

# Overview of disclosure, due diligence, and trade-based supply chain legislation of relevance for the coffee sector

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## Executive summary

Between 2015 and 2022, numerous consuming countries in North America, Europe, and Oceania have proposed or passed legislation aimed to improve the environmental and social sustainability of businesses' supply chains. These fall into three categories: *disclosure-based legislation*, mandating that companies report on sustainability-related risks and their approach to reducing it; *due diligence legislation*, which mandates companies to implement procedures to assess, mitigate, and remediate sustainability-related risks in their supply chains; and *trade-based legislation*, which prohibits the import of specific types of goods linked to adverse outcomes. We can further distinguish between *single-issue legislation* on the issues of labor problems (modern slavery/forced labor/child labor) and deforestation in the supply chain, and legislations with *broader human rights and environmental scope*. This report and the related database aim to provide an overview of the status, scope, and requirements of various laws that are tabled or already in force, with a particular focus on how they are likely to affect the coffee sector and actors within it. It served as a basis of discussion for the International Coffee Organization's Public-Private Taskforce TWS 3 Policies of Importing Countries.

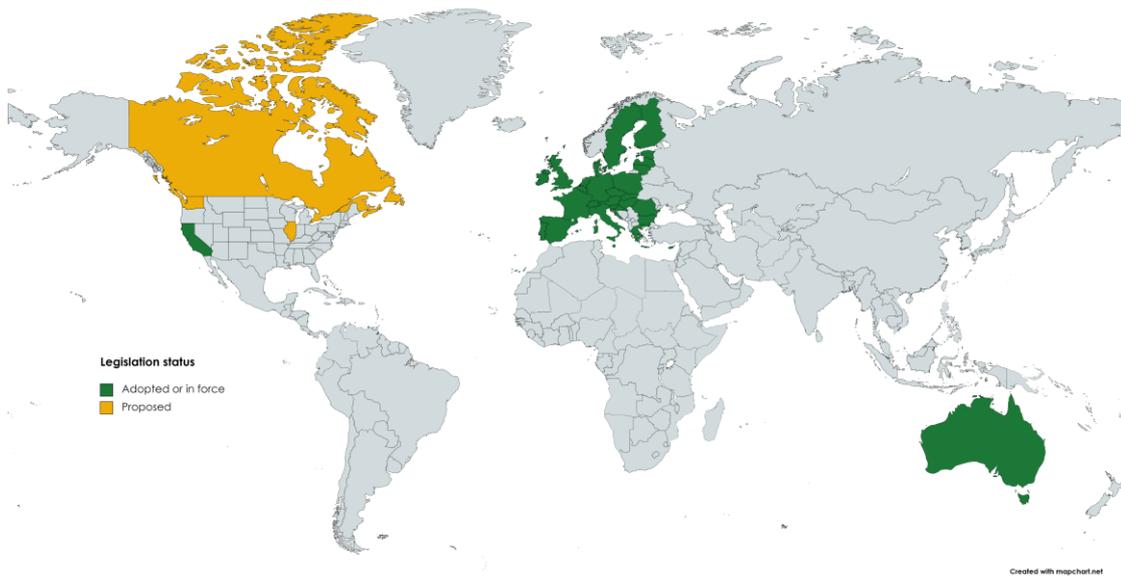
The coffee sector is affected both by the broad human rights and environmental due diligence laws as well as by the single-issue legislation, with risk of forced labor in certain origins<sup>1</sup>, risk of child labor in a number of producing countries, and a deforestation footprint that is historically lower than some other commodities such as palm oil or cocoa, but on the rise due to climate change. In some countries such as [Germany](#), coffee is even one of the major drivers of imported deforestation. While coffee is not (yet) included in the US FOREST Act prohibiting imported illegal deforestation, it is part of both the UK and EU deforestation-related legislation. The proposed EU deforestation legislation in particular requires companies to exclude the risk of deforestation or reduce it to negligible levels, which may lead to supply chain restructuring and avoidance of high-risk supplying areas. The legislation also makes it explicit that companies cannot rely solely on certification for due diligence verification, meaning large internal resources may be needed.

