ClientEarth

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Legal validity risks of delaying or weakening the EU Deforestation Regulation

Top-line messages:

- The EU Deforestation Regulation (**EUDR**) is designed to mitigate the EU’s contribution to global forest and biodiversity loss and climate change. It entered into force in June 2023 and will start applying to the private sector on 30 December 2025.

- Amending the EUDR to delay its application or weaken its requirements would prevent the environmental benefits expected from EUDR application and prolong the EU’s impacts on forests, climate and biodiversity.

- Without clear policy justification or consideration of the potential environmental and economic impacts, further delay or weakening of the EUDR risks violating legal obligations under the EU treaties, general principles of EU law, and international law on State climate obligations.

- Those violations could render the relevant amendments invalid and vulnerable to legal challenge.

1. Context

On 21 October, the European Commission submitted a proposal (**Commission Proposal**) to amend the EU Deforestation Regulation (**EUDR**) to remove certain obligations on operators and traders, seeking to address anticipated technical issues with its IT system.[1]

On 31 October, Austria called for more fundamental changes to the EUDR and longer delays to its application.

During the Environment Council meeting on 5 November, Member States were divided on their positions on the Commission Proposal, with various calls for another one-year delay, an indefinite 'stop the clock' postponement, introduction of a so-called 'zero-risk' country benchmarking category and accompanying removal of product traceability rules and market access conditions, exemptions for insignificant-risk areas, and exemptions for minimum volumes of regulated products.

In discussions on 12 November, the Danish Presidency apparently proposed to add an additional one-year delay to the Commission Proposal.

No impact assessment was conducted for the Commission Proposal – the Explanatory Memorandum to the Proposal notes that the proposed "measures are based on experience in preparing for the implementation of [the EUDR]" and that the findings of the original impact assessment for the EUDR "were taken into account".[2]

2. The EUDR is designed to mitigate deforestation, biodiversity loss and climate change

The objectives of the EUDR, as stated in Article 1, are to:

a. minimise the EU's contribution to deforestation and forest degradation worldwide, and thereby contribute to a reduction in global deforestation; and
b. reduce the Union's contribution to greenhouse gas emissions and global biodiversity loss.

The Recitals to the EUDR acknowledge that:

a. deforestation and forest degradation are important drivers of global warming and biodiversity loss (Recital 2);
b. deforestation and forest degradation contribute to the global climate crisis in multiple ways, with deforestation alone accounting for 11 % of greenhouse gas emissions (Recital 3);
c. global warming and biodiversity loss are the two most important environmental challenges of our time (Recital 3);
d. climate change, biodiversity loss and deforestation are concerns of the highest global importance, affecting the survival of humanity and sustained living conditions on Earth (Recital 6); and
e. combating deforestation and forest degradation constitutes an important part of the EU's package of measures needed to reduce greenhouse gas emissions and to comply with the Paris Agreement and

[1] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2023/1115 as regards certain obligations of operators and traders, 2025/0329 (COD), 21 October 2025.
[2] Commission Proposal, Explanatory Memorandum, pp.6-7.

the legally-binding commitments under the EU Climate Law[3] to reach climate neutrality by 2050 and reduce greenhouse gas emissions by at least 55 % compared to 1990 levels by 2030 (Recital 13).

The original impact assessment for the EUDR anticipated that the EUDR would reduce EU consumption-driven deforestation by 29% by 2030 and save a minimum of 72,000 hectares of forests from EU-driven deforestation or forest degradation annually from 2030. This would prevent a minimum of 32 million metric tonnes of carbon emissions to the atmosphere every year due to EU consumption and production, translating into an economic saving of at least EUR3.2 billion annually.[4]

The impact assessment also noted that the preferred option "would also contribute more decisively to preserving biodiversity by reducing activities that are proven to threat[en] the survival of numerous species" and "would also contribute to creating a level playing field for companies operating in the EU market and streamline enforcement activities and associated costs across the EU through the transparent identification of contravening operators".[5]

These anticipated benefits were calculated based on the original date of application of 30 December 2024. That date was extended in December 2024 to 30 December 2025.

