agriculture land for relevant commodities;
3. production trends of relevant commodities and of relevant products.

By establishing a set of mandatory criteria based on objective and quantitative data, which directly reflect the risk that commodities production in a country (or parts thereof) may be linked to deforestation or forest degradation, the law aims at ensuring that the country benchmarking is based on a scientific and verifiable approach.

Against this background, we are deeply concerned that the classification under the country benchmarking may be used as a bargaining tool in order to facilitate the conclusion of trade agreements. We are aware, in this regard, that representatives of the Brazilian and Argentinian governments have asked, in the context of the negotiations of the EU-Mercosur trade deal, that Mercosur countries be assigned to the “low risk” category as a condition for their approval of the agreement.<sup>2</sup>

The undersigned organisations urge the European Commission to ensure that the country benchmarking will be conducted on the basis of the **clear, objective** and **scientific** criteria laid out by the EUDR, underpinned by a **transparent process**, and that it will not be influenced by considerations that, by not helping to faithfully reflect the deforestation or forest degradation risk in a producing country, would undermine the law’s objective to ensure that products that are placed or made available on, or exported from, the EU internal market comply with the deforestation-free standard and the legislation of the country of production, including human rights and land use rights.

We also warn of the consequences that would inevitably follow, were the Commission to depart from such criteria for the purpose of facilitating the conclusion of a trade agreement, as advocated by some of the countries negotiating the EU-Mercosur trade deal:

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<sup>2</sup> <https://www1.folha.uol.com.br/mercado/2023/06/governo-planeja-propor-a-ue-que-brasil-seja-considerado-de-baixo-risco-de-desmatamento.shtml>  
<https://www.cnnbrasil.com.br/economia/em-resposta-a-ue-brasil-quer-blindagem-ambiental-e-flexibilidade-em-compras-publicas>  
[https://www.em.com.br/app/noticia/politica/2023/09/11/interna\\_politica,1559822/lula-pede-reuniao-com-chefes-de-estado-para-resolver-acordo-ue-e-mercosul.shtml](https://www.em.com.br/app/noticia/politica/2023/09/11/interna_politica,1559822/lula-pede-reuniao-com-chefes-de-estado-para-resolver-acordo-ue-e-mercosul.shtml)  
<https://www.gov.br/planalto/pt-br/assuntos/g20/pronunciamento-do-ministro-das-relacoes-exteriores-mauro-vieira-em-coletiva-de-imprensa-apos-a-cupula-do-g20>  
<https://www.europapress.es/economia/macroeconomia-00338/noticia-argentina-presentara-nueva-propuesta-acuerdo-ue-mercosur-frenar-efectos-adversos-20230614133514.html>

- Unless scientifically sound, transparent and verifiable, the country benchmarking would prove unreliable and undermine the risk assessment in the operators' and traders' due diligence, which is one of the core elements of the EUDR. In the worst cases, it may allow the application of the simplified due diligence to commodities and products that should, instead, require the operators and traders' full attention, in light of the deforestation, forest degradation and illegality and human rights violation risks associated with a producing country (or parts thereof);
- Competent authorities would not be able to focus their enforcement efforts where they would be the most effective and needed;
- The Commission and Member States' cooperation would not be directed towards the producing countries that would mostly benefit from EU partnerships;
- The EU may become the target of actions before the WTO, on account of the unjustified trade distortions that may follow from the application of a country benchmarking based on political criteria.

Finally, by undermining the effectiveness of the EUDR, the first law globally to address deforestation, the EU would compromise the credibility of its environmental policy on the domestic and international scene.

We call on you to guarantee that the country benchmarking process strictly adheres to the standards of objectivity and transparency set out in the law and is duly based on the application of the quantitative criteria outlined in Article 29 (3) EUDR, taking into account the latest scientific evidence. It is also your responsibility to ensure that this process is shielded from any undue attempts to undermine or otherwise weaken the effectiveness of the law.

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