In general, in the coming years coffee importing companies as well as roasters based in Europe are likely to be asked to have much more detailed knowledge about their supply chains and to provide credible information as to potential and actual adverse environmental and human rights impacts. Such requirements may also reach multinational enterprises that have a subsidiary registered in Europe or that place goods into the European market. Penalties for non-compliance range from injunctive relief (the court forcing action) to fines (up to 4% of annual turnover or 10 million euros [in France]) and prison sentences of responsible directors and board members (e.g. Canada, Netherlands, Norway, Belgium, UK). Victims' access to the court system may increase, leading to greater accountability but also reputational risk of large companies. In addition, coffee imported into the US, Canada and Australia that is linked to forced labor may be detained at the border, seized and destroyed.

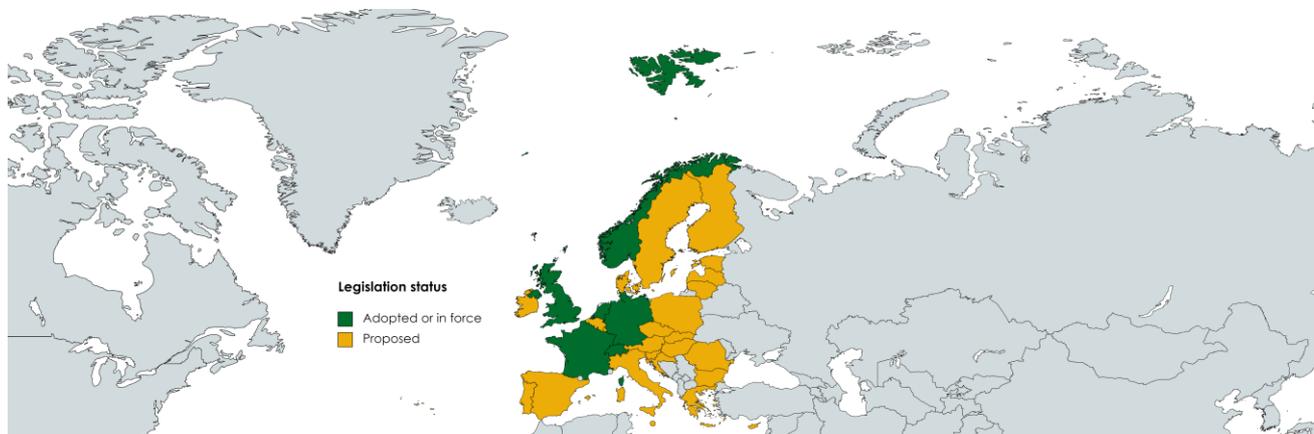
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<sup>1</sup> For instance, the United States' Bureau of International Labour Affairs lists coffee from Brazil and Cote d'Ivoire as goods that may be produced by forced labor. It should be noted that such a categorization may in part be due to higher efforts at transparency and public anti-forced labor enforcement in such origins, e.g. Brazil's anti-slavery blacklist.

