# Requiring perfection is not proportionate

## Legal opinion regarding the interpretation of the EUDR's obligations on upholding the relevant legislation of the country of production (Art. 2 No. 40 & Art. 3 EUDR) in supply chains as obligations of means

Date
16th January 2026

There is currently legal uncertainty around the interpretation of the obligations of **Art. 2 No. 40 & Art. 3 EUDR**: Some argue that they should be interpreted as obligations of results, meaning that any violation of human rights and labour rights would lead to EUDR relevant products and commodities being potentially subject to be withheld from the EU market.[1] Others, including this legal opinion, argue for an interpretation aligned with established international standards and proportionality, as obligations of means.

An interpretation as obligations of results would entail extreme challenges for European companies, their suppliers and rightsholders (I.). The interpretation of the wording is open to both an obligation of results and an obligation of means (II 1.). However, the systematic of the law (II 2.), the lex specialis rule (II 3.) in light of the principle of proportionality (II 4.) all argue for an interpretation as obligations of means. At the very least, the obligations to uphold human rights aspects would have to be restricted to aspects related to the use of land (II 5.). For reasons of legal certainty, the EU Commission's official guidance or ideally the legal text of the EUDR itself should clarify that the EUDR establishes an obligation of means for human rights and labour aspects in supply chains (III.).

### I. Challenges entailed with an interpretation as obligations of result

An obligation to guarantee the result of no violations of human and labour rights in the whole supply chain of EUDR relevant commodities and products would be very challenging, if not impossible to implement for businesses (1.). This would lead to significant risks of disruptions because of withholding of products and commodities from the EU market, for businesses both inside and outside the EU (2a). Some businesses would be likely to react with immediate termination of supplier relationships at the occurrence of risks or violations, sometimes even pre-emptively only because of the prevalence of risks in a certain region. This would lead to risks to the right to work in the form of job losses and by shifting supply chains to buyers with less inclination to respect human and labour rights (2b.).

[1] See Art. 24 (2) b, c, d.

1. The near impossibility of guaranteeing risk and violation free EUDR supply chains

Art. 3 requires products and commodities covered by the EUDR to be "*produced in accordance*" with all of these standards mentioned in Art. 2 No. 40. This article has an extremely wide scope, including standards as diverse as land use rights, environmental protection and labour rights protected in the country of production and "*human rights protected under international law*".

Guaranteeing compliance with all these standards, as an obligation of result for the entire the supply chain, would be challenging for any business, anywhere in the world. Human rights risks such as discrimination or gender pay gaps are not uncommon in Europe.[2] In some European low-wage service supply chains such as agriculture, construction or logistics,[3] even violations such as withholding of minimum wages and even forced labour indicators are not entirely uncommon to occur.[4] These challenges are even bigger in the EUDR relevant supply chains, which commonly include agricultural pre-products and commodities from all over the world and regions with a significantly higher level of risk than is common in the Europe. The problems of living wages, non-discrimination and healthy and safe working conditions[5] in many agricultural and forestry supply chains show this.[6] This often has complex and structural causes and improvements can usually only be achieved gradually and over time.[7] For example, child labour has complex root causes including poverty, cultural factors and lack of education infrastructure that requires collaborative action from businesses, the state and local civil society.[8] Living wages and incomes are often significantly undercut in agricultural supply chains and can only be achieved over time.[9] Discrimination can be related to widespread and hard to change attitudes in society towards certain groups. Exactly this is the reason why no established standards on HREDD in supply chains expect perfection on human rights in supply chains, but only continuous improvement: analyzing risks, prioritizing them and improving the situation step by step, empowerment before withdrawal, with exit as a last resort. The challenges of a globalized economy are complex. Pretending they can be resolved with quick fixes risks doing more harm than good.

