

EUDR: the latest political developments and AHEC's strategic response

Legal and deforestation-free verification system for U.S. hardwoods

Work continues to develop the framework that will allow American hardwood exporters, before the end of this year, to provide a robust due diligence statement with every consignment to demonstrate that all wood supplied is from legal and deforestation-free sources. Each statement will draw on and provide links to data-rich assessments of deforestation and illegality risk in line with internationally recognised definitions and prepared by independent third parties. In addition to confirming a negligible risk of illegality and commodity-driven



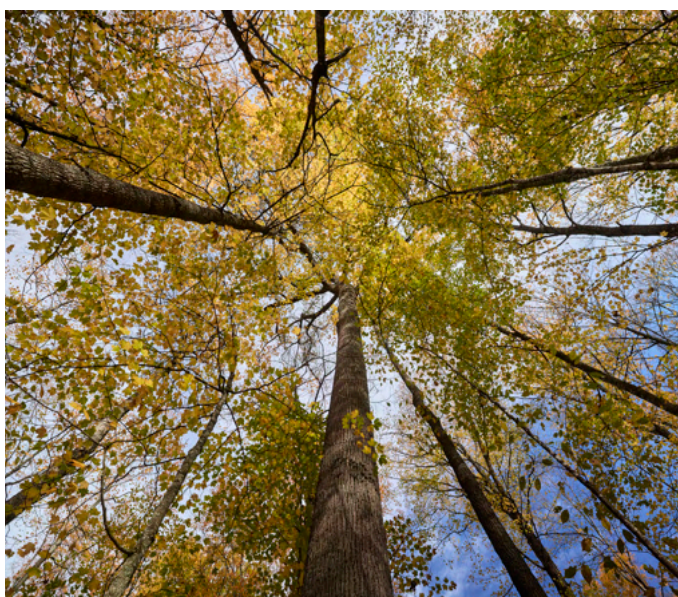
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deforestation, the framework must ensure that U.S. hardwood exporters, alongside their suppliers and overseas customers, are not exposed to unreasonable legal liabilities in relation to claims made or to anti-trust, confidentiality, and privacy laws in the U.S. and overseas.

While pilot work on this framework focused on a mechanism to facilitate American hardwood

conformance for the EU Deforestation Regulation (EUDR), AHEC's strategy has now shifted towards a mechanism for global market development that is practically achievable and useful in the context of U.S. hardwoods. If that implies challenging certain aspects of EUDR, which it is now becoming clear contains serious technical flaws when applied to the forest products sector, then so be it. Ultimately, a failure to confront these flaws right now will lead to more serious problems down the track. That's not to say that EUDR is without merit, only that policy makers in the EU must be encouraged to make certain specific changes if the law is to meet its entirely legitimate objectives and to avoid becoming discredited in the global marketplace.

Having invested a significant amount of time and effort trying to develop a fully "EUDR-conformant" solution, AHEC has concluded that certain obligations in the legal text as currently written are, to all intents and purposes, impossible for the U.S. hardwood sector. The word "impossible" is used advisedly, drawing as it does on close examination of the technical options alongside very careful reading



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of the law and direct consultations with the EC, EU regulators, and industry representatives. In effect, the current legal text, alongside the interpretative guidance so far issued by the EC, will act as a de facto ban on EU trade in most U.S. hardwood products. This in a sector where the risks of illegality and commodity-driven deforestation are practically zero.

The key underlying issue is that, unlike for agricultural products, when dealing with forest products the deforestation event is necessarily in the future and cannot be predicted with certainty. Furthermore, whether deforestation follows on from timber harvesting will not become evident until several years after the event. These issues apply to all forest products but become a serious obstacle when wood is sourced primarily from numerous non-industrial family forest owners. In these circumstances, the way EUDR is structured demanding geolocations for every “real estate property” from which wood might potentially have been sourced imposes an