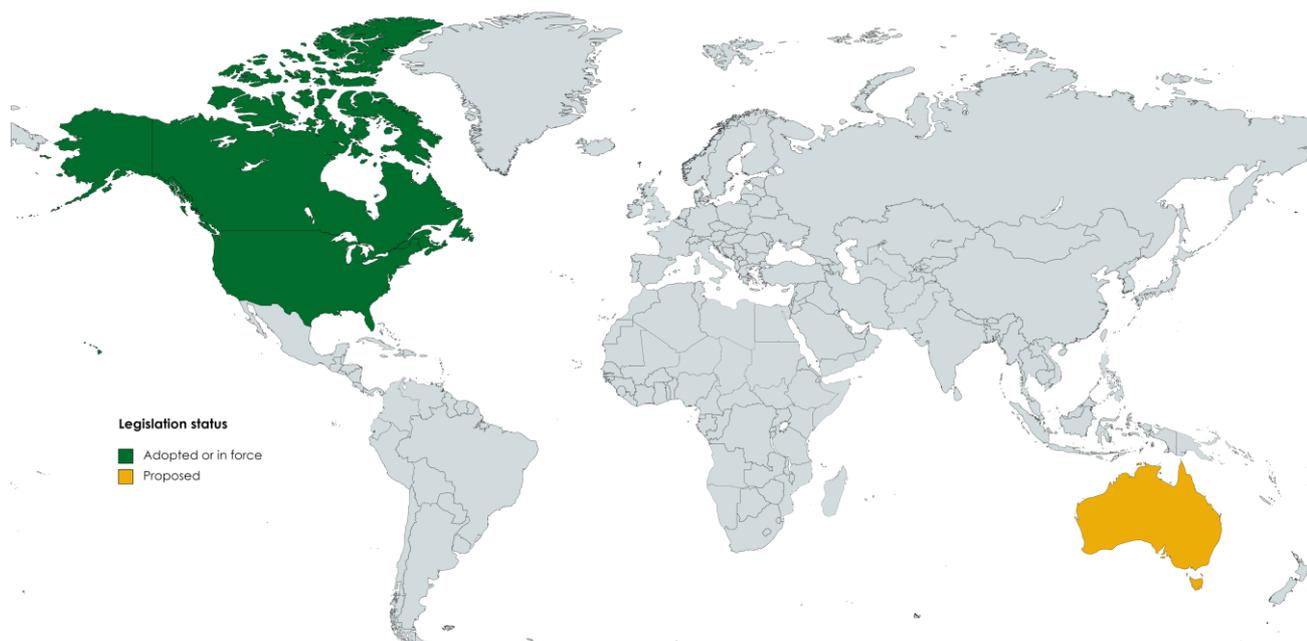
## Geographical overview and issue areas



*Disclosure-based legislation* is already in force in the EU, Switzerland, the UK, Australia, and California, and is being proposed in Canada, as well as the US States of Washington and Illinois. While UK, Australian and Canadian legislation focuses on disclosures of modern slavery risks, the EU and Swiss legislation is more generally focused on (non-financial) Environmental, Social, and Governance disclosures. In the UK, large companies furthermore have to report on climate-related risks and opportunities.



*Due diligence legislation*, in turn, is to date an exclusively European phenomenon. Kick-started via civil society action in France, such legislation has now been also adopted in Germany, Norway, the Netherlands (focused narrowly on child labor, but with broader scope proposed) and the UK (with a focus on due diligence related to illegal deforestation; in addition, a strengthening of modern slavery due diligence is proposed). Austria and Belgium are also considering similar legislation. A key focus is on two legislative proposals at the EU level: first, a proposal that would require due diligence for forest-risk commodities – a definition that includes coffee – to eliminate risk of any deforestation (illegal or not); a second, the broader Corporate Sustainability Due Diligence Directive, which would require EU companies to assess, prevent, mitigate and remediate any adverse environmental or human rights impact.



Finally, *trade-based legislation* to date has mainly been considered in North America and Australia and tends to be *single-issue legislation*. In the United States, it is illegal to import goods produced with forced labor (including forced child labor), and customs officials may detain goods at the border in case of reasonable suspicion, and ultimately may seize and destroy goods. Canada has adopted similar legislation, while such rules are also considered in Australia. In addition, the proposed US Fostering Overseas Rule of Law and Environmentally Sound Trade (FOREST) Act extends import restrictions to goods linked to illegal deforestation; however, coffee is not on the initial list of covered commodities.