2. Requiring perfection as a part of obligations of result would do more harm than good

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[2] Gender Pay Gap Statistics," Eurostat, accessed October 2, 2024, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Gender_pay_gap_statistics.
[3] https://www.ardaudiothek.de/episode/urn:ard:episode:0f9e1f512365805c/.
[4] https://www.deutschlandfunk.de/zwangsarbeit-in-deutschland-ausbeutung-im-nagelstudio-100.html.
[5] Protected rights according to Article 2 (2) of the ICESCR; to Article 7 (i) and (ii) ICESCR in conjunction with General Comment 23 of the United Nations Economic and Social Council; Art. 7 (ii) (b).
[6] The GIZ Initiative for Agriculture SASI explains: 'Income and wages from agriculture are usually so low that many smallholder families and workers cannot invest in their farms, education or a healthy diet, despite their hard work in the fields. As an example, the International Labour Organization (ILO) estimates as of 2023 that 664 million working women and men worldwide live in poverty." https://www.sustainable-supply-chains.org/de/themen/existenzsichernde-einkommen-und-loehne/. The risk situation in the case of discrimination against women or other disadvantaged groups is similarly complex: https://www.sustainable-supply-chains.org/de/themen/gendergerechtigkeit/.
[7] In detail https://www.bmz.de/resource/blob/104372/b6854bdf5da024a4bb559d9096fd0925/sustainable-agricultural-supply-chains-data.pdf.
[8] In detail, BAFA Guidance „The Protection of Children's Rights in the Act on Corporate Due Diligence Obligations in Supply Chains" https://www.bafa.de/SharedDocs/Downloads/DE/Lieferketten/guidance_protection_eng.html, p. 12.
[9] This is recognized in academia, see Surmeier/Meyer/Maleka, Living wages in global value chains: Pitfalls and pathways to successful implementation p. 4 f. (available at: https://www.sciencedirect.com/science/article/pii/S0090261624000846). For the corporate perspective, see, for example, Unilever's recommendation on living wages which underline the need for progress over time: https://www.unilever.com/news/news-search/2024/living-wage-key-lessons-from-a-decade-of-progress/.

If every violation of the standards under 1. in supply chains – such as discrimination against minority groups or women – threatens import bans under the EUDR, the likely outcome is not an improvement of these situations but a deterioration of both business interests (a) and respect for human rights and labour rights (b).

a. An obligation of results approach leads to high business risks

For some companies that import EUDR relevant products and/or commodities, a zero-tolerance approach might feel like an adequate reaction to an obligation of results requirement.[10] Given the likeliness of risks in agricultural and forestry supply chains, their imports of goods and commodities would have the Damokles sword of import bans hanging over them, threatening economic losses and creating legal and economic risks. Therefore, some of them might feel a need to use their market power to shift those risks to their suppliers, by requiring them to guarantee perfect compliance with human rights and labour standards under the threat of immediate termination and indemnification for incompliances.[11] They might also decide to strategically disengage from regions with a heightened risk level. Sometimes, they might lose crucial suppliers of single-source goods, making whole product lines unfeasible at least in the short term.[12] For suppliers, contractual obligations requiring them to be perfect would mean promising the near impossible, but to maintain their business, many of them would be very pushed to still agree. Effectively being in breach of contract from day one in many cases, they would then be inclined to do everything they can to hide and mask potential breaches. They would strive to obtain certificates and audit results certifying their perfect compliance, hiding problems or even engaging in corrupt practices to obtain such certificates.[13] Both suppliers and buyers would therefore face significant economic risks caused by disruptions by import bans that could be triggered at any time.

b. An obligation of results approach leads to risks for human and labour rights

At the same time, any honest answer to questions and good faith collaboration in audits and controls by suppliers becomes unlikely, affecting the effectiveness of buyer's HREDD.[14] For rightsholders, what may at first sight seem to promise big improvements by having the strictest standards could quickly lead to the opposite. In the regions that are perceived to be high risk, strategic disengagement by European buyers could lead to loss of work and livelihood. If EUDR is interpreted as an obligation of guarantees and buyers do encounter risks or violations, many of them would be incentivized to immediately withdraw to avoid economic risks. As a result, many suppliers would lose EUDR (and CSDDD, LkSG, loi de vigilance) obliged European companies. Some suppliers might manage to replace the European companies with companies with no or lower expectations on HREDD. In these

[10] However, such an approach would also be harmful under an obligations of results regime: Among other things, it would harm trust by suppliers and erode collaborative relationships with their suppliers and erode the effectiveness of HREDD that buyers might be obliged to implement because of CSDDD, UNGPs, the EU Taxonomy or other mHREDD standards.
[11] Such an approach was even widespread under obligation of means HREDD standards, in detail: Dadush/Schönfelder/Braun, Complying with Mandatory Human Rights Due Diligence Legislation Through Shared-Responsibility Contracting: The Example of Germany's Supply Chain Act (LkSG), available under https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4389817.
[12] For this reason, the OECD Guidance on Due Diligence (2018), p. 80 f. contains extremely balanced rules on termination for human rights reasons, stating that it should be a last resort, with detailed exceptions for single-source situations.
[13] Dadush/Schönfelder/Streibelt, What does the EU CSDDD say about contracts, NYU JLB Vol. 21 Spring 20205 Number 2, on. p. 257, 267; available under https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4389817.
[14] Ibidem.