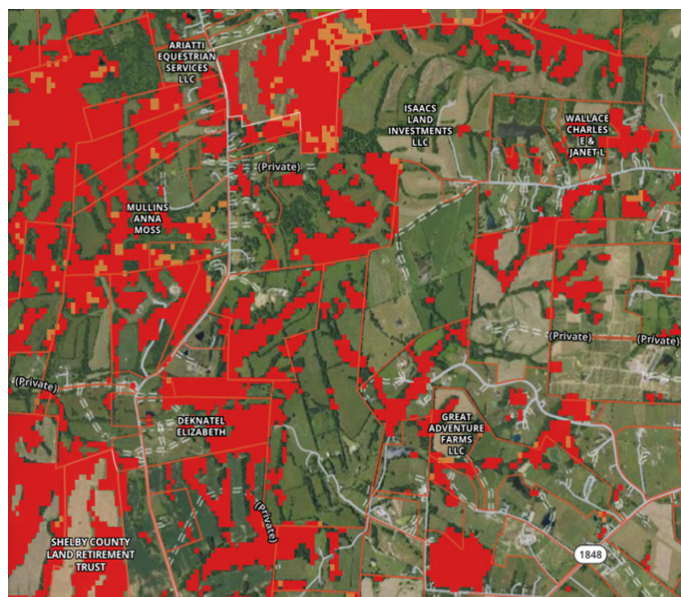


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apparently limitless liability on anyone trading in U.S. hardwood products. Since U.S. exporters can neither foresee nor control the economic decisions freely taken by non-industrial family forest owners following harvesting, there is no way they can shoulder this extraordinarily high level of liability in their dealings with EU customers.

The system now being developed by AHEC will

overcome this problem, alongside other concerns relating to anti-trust and privacy, by providing geolocation data at the level of individual counties rather than for properties. In hardwood producing areas of the United States there are around 1350 counties with an average area of 160,000 hectares area and which average around 100,000 m³ of hardwood logs each year. These figures are comparable to those of typical state forest areas, tropical concessions, and industrial plantations in both the U.S. and other countries which, under the terms of EUDR, can be defined as a “plot of land” for geolocation purposes. Counties are also



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sufficiently compact to ensure a homogenous level of deforestation risk. As such counties fulfil all EUDR requirements of the “plot of land” for which geolocations are required with the only exception that they are not “within a single real-estate property”. For this reason, the official position of the EC at present is that they are unacceptable for EUDR conformance purposes as the law stands.

AHEC is determined to challenge this position and to seek clear unambiguous guidance from the EC that county-level polygons are acceptable for EUDR conformance when sourcing from non-industrial forest operations and where steps have been taken to clearly demonstrate negligible risk of deforestation at this level. In the absence of this guidance, AHEC will have no option but to advise U.S. hardwood exporters to ensure that, when exporting to the EU, their supply



contracts with EU customers explicitly exclude their acceptance of any liabilities associated with their customers obligations under EUDR. The framework that AHEC is currently developing to provide a robust assurance of the legal and deforestation-free status of U.S. hardwoods in global markets will explicitly state that it does not align with strict interpretation of the text of the EUDR or with EC guidance, setting out the reasons.

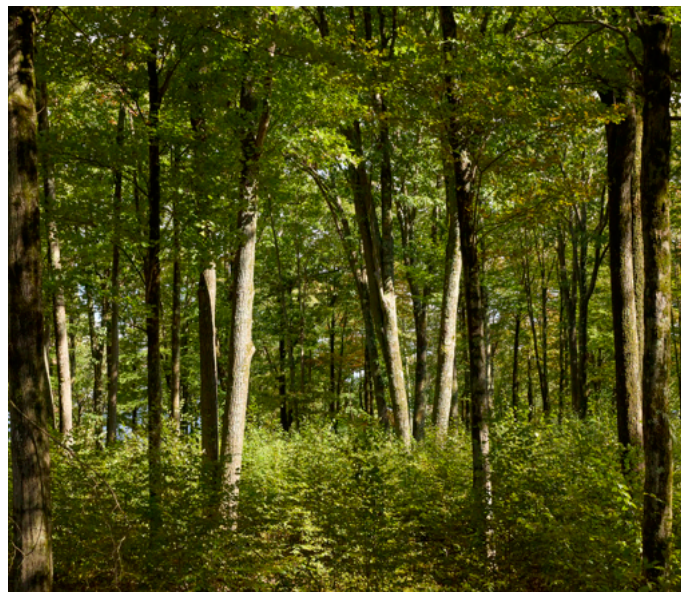
However, the EC responds, AHEC is committed to actively promoting this system in global markets to provide a robust assurance of the legal and deforestation-free status of U.S. hardwoods, and as a demonstration of an appropriate framework that achieves this without creating technical barriers to trade or otherwise conflicts with international trade law.

Full details of the legal and deforestation-free system for U.S. hardwood which is scheduled for launch no later than 30 November 2024 will be provided in the next AHEC European Market Report in August. Any immediate questions or concerns should be directed to AHEC's Environmental Policy Director Rupert Oliver (rupert@americanhardwood.org).