3. Delaying the EUDR will increase EU impacts on forests, climate and biodiversity

In direct contrast, proposals for an additional one-year delay or indefinite 'stop the clock' pause to the EUDR's entry into application would prolong the EU's contribution to global deforestation, biodiversity loss and climate change. Further delay would not simply postpone action that has not been initiated but, on the contrary, **would prevent action that is currently legally required on and from 30 December 2025** – action to minimise the EU's contribution to global deforestation and forest degradation, biodiversity loss and climate change.

In other words, delaying the EUDR's application or weakening its requirements would prevent the benefits to forest protection, climate change mitigation and biodiversity conservation that the application of the EUDR is expected to deliver. Based on the EUDR impact assessment, it can be estimated that a 12-month delay to the EUDR would cause the loss or degradation of 72,000 hectares of forest and release of 32 million metric tonnes of carbon emissions to the atmosphere.

Delaying the EUDR so close to the current date of application – 30 December 2025 – when many businesses have been working towards and investing in achieving compliance on time may also cause negative impacts for business competitiveness and return on investment, and lead to potentially higher transition costs of delayed action for both EU Member States and businesses.

Proposals to further delay the application of the EUDR or weaken its requirements therefore entail significant environmental, climate and biodiversity impacts as well as economic risks.

[3] Regulation (EU) 2021/1119 of 30 June 2021: https://eur-lex.europa.eu/eli/reg/2021/1119/oj/eng.
[4] Commission Staff Working Document, Impact Assessment accompanying the proposal for the EUDR, SWD(2021) 326 Final, pp.73. See also EUDR Explanatory Memorandum p. 9.
[5] Ibid. p.73.

4. Inconsistency with EU treaty obligations, general principles of EU law and climate obligations under international law

Without any clear policy justifications and without an assessment of the potential impacts – both in terms of environmental impacts but also impacts on EU businesses – a further delay or weakening of EUDR requirements seems inconsistent with:

a. EU Treaty obligations, in particular the principles of environmental protection and proportionality;
b. general principles of EU law, in particular the principle of legitimate expectations; and
c. international law, particularly as clarified by the recent Advisory Opinion of the International Court of Justice (**ICJ AO**) on State climate obligations.[6]

These legal inconsistencies could render the legislative act that amending the EUDR vulnerable to legal challenge – via an annulment action under Article 263(2) of the Treaty on the Functioning of the European Union (**TFEU**) or a preliminary reference on validity under Article 267 TFEU.

A. INCONSISTENCY WITH EU TREATY OBLIGATIONS ON ENVIRONMENTAL PROTECTION

Article 11 TFEU provides that "[e]nvironmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development". This principle is completed by the protection clause of the third paragraph of Article 114 TFEU which expressly requires that a high level of protection of the environment should be guaranteed.[7]

Similarly, under Article 37 of the EU Charter of Fundamental Rights (**CFR**) "[a] high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development." The Court of Justice of the European Union (**CJEU**) has confirmed that Article 11 TFEU, read in conjunction with Article 37 CFR, is horizontally applicable, which requires that the EU legislature must incorporate environmental protection requirements into the EU's policies and activities, and may therefore serve as a standard for reviewing the legality of EU legislation.[8]

As noted above, given the law currently provides that the EUDR will enter into application on 30 December 2025, a decision by the co-legislators to (again) delay its application would constitute a decision to prolong the EU's impacts on forests, biodiversity and climate worldwide.