cases, respect for rightsholders is likely to be weaker. Other suppliers, bereft of sales to European importers, might go bankrupt, leading to loss of livelihood for workers. Terminations for HREDD reasons are a complex topic, both for business and human rights. It is for these reasons that established international labour unions and NGOs for a long time have advocated for an approach that prioritizes engagement over termination and international standards and implements responsible disengagement:[15] All HREDD standards reflect this, calling for "responsible" disengagement as a last resort, after trying to improve the situation and after considering adverse impacts caused by termination.[16] By breaking off the business, the human rights progress triggered by measures would be destroyed.

## II. Legal assessment

While at first sight the EUDR's wording for some readers seems to indicate obligations of results for human rights and labour aspects, a detailed legal assessment shows that they are obligations of means. While an interpretation according to the wording EUDR is open to both understandings (1.), a systematic interpretation of the EUDR shows that it is in fact an obligation of means (2.), while an interpretation as obligation of results would place disproportionate demands on companies (3.) and ignore the rule of lex specialis by displacing more specific and established rules set by the CSDDD (4.). At the very least, any obligation to achieve a result would have to be strictly limited to provisions relating to land use (5.).

### 1. The wording of the EUDR is open to an interpretation as obligations of results or obligations of means

The EUDR states: "*relevant commodities and relevant products*" have to be "*produced in accordance with the relevant legislation of the country of production"* (Art. 3 b) and that includes, as human rights and labour rights aspects*, "(…)laws applicable in the country of production concerning the legal status of the area of production in terms of: (a) land use rights; (…) (d) third parties' rights; (e) labour rights; (f) human rights protected under international law; (g) the principle of free, prior and informed consent (FPIC), including as set out in the UN Declaration on the Rights of Indigenous Peoples; (…)*" (Art. 2 No. 40). This has been read by some as meaning, black or white: **is a product either free of any violations of law in any stage of the supply chain or not**?

However, the text mentions no obligations of means or of results, but only a requirement of compliance with law in general. This understanding as an **obligation of results is therefore not the only possible interpretation of the wording**. The key to a different understanding lies in the words of Art. 2 Nr. 40 "*produce in accordance with (…) (f) human rights protected under international law".* Produced in accordance with human rights is a notion that is seen to implicitly refer to respect for human rights in the operations of businesses and in their supply chains. There is however no clear definition in the EUDR of what this notion means and it is

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[15] Even in the most challennging contexts, for Myanmar see Industriall: https://www.industriall-union.org/framework-for-a-responsible-business-disengagement-from-myanmar. For agriculture, see FTAO: https://fairtrade-advocacy.org/posts/196-juri-committee-betrays-smallholder-farmers-and-responsible-businesses-co-legislators-must-resist-any-further-weakening-of-an-already-diluted-package.

[16] Which is why all HREDD standards establish balanced rules of how to take adverse impacts for human rights caused by disengagement into account, see for example, Art. 10 (6) and 11 (7) of CSDDD, OECD Guidance on Due Diligence (2018), p. 30, 80 f., Commentary to UNGP 19; in more detail, see: OHCHR, Business and Human Rights in Challenging Contexts
Considerations for Remaining and Exiting (2023), available at: https://www.ohchr.org/sites/default/files/documents/issues/business/bhr-in-challenging-contexts.pdf. This also applies for LkSG, see: BAFA/Helpdesk, Collaboration in Supply Chains (2023), p. 24.

also not immediately clear, since human rights traditionally, in the European context, apply to states, not companies.[17] Also, it would be expected that where a law would require companies to take responsibility for the action of other actors in the supply chain, it would specifically state so, as the "standard" case is each legal person responding for their own actions, not for their supply chain. Exception to this standard approach need to be well defined and where they are not, interpreted narrowly, not extensively.[18]