U.S. government appeals for EUDR delay

Calls for a delay to implementation of the EUDR, scheduled for 30 December, have continued to get louder both inside and outside the EU. On 30 May, the U.S. government made a direct appeal to the European Commission to delay full implementation until certain specific conditions were met. The appeal came in a letter addressed to the commission's vice-president, Maros Sefcovic and signed by U.S. agriculture secretary Thomas Vilsack, commerce secretary Gina Raimondo and U.S. trade representative Katherine Tai. It states that the signatories are "deeply concerned with the remaining uncertainty and the short time frame to address the significant challenges for U.S. producers to comply with the regulation".

The letter goes on to say that the U.S. authorities have together with "several stakeholders" identified four "critical challenges" for U.S. producers to understand and comply with the EUDR: no final version of the EUDR information system for producers to submit the mandatory due diligence documentation has been established yet; no implementation guidance has been provided – with the Information System for



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submission of Due Diligence Statements expected to launch in November; many EU member states have not designated a competent authority to enforce the regulation; and finally, the EU has an interim decision to classify all countries as standard risk, regardless of forestry practices.

Should these issues not be addressed before the EUDR starts being enforced, it "could have significant negative economic effects on both producers and consumers on both sides of the Atlantic", the letter said. "We therefore urge the EU Commission to delay the implementation of this regulation and subsequent enforcement of penalties" until the challenges have been addressed, it added.

German state governments call for easing of EUDR obligations for low-risk supplies

The U.S. letter arrived in the EC's in-tray just days after the German Bundesrat passed a motion on the EUDR "calling for an extended implementation and to relieve producers of avoidable, additional bureaucracy where there is no demonstrable risk". The Bundesrat is the upper chamber of the German government where the Länder (States) are represented. The Bundesrat motion observes that "it is not possible to implement the regulation in accordance with the current requirements" and goes on to suggest that "the wood-processing industries are currently facing an insurmountable task" and



that “there is a threat of considerable burdens for the relevant companies and distortions along the entire wood value chain”.

The Bundesrat motion calls on the German Federal Government to obtain an implementation regulation from the EU in the short term that is legally compliant with the WTO regulations that extends the deadlines for EUDR implementation, relieves raw material producers in Member States and regions where there is no demonstrable risk of deforestation from avoidable, additional bureaucracy, and enables other market participants to apply it in a practical and legally compliant manner.



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These calls for a delay to EUDR implementation echo earlier calls in various statements and letters, many issued jointly, including by every major EU forest products industry association; by their counterparts in the U.S., Brazil, New Zealand, Australia, and Chile; by the Ambassadors of 17 tropical countries; by the Agricultural Ministers of 20 out of the EU’s 27 Member States; and even within the EC itself by the Agricultural and Trade Commissioners.

EUDR labelled “bureaucratic monster” by EU Parliamentary election winners

On 27 June, the head of environment policy for the centre-right European People’s Party (EPP), which emerged as the largest single group following the recent EU Parliamentary elections, called explicitly

for a two-year delay to EUDR implementation. Peter Liese described EUDR as a “bureaucratic monster” and said that “many small farmers around the world and even small forest owners in the European Union cannot work with the text.” He also said that recent contact with officials “at all levels” in the European Commission had shown him “everybody is aware that we have a problem that cannot be solved without postponement”. As to the length of the delay, he added: “I would consider two years a reasonable time.”

Liese’s intervention is notable not only because of the EPP’s success at the European elections, but all because the EPP is the party of Ursula von der Leyen, just nominated by the European Council to continue in her role as President of the European Commission for a second term.

Overall, the European Parliamentary elections concluded with significant gains being made by right wing parties that will be more inclined to oppose European Green Deal measures. The socialist and green groups that have been the Deal’s most vociferous advocates lost ground. The biggest gains by right wing parties were made in Germany, France, and Italy, the three largest economies in the EU.

On 30 June, in the first round of French national elections called after President Macron’s centrist party was eclipsed by Marine Le Pen’s right-wing National Rally (RN) at the European elections, the



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RN emerged as the largest single party. The RN won 33% of the popular vote, ahead of the leftwing New Popular Front (NFP) alliance on 28% and leaving President Macron's centrist Together bloc in third on 21%. In desperation, the French president is calling on the public to vote for anyone except RN in a so-called "Republican front" to "block the far right" in the second round of elections on 7 July.

