EU Deforestation Regulation – Provision to the EU Commission Expert Group / Multi-Stakeholder Platform – BMW Group

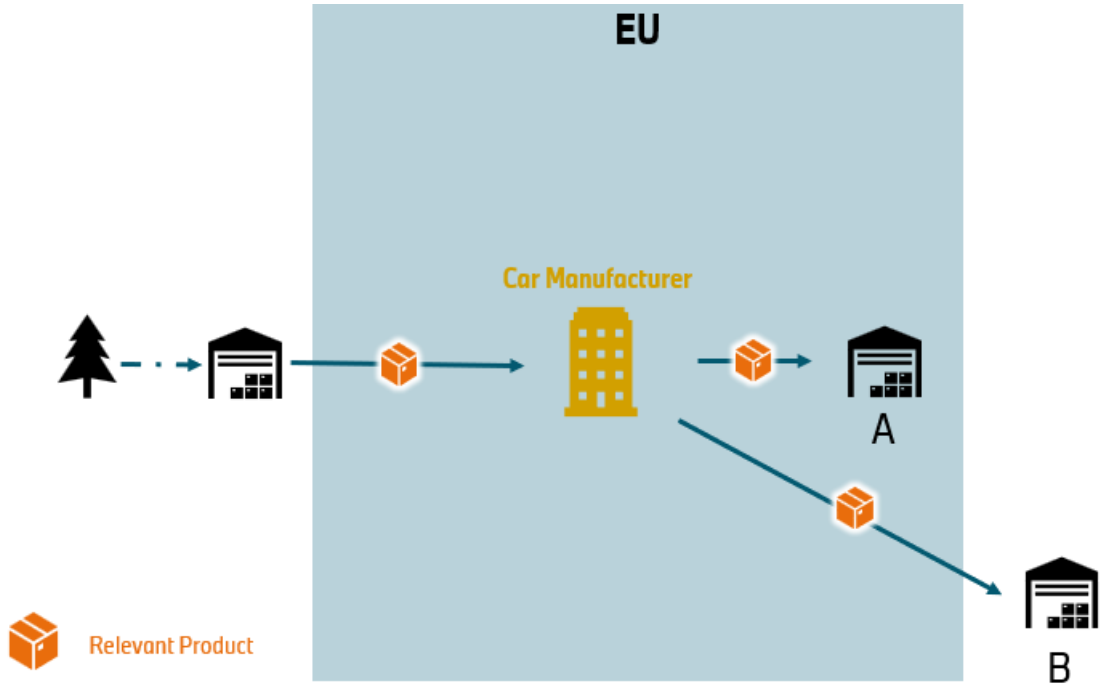
23.01.2026

1. Interpretation of the EUDR's "Legality Obligations" as Obligations of Means

From a legal perspective, the EUDR's obligations on ensuring relevant commodities and products have been produced in accordance with the relevant legislation of the country of production (Art. 2 No. 40, Art. 3 EUDR) can be interpreted in different ways. While some interpret these obligations as obligations of results, the Commission should – through an updated Guidance Document or FAQs – clarify that these obligations are rather obligations of means. The presence of obligations of results would essentially mean that relevant commodities and products could not be placed on the market as soon as there was even a single violation of one of the legal positions listed in Art. 2 No. 40 EUDR. However, in the area of human rights and environmental due diligence, obligations of means have become established as the standard practice, as they reflect the realities of complex supply chains. Both the EU Corporate Sustainability Due Diligence Directive (CSDDD) and the German Supply Chain Due Diligence Act (LkSG), for example, stipulates obligations of means as well, and for good reason: Improving environmental and social standards in supply chains requires long-term joint efforts by all market participants (empowerment before withdrawal).

2. Differentiation of EUDR Roles (Operators, Downstream Operators and Traders)

In general, we welcome the new role of downstream operators (Art. 2 No. 15b EUDR) with correspondingly reduced EUDR obligations. However, in many cases, the respective EUDR roles cannot be clearly differentiated. The following illustration is intended to portray the issue and the legal uncertainty surrounding it:



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In this scenario, a Car Manufacturer imports an EUDR-relevant product and sells it either within the EU (company A) or outside the EU (company B). It is undisputed that the Car Manufacturer initially acts as an operator in accordance with Art. 2 No. 15 and is therefore subject to expansive due diligence obligations. The question is, however, whether the Car Manufacturer takes on a different/second EUDR role in the next step – i.e. when selling the product on to company A or company B – and then be considered a downstream operator (Art. 2 No. 15b) or trader (Art. 2 No. 17) within the meaning of the regulation.

The crucial question here is whether the EUDR role is simply determined by the respective position in the supply chain, or whether the role changes when the respective legal entity carries out a different action (e.g. assembling another relevant product and selling it). Identifying the relevant EUDR role in each case is of utmost importance for achieving EUDR compliance, as all obligations for the company concerned (in this case the Car Manufacturer) and, where applicable, also for subsequent market players depend on this. We therefore kindly ask the legislator to sharpen and clarify the legal definitions for operators, downstream operators and traders, ideally with reference to specific example scenarios, through an updated Guidance Document or FAQs.