## Types of companies covered

Most of the disclosure and due diligence legislations focus on large or very large companies as defined by a combination of minimum employee number, turnover, or total assets. The definition of this, however, is highly country-specific, ranging between 50 and 5000 employees; 7 and 100 million euros in turnover; and 3.5 to 43 million euros in total assets. The attached database provides case-by-case details. Companies in scope usually need to be registered or stock-listed in the regulating country in question, though some due diligence legislation also extends to any company placing goods and services into the respective market (e.g. UK, Netherlands, EU Regulation on Deforestation-Free Products), and many include locally registered subsidiaries of multinational enterprises. The trade-based legislation applies to all importers irrespective of their headquarters.

## Supply chain scope and traceability requirements

Only few pieces of legislation limit their scope to only specific tiers of the supply chain (e.g. the German due diligence law focuses full obligations only on direct suppliers). The rest tend to be vague but all-encompassing by referring to companies' suppliers, subcontractors, business partners and/or 'established business relationships' (direct and indirect relationships that are or are expected to be lasting, not negligible and not merely ancillary), which is a term still open for interpretation in practice. The single-issue legislation tends to make stronger demands on supply chain traceability, transparency and risk minimization or elimination.

Only two pieces of legislation that we mapped are explicit about traceability requirements: The proposed EU Regulation on Deforestation-Free Products, which requires plot-level traceability with geo-location coordinates; and the Swiss Child Labor Due Diligence Provisions, which requires names and addresses of suppliers as well as of all production sites or service providers of all components of the product along the entire supply chain. However, this requirement only comes to play in case of “products for which there are reasonable grounds to suspect that they were produced with child labour”; and it is unclear how companies will arrive at such grounds without establishing traceability systems in the first place.

## Required actions and regulatory alignment across countries

Most legislation aligns itself explicitly or implicitly with the [UN Guiding Principles on Business and Human Rights](#) and its “Protect, Respect and Remedy” Framework. In practice, businesses are called to map and assess the potential and actual risks of adverse environmental and social impacts occurring in their supply chains and business operations; creating processes to prevent or mitigate such risks; take steps to end negative impacts that have been uncovered; and provide access to complaints procedures and adequate compensation to victims. There is greater overlap in regulatory obligations at the beginning of this chain – regarding risk assessment and mitigation – than at the end of it; while some regulations spell out necessary steps to take in case adverse impacts were uncovered (the proposed EU Corporate Sustainability Due Diligence Directive is a good example), others are silent on that matter. The need to verify compliance, provide third-party assurance of information provided in disclosure reports, and conduct regular monitoring and evaluation activities is mentioned by some, but not all regulations. In addition, victims’ access to local courts is only guaranteed in a subset of passed legislation (France, and Germany in a limited fashion), though it is more prominent in legislative proposals on the table (Netherlands, Austria, Belgium, EU). In terms of regulatory alignment, some European countries seem to be holding out for the EU Corporate Sustainability Due Diligence Directive to pass in order to reduce the risk of conflicting or duplicating legislation; yet, the longer this legislation is postponed, the more likely it is that an increasing number of countries will move forward on their proposed national laws.

## Support for supplier compliance and producing country cooperation

There is little information on how to balance these heightened due diligence and compliance expectations with the inclusion of smallholders or SME suppliers into regulated supply chains. The only legislative text of relevance is the proposed EU Corporate Sustainability Due Diligence Directive which specifies that “companies should provide targeted and proportionate support for an SME with which the company has an established business relationship, where compliance with the code of conduct or prevention action plan would jeopardize the viability of the SME”. Larger-scale support of producing countries to ensure compliance is considered vaguely in the proposed EU Deforestation Regulation and, in more detail, in the US FOREST Act. None of the remaining pieces of legislation include conclusive steps in that regard as far as we can tell.

*It should be noted that all conclusions above and the information contained in the database are the best available information at time of writing but may change or be incomplete and should not be taken as legal advice. Thank you for alerting us in case you notice any mistakes or oversights.*