Fate of EUDR and EU Green Deal in the balance

At first sight therefore, all the conditions seem to be in place for a reorientation of European policy in a way that will lessen commitment to the EUDR and other EU legislative initiatives of the Green Deal. But this is simplistic. The outcome of the intense horse-trading now ongoing in the European Parliament and Council could yet lead to scenarios where political commitment to the EUDR remains as strong as ever amongst those holding the levers of power.

It should also be emphasised that while AHEC is looking for very specific changes in the way EUDR operates to avoid it becoming a technical barrier to the trade in U.S. hardwoods, a weakening in the EU's commitment to the wider Green Deal, at a time when it is only half implemented, may well be detrimental to longer term prospects for natural hardwood products in the EU market. In fact, there is a risk that we could end up with the worst of all possible outcomes: a misfiring EUDR with concessions made to make it more palatable to the domestic industry but retaining technical barriers to external producers; while other Green Deal measures that could benefit U.S. hardwoods but which have yet to find their way on to EU statute books could be dropped or watered down. This includes a whole host of measures linked to the EU's Circular Economy Action Plan designed to increase use of sustainable materials and reduce carbon-intensity across the whole EU economy.

Particularly relevant to the future of the EUDR and other Green Deal measures will be the European Parliament's vote scheduled for the week of 15 July on Von Der Leyen's reappointment as European Commission President. When the 720 MEPs meet, Von Der Leyen will need to convince just over half, at least 361, to vote for her in a secret ballot. The current coalition comprising her centre right EPP, the Socialists and Democrats (S&D), and the liberal Renew group has just under 400 seats, theoretically enough to see her over the line. However, some analysts project a defection rate of around 10

percent, which would put her right around the 361 mark. To be sure of a win, she will need votes either from Italian Prime Minister Meloni's right-wing ECR group, which came third in the European parliament elections, or from the Greens who lost a few seats in the parliamentary election but are still large enough to influence the vote.

The challenge for Von Der Leyen is that if she chooses to lean more towards the left or right in forming the coalition, the centre will almost certainly start to fragment. This has direct implications for the future of the EUDR. Green groups have stated explicitly that their continued support for Von Der Leyen will depend on her continuing the roll out of the EUDR alongside all the other Green Deal Measures. So too have the S&D, the second largest group in the Parliament. An S&D spokesperson told Reuters in the last week of June that the S&D is "totally opposed" to delaying the EUDR. "It is a clear no go for S&D. The Commission has an obligation to implement it," said the S&D source.

Unfortunately for Von Der Leyen this position conflicts with that of her own EPP that is already calling for a delay to EUDR, while any move to accommodate the ECR, which is openly sceptical of the whole Green Deal package, will only strengthen these calls for delay. Therefore, if Von der Leyen makes concessions to the S&D and the Greens, she will almost certainly lose support of MEPs within her



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own EPP group.

Irrespective of whether Von Der Leyen is eventually re-elected as Commission President, there will be equally challenging negotiations inside the European Council to decide on the various Commissioners. There are 27 Commissioners, one appointed from each of the EU Member States, and the process to decide who goes where involves intense bargaining. How this will play out is anyone's guess. Having been frozen out of the selection process for Von Der Leyen as Commission President, Italy's Prime Minister, Meloni, is determined that at least one of the major economic portfolios in the Commission - monetary affairs, competition, or trade - is taken by an Italian from her party. France's position will not become clear until after the national election. Particularly significant is that Spain's ruling Socialist Workers' party is pushing for their environment minister, Teresa Ribera, to be put in charge of the EC environment portfolio responsible for EUDR implementation. In May, Ribera said she would do everything in her power to save the Green Deal.

Formal EUDR delay still seems unlikely

This all highlights just how polarised and politicised the question of EUDR implementation has become. In practical terms, a formal delay to EUDR, which would require the agreement of all three of the European Council, Commission, and Parliament, would face major political challenges. Therefore, the working

assumption must be that the official timetable will remain unchanged, and EUDR enforcement will begin on 30 December 2024.

Equally, despite the public assurances of EC officials that everything is on track, it is clear that the various agencies responsible for EUDR implementation both at EU level and in the Member States are ill-prepared to implement the law. The delay to the country benchmarking is particularly problematic because it means that the "simplified" due diligence procedures for low-risk countries are unlikely to be available until the second half of 2025. This creates significant problems for internal EU trade as many regulators and operators inside the region are relying on the low-risk designation to keep down the costs of both enforcement and implementation.