In international and European law, there is increasing clarity around what is expected of companies in relation to human rights and labour standards in their supply chains. What respect for human rights in businesses and supply chain means in international law are is **authoritatively defined by the UNGP, unanimously adopted by the UN Human Rights Council and implemented in the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD MNE)**. Both of standards are referred to in many laws on business and human rights in the European Union,[19] as well as in the EU Action Plan on Human Rights and Democracy.[20] The UNGP and the OECD MNE formulate, as the **core standard** that businesses have to meet to fulfil their obligation to respect human rights including labour standards in supply chains: the **standard of human rights due diligence (HRDD)**. This standard requires companies to identify risks and take measures to improve the situation, as an obligation of means with an option to prioritize and an obligation to only terminate business relationships as a last resort. **Crucially, the standard does not require companies to implement an obligation of results** in all cases for their supply chain. It can therefore be reasonably assumed that the EUDR refers to the requirement of the standard of HRDD to be met when it requires that labour and human rights standards must be met in supply chains, especially since it does not spell out a clear alternative standard itself.

2. Taking into account the systematics of the EUDR makes it clear that it creates obligations of means

This interpretation is also supported by a systematic interpretation and the Recitals of the EUDR. When defining what companies have to do in relation to risks they identify, the EUDR uses the language of "*due diligence*": Art. 8 ff. defines the whole governance process in relation to potential incompliances with Art. 3 as a due diligence process. Art. 11 (1) requires companies to take measures to "*mitigate risks*". Crucially, it **does not require to guarantee a context without risks, but states that reaching "*negligible risks*" is sufficient**. Art. 11 (1) goes on to mention measures of support by **capacity building and investments as risk mitigation measures**. Such measures, however, typically address situations where a company cannot, from the next day, comply with the required standard but improves towards it. Recital 50 supports this understanding, requiring only "***reasonable efforts***" to ensure prices that enable living incomes, a crucial human right. All this is framed in the logic of obligations of means of continuous improvement, not an obligation of creating immediate results or pulling out.

[17] Other than in other contexts such as Brasil, there is no general horizontal application of human rights to businesses.
[18] The EUDR creates the risk of penal fines, Art. 25 (2a), implying the need fo narrow interpretation of broad terms in penal law. This need derives from the fundamental principle of legality as enshrined in Article 49(1) of the Charter of Fundamental Rights. The ECJ maintains that interpretation of penal law is strictly limited by the principle of foreseeability: consequences need to be „*reasonably foreseeable at the time the offence was committed*". This would not be the case for extensive interpretations to the detriment of the accused, See ECJ, C-102/16, para 51.
[19] For example: Art. 18 Taxonomy Regulation; Art. 49 (2f), Art. 51 (1e), Annex X (4) and Recitals 83-85 EUBR; Recitals 31, 45 CSRD; Recitals 5, 6, 14, 20, 37, 51, 59, 62 of the CSDDD.
[20] https://www.consilium.europa.eu/media/46838/st12848-en20.pdf, p. 27.

This understanding is further supported by Art. 11 (2): companies are required to have in place "***adequate*" and "*proportionate*" policies,** controls and procedures that "***effectively*" manage the risks**. With the reference to these general terms that allow for adaptation to individual contexts, the legislator recognizes the complexity of sustainability issues in the supply chain. These are concepts that are used in a similar way in other EU mHREDD legislations: in the CSDDD, companies are required to take "*appropriate*" measures that also include an "*effectiveness*" element, similarly in LkSG and loi de vigiliance.[21] All these concepts address a common issue: **sustainability conditions in global supply chains are complex, leverage over suppliers and sub-suppliers limited, prioritisation is required**. Effectiveness focuses on measures that improve the sustainability situation. Terminations in themselves might signal to other actors and the markets a readiness to take sustainability issues seriously, thereby fulfilling a function of general prevention. However, they do not help improve the specific sustainability risk or violation,[22] so their *"effectiveness*" is limited in a way that does not allow for termination to be the default measure in all cases. Given the complexity of addressing labour and human rights risks in supply chains,[23] **it can hardly be called "*proportionate*" to require companies to implement obligations of results** for each stage of the supply chain.

