Deforestation – EU Forest Risk Commodities proposals

The EU, as expected, has now published its proposed Regulation relating to forest risk commodities, which includes Coffee.

The proposed legislation will now begin its journey through the EU legislative process before final adoption by the Commission.

The Regulation is, as with all EU legislation, lengthy but some initial observations follow:

What does it cover
The legislation would cover all coffee entering the EU market and which was produced after 31st December 2020 – it has no retrospective effect for any products produced (harvested) before that date, nor indeed whether land was deforested before that same date.

Definition of forest
The definitions are such that it would be illegal to place on the EU market coffee that had come from a plot of land which had previously been forest (even if the loss of the forest area was not 'human-induced' (ie, had happened through natural forces) Forest means "land spanning more than 0,5 hectares with trees higher than 5 meters and a canopy cover of more than 10%, or trees able to reach those thresholds in situ, excluding agricultural plantations and land that is predominantly under agricultural or urban land use"

Where does the responsibility lie?
The responsibility is placed on the operator and they are considered to be the one who places the product on the EU market (would therefore include a UK business exporting coffee to the EU – green or otherwise)

What are the requirements on the operator?
The operator must undertake a due diligence assessment to ensure the coffee in question does not come from deforested land. This will result in a due diligence statement which the operator has to lodge with the EU before the coffee can be placed on the market
Secondly, the operator has to collect all the relevant information which supports this assessment and hold those records for 5 years

How much information is needed?
There is a range of information that must be submitted in the statement but it includes not only the country of production but also the geo-coordinates of the plot(s) of land from which the coffee was produced and the time range of production (ie. year)

Will the information allow a clear decision to be made?
The regulation recognises the chance of not being able to get to a definitive view but concludes if the risk assessment cannot show that the risk is negligible, then the coffee should not be placed on the EU markets

Who else has a responsibility?
Traders are defined as those trading goods on the EU market (as opposed to first placing them on the EU market). A trader who is an SME must keep records for 5 years of suppliers and customers, and make them available as necessary.
Traders who are defined as large (not SME) carry the same level of responsibility as an operator and must provide the range of information outlined above.

Where does the information need to go?
The EU will develop a system for the receipt of this information which is then available to both EU and national authorities. In anonymised form the information would also be publicly available

Who checks all this?
National authorities have the obligation to carry out checks, including spot audits and documentary checks

And what about penalties?
Again, it will be the responsibility of the national authority to determine penalties but the legislation does allow this to go to a maximum of 4% of annual turnover of operator or trader in the Member State(s) concerned.

When does this all come into force?
Difficult to be precise given that national Governments and the European Parliament(EP) need time to give their views but at some point in 2022 it could be finalised unless there are significant differences of opinion at either national or EP level