A further delay to the application of the EUDR would therefore undermine the EU's environmental objective to uphold a high level of environmental protection, as well as the EU's commitments to reach climate neutrality by 2050 and to reduce net greenhouse gas emissions by at least 55% compared to 1990 by

[6] International Court of Justice, 23 July 2025, [Advisory Opinion on the obligations of states in respect of climate change]().
[7] CJEU, Judgment of 22 June 2017, Case C-549/15, E.ON Biofor Sverige AB, para 48. A reduction in the level of protection in certain cases is acceptable as long as the general result is a considerable improvement in the protection of the interests at stake (The EU treaties, Article 114 para. 36; See, to this effect regarding consumer protection, CJEU, Judgment of 13 May 1997, Case C-233/94, Germany v EP and Council, para 48).
[8] CJEU, Judgment of 4 October 2024, Cases C-541/20 to C-555/20, Lithuania and others v. European Parliament and Council, paras 423 et seq. See also the General Advocate's opinion delivered on 14 November 2023, paras. 569-583.

2030, as enshrined in the EU Climate Law (Articles 2(1) and 4(1)), as it would constitute a reduction in environmental protection and climate mitigation effort.

B. INCONSISTENCY WITH EU TREATY OBLIGATIONS ON PROPORTIONALITY

Article 5(4) of the Treaty on European Union provides that “the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties”. The CJEU has consistently held that EU acts must be “appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them”.[9] The CJEU has also affirmed that the principle of proportionality, “as a general principle of European Union law, is [...] a criterion for the lawfulness of any act of the institutions of the Union”.[10]

While the co-legislators enjoy a wide margin of discretion in areas involving complex assessments (e.g. the adoption of a new law),[11] this discretion is not unlimited. The co-legislators must take into consideration “all the relevant factors and circumstances of the situation the act was intended to regulate” and must “at the very least be able to produce and set out clearly and unequivocally the basic facts which had to be taken into account as the basis of the contested measures of the act and on which the exercise of their discretion depended”.[12]

In this respect, **the absence of an impact assessment** for the Commission Proposal, let alone for any additional delay to the application of the EUDR, can constitute a breach of the principle of proportionality.[13] Recently, the CJEU annulled part of a regulation due to the absence of an impact assessment, despite the EU legislature’s broad discretion in the matter. The annulment was based on the fact that the EU legislature lacked sufficient information to assess the proportionality of the measures.[14]

In the present case, the Commission chose not to conduct an impact assessment, citing the fact that the Proposal amends an existing legal act for which an impact assessment was carried out, and claiming that the earlier impact assessment was “taken into account”.[15]

However, the EUDR has not yet been applied by companies or fully implemented by Member States. As a result, without an updated impact assessment the co-legislators lack sufficient information on the impacts on Member States and companies, and on the pursuit of the EUDR’s objectives. In the absence of such as assessment the co-legislators cannot properly assess the proportionality of a further delay to the application of the EUDR – especially given the arguments for such a delay are based on general, unquantified and unsubstantiated assertions of “administrative burden”.

In this context, a further delay to the EUDR creates a risk of legal challenge for breach of the principle of proportionality.

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[9] CJEU, Judgment of 8 June 2010, Case C-58/08, Vodafone, para. 51; CJEU, Judgment of 18 June 2015, Case C-508/13, Estonia v EP and Council, para. 28; CJEU, Judgment of 7 July 2009, Case C-558/07, S.P.C.M. and Others, para. 41

[10] CJEU, Judgment of 29 June 2010, Case C-441/07, Alrosa, para. 36.

[11] In areas in which the Union institutions, bodies, offices, and agencies have a broad discretion, the legality of a measure “can be affected only if the measure is manifestly or obviously inappropriate having regard to the objective which the competent institution is seeking to pursue”. See CJEU, Judgment of 8 June 2010, Case C-58/08, Vodafone, para. 52; CJEU, Judgment of 10 January 2006, Case C-344/04, IATA and ELFAA, para 80; CJEU, Judgment of 10 July 2008, Case C-413/06, Bertelsmann, paras 69 and 144; CJEU, Judgment of 8 July 2010, Case C-343/09, Afton Chemical Limited, para. 46.

[12] *A contrario* reading of CJEU, Judgment of 3 December 2019, Case C-482/17, Czech Republic v. Commission, para 85.

[13] CJEU, Judgment of 3 December 2019, Case C-482/17, Czech Republic v Parliament and Council, para 85.