3. Clarification of EUDR Obligations for Downstream Operators and Traders

There are furthermore uncertainties regarding obligations that have been added or adjusted through the amendment to the regulation. The following aspects should be viewed in the light of the above-mentioned need for clear differentiation of the respective EUDR roles, as the corresponding obligations can only be derived once the relevant role has been clearly defined.

a) Statement of DDS reference numbers on export customs declarations

We greatly welcome the fact that downstream operators are generally exempt from the obligation to state the reference number of a DDS on the export customs declaration (Art. 26(4) EUDR) – by that adjustment, the bureaucratic effort in warehousing and logistics processes is significantly reduced already. However, legal uncertainty continues to exist in certain constellations: If a Car Manufacturer imports a relevant product and then exports it at a later stage, the Car Manufacturer might still be considered an operator within the meaning of the EUDR, even though he should actually be regarded as a downstream operator since this transaction is detached from the initial import action (see section 2 on the difficulty of differentiating between EUDR roles). To resolve this contradiction, we recommend that only DDS reference numbers for those relevant products that were not yet subject to due diligence should be referenced in export customs declarations – this would limit the scope of this provision to cases where a relevant product was produced in the EU and then exported by an operator.

b) Obligations to collect and keep information

According to the amended regulation, downstream operators and traders shall collect and keep various information regarding their supplier relating to the relevant products they intend to place or make available on the market or export (Art. 5(3) EUDR). The first downstream operator or trader must additionally collect and keep the corresponding reference number of the due diligence statement (DDS). While we understand that these obligations should ensure traceability, we would like to point out the remaining administrative burden as well as the legal uncertainty this entails. It is therefore important

that the Commission clarifies, through an updated Guidance Document or FAQs, exactly how the required information shall be collected and kept.

c) Clarification of wording “Substantiated concerns”

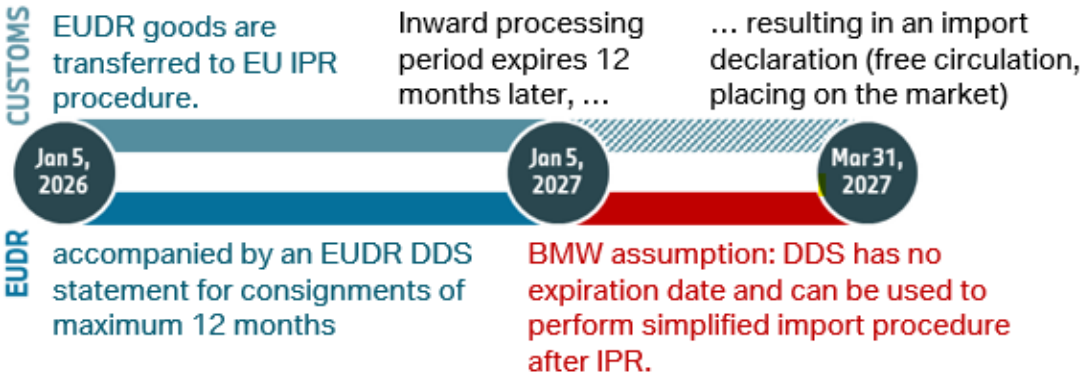
According to Art. 5(6) EUDR, non-SME downstream operators and non-SME traders shall *verify* that due diligence was exercised and that no or only a negligible risk was found if they have *substantiated concerns* that a relevant product or commodity might not be compliant with the requirements of the EUDR. This wording allows for a range of legal interpretations regarding the question of when there are substantiated concerns and what is required by the obligation to *verify* and should therefore be clarified through an updated Guidance Document or FAQs. Particularly, when it comes to the obligation to *verify,* it should be made clear which obligations arise in comparison to the respective provision of the original EUDR, according to which downstream suppliers had to *ascertain* that their upstream supplier had fulfilled its due diligence obligations.

4. Obligation for Operators to pass on DDS Reference Numbers to Downstream Market Participants

According to Art. 4 (7) EUDR, operators shall pass on the DDS reference numbers for relevant products to downstream market participants. In this context, however, the amended regulation entails increased effort compared to the original EUDR: Previously, downstream market participants "bundled" different DDS numbers (and thus different deliveries) by generating a new DDS number. As the amended regulation no longer requires the creation of a new DDS number by downstream market participants, the possibility of bundling is no longer available. The operators would therefore have to assign each individual delivery to a specific DDS number to be able to forward it to the downstream market participant. This runs counter to the purpose of simplification and creates an enormous amount of additional effort. We therefore strongly recommend a clarification that several deliveries – and thus DDS numbers – can be aggregated when passed on down the supply chain.

5. Aligning the EUDR’s Obligations with Inward Processing Relief (IPR) / De-Minimis

To preserve the competitiveness of EU manufacturing within complex global automotive value chains, it is crucial that established customs/tax mechanisms like the Inward Processing Relief (IPR) are not compromised by the provisions of the EUDR. However, even after simplifying the regulation, the requirements regarding an EUDR DDS and the IPR might not be aligned – this is because the EUDR (and the corresponding FAQ provisions) can be interpreted in different ways regarding the validity of a DDS: We argue that while a DDS shall indeed only cover deliveries within one year, it can otherwise be used over a longer period of time. Nevertheless, the provisions can also be understood to mean that the validity of a DDS is actually limited to 12 months. The following illustration shows the discrepancy that arises when assuming the validity of a DDS is strictly limited to 12 months, since this could lead to a DDS expiring before a product is placed on the market based on the IPR procedure. Accordingly, we strongly recommend a clarification through an updated Guidance Document or FAQs that the validity of a DDS is not limited to 12 months, which would allow relevant products free circulation under IPR.



Yet, another essential aspect of aligning the regulation with common practice is exempting small consignments. Requiring action below a certain threshold (e.g. 150 EUR) is disproportionate given the complexity of the EUDR and volume of relevant products involved. Therefore, we continue to recommend implementing a general de-minimis rule (e.g. based on customs values & pivotal HS-codes) to achieve further simplifications for economic operators without undermining the core objectives of the regulation.

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