Taking all this into account, the expectation is that, while a formal delay is unlikely, there will be an "informal" transition period of perhaps one to two years when sanctions will not be imposed and both regulators and businesses will be given time to become accustomed to the requirements and to work out how best to deliver against the legal objectives. The extent of "flexibility" allowed in interpretation might well vary between member states, and the extent to which the EC chooses to force individual Member States to strictly adhere to the requirements, and the timing of this, will depend partly on the composition of the ruling coalition in the European Parliament and on the outcome of the French election.

Signs that EUDR requirements for internal trade may be eased

At the same time, there are early signs of a potentially malign development, at least from the perspective of external suppliers into the single market. These came in the latest newsletter of the German timber trade association GD Holz. It seems that the EC is already acting to appease the concerns of European politicians and industry groups, by watering down EUDR due diligence requirements for internal EU trade, while trying to maintain a hard line with respect to imports from outside the bloc. The good news is that, if the EU is indeed going down this route, it will soon come under intense pressure to make equivalent concessions to suppliers in low-risk countries and regions outside the EU. It is so blatantly discriminatory and protectionist that it would create an international outcry.



While a formal delay is unlikely meaning EUDR enforcement will begin this December, there will be an "informal" transition period of perhaps one to two years.



GD Holz state that in response to their questions to EC officials at the 28th meeting of the “Multi-Stakeholder Platform on Protecting and Restoring the World’s Forests” held in June, the EC “clarified that downstream non-SME market participants (large companies within the EU) do not have to provide geocoordinates when submitting their due diligence declarations”. Based on the EC answers, GD Holz suggest that “This means that geo-coordinates are only mandatory for the beginning of the supply chain in the EU (import or forest ownership). It may be necessary to pass on geocoordinates in individual cases, e.g. for high-risk goods, but it is not always necessary to pass them on”.

GD Holz also say that “asked what kind of checks downstream non-SME market participants have to carry out if they purchase products affected by the EUDR within the EU, the EC has clarified that such checks need not relate to individual deliveries, but to the general application of the EUDR by the supplier. To this end, the due diligence system applied by the supplier must be reviewed, e.g. in the form



There have been signs the EC may be watering down EUDR due diligence requirements for internal EU trade, while trying to maintain a hard line with respect to external imports.

of regular audits. This means that, as a rule, only rudimentary information (e.g. reference number, tree species, country of felling) and information on the due diligence system used must be passed on. If the customer determines that there is a high risk in individual cases, further data may be requested”.

While the EC is making concessions to internal

suppliers on the issue of traceability and geolocations, GD Holz implies that the EC is less inclined to make concessions to suppliers outside the EU. GD Holz state that “another important issue that we have raised with the EU is imports from countries that currently make it difficult to share geocoordinates. The best-known example of this is China, which prohibits the disclosure of coordinates for security reasons. The EU has succinctly informed us that there have been discussions on this topic with the Chinese government and suppliers. It was made clear that imports without coordinates were not possible and that there would be no exceptions for countries such as China. No statements were made about attempts to solve this problem”.

AHEC has every sympathy with the concerns of Europe’s domestic wood industry, for whom the due diligence requirements are clearly excessive where there is a negligible risk of their log supplies being illegally harvested or contributing to deforestation. But if the traceability requirements cannot be effectively implemented inside the EU – which has one of the most sophisticated and well-resourced forest products sectors in the world – then these arguments apply equally to suppliers of forest products outside the EU. Non-EU suppliers of forest products should also be exempt from the provision of geolocation co-ordinates – or at least allowed to provide these at a jurisdictional level – if they can demonstrate by other means a negligible risk of their log supplies being illegally harvested or contributing



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to deforestation.

The GD Holz newsletter also makes no mention of whether regulated products exported from the EU would still be subject to the geolocation requirement. The implication seems to be that they would not since it would be extremely difficult to segregate supply chains for products destined for non-EU markets from those sold in the internal market. In meetings with international trade partners, the EU has frequently made the case that EUDR does not conflict with WTO regulations because the obligations placed on exports from the EU are the same as those on imports. This is a big deal when it is considered that the EU is a considerably larger exporter of forest products than it is an importer. Last year, total EU27 imports of wood, paper and pulp, and wood furniture from outside the bloc were valued at \$33.3 billion. The value of exports to countries outside the bloc was nearly double that, at \$66.4 billion.