[14] CJEU, Judgment of 4 October 2024, Joined Cases C-541/20 to C-555/20, Lithuania and others v. Commission and Council of the EU, paras 718-738. See also CJEU, Judgment of 7 September 2006, Case C-310/04, Spain v. Council, para. 97.

[15] Commission Proposal, Explanatory Memorandum, p. 6.

C. INCONSISTENCY WITH EU LAW ON LEGITIMATE EXPECTATIONS

The principle of legitimate expectations holds that legal persons who act reasonably and in good faith based on existing EU law should not suffer from the frustration of those expectations.[16] The CJEU has consistently held that this principle protects any person with regard to whom an EU institution has given rise to justified hopes[17] through precise, unconditional and consistent information coming from authorised and reliable sources.[18]

Article 34 EUDR sets out a detailed schedule for the Commission to undertake targeted and general reviews of the impacts of the EUDR's implementation, and to present those assessments the Council and the Parliament.

The topics to be addressed in the first "five year review" planned for mid-2028 (under Article 34(6)) align with the issues raised by proponents of further delaying the EUDR: additional trade facilitation tools, impacts on farmers and smallholders, the possible need for additional support for the transition towards sustainable supply chains and for smallholders to meet the EUDR requirements, the threshold for mandatory use of polygons (for geolocation reporting), and an assessment of whether checks have been effective.

It could be argued that economic operators who have invested in establishing EUDR-compliant supply chain traceability, due diligence systems and risk management measures have:

a. a legitimate expectation that they will be subject to the existing EUDR requirements from 30 December 2025 and they will remain unchanged until at least 2028; and

b. "justified hopes" of being able to do business without unfair competition from non-compliant businesses during this period.

These expectations are further supported by the years-long negotiation process leading to the adoption of the EUDR and subsequent development of FAQs and Official Guidance,[19] and the first delay to its application in late 2024,[20] which reasonably led stakeholders to believe that the resulting rules were well thought-out, will enter into application on 30 December 2025 and will remain stable in the near future.

Based on these expectations, many businesses have already invested substantial resources in systems, processes, and expertise preparing for and complying with the EUDR obligations. Since the EUDR's adoption in March 2023, many companies have invested significantly in transitioning their internal procedures, systems and supply chains towards compliance to ensure they would remain competitive.

In recent months, many timber companies and major manufacturers have voiced support for the timely implementation of the EUDR. On 1 November, 51 investors recognised that the EUDR demands urgent and measurable action and called on governments to implement strong policies and regulations to eliminate commodity driven deforestation. On 6 November, Business for Nature stressed that changes to the EUDR undermine confidence in EU regulatory stability, increase compliance costs, penalise

[16] U. Bernitz, J. Nergelius, C. Cardner, General Principles of EC Law in a Process of Development, Kluwer law International, 2008, p. 54. See CJEU, Judgment of 14 March 2013, Case C-545/11, Agrargenossenschaft Neuzelle eG, para. 24.
[17] CJEU, Judgment of 14 March 2013, Case C-545/11, Agrargenossenschaft Neuzelle eG, para. 24.
[18] CJEU, Judgment of 21 June 2018, Case C-5/16, Poland v. European Parliament and Council, para. 110.
[19] Commission Notice – Guidance Document for Regulation (EU) 2023/1115 on Deforestation-Free Products C/2025/3588, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52025XC04524.
[20] Regulation (EU) 2024/3234 of the European Parliament and of the Council of 19 December 2024 amending Regulation (EU) 2023/1115 as regards provisions relating to the date of application
PE/98/2024/REV/1, available at https://eur-lex.europa.eu/eli/reg/2024/3234/oj/eng.

responsible actors, distort competition by providing unfair advantages to those ignoring the rules, and risk damaging the EU's credibility.

Further delay to the EUDR, let alone further changes to the requirements it imposes on businesses, arguably breaches the principle of legitimate expectations.

D. INCONSISTENCY WITH CLIMATE OBLIGATIONS UNDER INTERNATIONAL LAW

The ICJ AO of 23 July 2025[21] affirmed that the obligation to limit global temperature rise to 1.5°C under the Paris Agreement remains legally binding and non-negotiable, regardless of current emissions trajectories or political feasibility.[22] It also clarified legal obligations under international law in relation to climate change; underscoring the growing consensus that States and, given its international law obligations, the European Union, have a specific human rights duty to regulate companies in the context of climate change.

The ICJ AO built on recent rulings from the European Court of Human Rights, the International Tribunal for the Law of the Sea and the Inter-American Court of Human Rights and unanimously found that:

a. A clean and healthy environment is the **foundation for human life** and human rights protected by international law,[23] such that, in order to guarantee the enjoyment of human rights in general, States (and to the extent applicable, the EU) must take measures to protect the climate system and other parts of the environment, including through mitigation and adaptation measures, the adoption of standards and legislation, and the regulation of the activities of private actors.[24]

b. **Climate change prevention is a binding legal obligation**, not a discretionary matter of policy, derived from international customary law and binding treaty obligations.[25]

c. **There is an international law duty to regulate private actors' GHG emissions**, including not just passing climate laws but ensuring such laws are effectively implemented and enforced.[26]

d. Compliance with these obligations requires "**stringent" due diligence** because of the severe risks posed by climate change,[27] which is "particularly relevant in a situation in which the activities in question are mostly carried out by private actors or entities".[28]

Relevantly, the ICJ AO clarifies that a the failure to regulate the emissions of private actors within its jurisdiction or control – which include extraterritorial emissions such as supply chain emissions from deforestation and land-use conversion – may be unlawful and trigger consequences under the law of State responsibility.[29]

As noted above, the EUDR is an existing EU law explicitly designed to reduce the EU's collective, and Member States' individual, contribution to global deforestation and climate change. The EUDR seeks to regulate private actors' contributions to global deforestation and forest degradation by ensuring that the

[21] International Court of Justice, 23 July 2025, Advisory Opinion on the obligations of states in respect of climate change.
[22] Ibid, paras. 224-225.
[23] ICJ Advisory Opinion, op. cit., para. 393. See notably David R. Boyd, A Right Foundational to Humanity's Existence, Verfassungsblog, 30 July 2025.
[24] Ibid, para. 403.
[25] Ibid, aras. 272–300, 230-254 and 404.
[26] Ibid, para. 403.
[27] Ibid. paras. 138, 246, 268.
[28] Ibid, para. 252.
[29] Ibid, paras. 95, 252, 282, 427 and 428.

products they place on the EU market are “deforestation-free”. These requirements, and Member States’ corresponding obligations to ensure the rules are followed and enforced, will apply from 30 December 2025.

Delaying the application of the EUDR therefore seems directly inconsistent with Member States – and the EU’s – obligations under international law to regulate the activities of the private sector with respect to their climate impacts, to ensure that laws designed to mitigate climate change are effectively implemented and enforced, and to carry out stringent due diligence before changing or adopting laws that could impact the pursuit of climate mitigation objectives.

By again delaying the application of the EUDR, Member States and the EU institutions may therefore be vulnerable to legal challenge for violating their international law obligations both vis-à-vis third countries and with respect to their international human rights obligations to EU citizens.

Conclusion

The over-arching objective of the EUDR is to mitigate the EU’s contribution to climate change and biodiversity loss by reducing the EU’s contribution to global deforestation and forest degradation. Because the EUDR has already entered into force and will enter into application on 30 December 2025, a decision to delay its application is equivalent to a decision to prevent the environmental, climate and biodiversity benefits that EUDR application is expected to provide. Without clear policy justification and an assessment of the potential environmental and economic impacts, delaying the EUDR’s application or weakening its requirements risks breaching legal requirements under the EU treaties, under general principles of EU law, and under international law on climate obligations.

These inconsistencies could render such amendments to the EUDR invalid and make the relevant legislative act vulnerable to legal challenge.

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