A look at the mandate for enforcement action by the authorities further underlines this understanding. Art. 24 (1) asks authorities to take "***appropriate and proportionate corrective actio****n to bring non-compliance to an end within a specific and reasonable period of time*". Crucially, immediate ending in all cases is not required, but **flexible criteria that allow for adaptation to complex realities and problems are formulated**. In consequence, the enforcement actions listed in Art. 24 (2) do not always have to include banning the product (b-d) but can also consist in rectifying actions (a).

3. CSDDD as lex specialis in relation to human rights violations in supply chains

At least in relation to obligations on human and labour rights violations in the supply chain, the CSDDD supersedes the EUDR as lex specialis. The EUDR and the CSDDD have a regulatory overlap when it comes to the issue of addressing human and labour rights violations in supply chain, so the lex specialis rule applies to resolve the question on which standard applies (a). As the CSDDD contains more specific rules on this issue, those rules must take precedence over the EUDR's rules, which only address the issue very superficially (b), especially as, otherwise, a balanced and well established European regulatory system grounded in international law would be ignored, which would be against the will of the EUDR legislator as expressed in the Recitals (c).

a. The lex specialis principle applies as CSDDD and EUDR partially regulate the same facts of life when they regulate human and labour rights violations in supply chains

[21] Art. 3 (o) CSDDD, Sec. 4 (2) LkSG, Art. L. 225-102-4 5° code de commerce (loi de vigilance).
[22] Assume a situation where supplier failed to pay a minimum wage. The buyer would be required to have policies, controls and procedure to „*manage effectively the risks of non-compliance*". Managing the risk effectively would mean ensuring the workers are paid what they are owed. An analysis of the reasons why the minimum wage was not paid, combined with measures to adress them and a request to the supplier to cooperate combined potentially with a threath of termination if supplier does not cooperate might lead to the workers being paid and therefore be deemed effective risk management. An immediate termination does nothing to motivate the supplier to pay its workers.
[23] See above under I 1.

The lex specialis rule requires the application of the more specific rules of the CSDDD in relation to human rights violations in supply chains. According to general principles of law, the more specific law supersedes the more general law if two laws regulate the same facts of life. The CSDDD and the EUDR both regulate requirements for the sustainability, including human rights and labour as well as environmental criteria to be upheld in supply chains. The legislator of the EUDR recognizes this overlap and adresses it with instructions on how to deal with such overlaps in line with general lex specialis principles in Recital 56.[24]

b. The CSDDD provides for more specific provisions and adds requirements to the provisions regarding human rights violations in supply chains

For situations of regulatory overlap, the legislator establishes that "*Other Union legal acts that provide for due diligence requirements in the value chain with regard to adverse impacts on human rights or on the environment should apply in so far as there are no specific provisions with the **same objective, nature and effect** in this Regulation(…)".* This formulation as a general rule (application of other legal acts) and exception (application of the EUDR if…) shows that the legislator seems to assume that the general rule would be that the other legal act applies and only exceptionally: that is the case only where the EUDR has specific provisions with the same objective, nature and effect. The legislator seems to further underline this, stating: "*The existence of this Regulation should not exclude the application of other Union legal acts that lay down requirements regarding value chain due diligence. Where such other Union legal acts provide for **more specific provisions** or **add requirements** to the provisions laid down in this Regulation, such provisions should be applied in conjunction with this Regulation.*"

Compared to the CSDDD the EUDR is undoubtedly *lex specialis* in deforestation issues, as it establishes a detailed and balanced regulatory system for this situation. However, this is precisely not the case regarding the **observance of human and labour rights in supply chains. The EUDR sets very superficial rules on this issue** (1). The **CSDDD establishes a carefully balanced system** in line with established international standards, whose clearly set "*objective"* and *"effect*" an interpretation as obligation of guarantees in EUDR would ignore, namely, the objective and the effect of establishing a proportionate system that addresses the complexities of carefully improving human rights situations over time. It also includes "***more specific*" rules and "*add requirements*",** namely on the role of improvement over time and termination (2). A different result would **undermine the CSDDD** (3) and is also not warranted because of **stricter sanctions of the CSDDD** (4).

(1) The EUDR regulates human and labour rights in supply chains superficially

The **EUDR** exhausts itself here in the brief reference that "*relevant legal provisions of the producing country must comply with the legal provisions applicable in the producing country*

[24] Recital 56: "*Other Union legal acts that provide for due diligence requirements in the value chain with regard to adverse impacts on human rights or on the environment should apply in so far as there are no specific provisions with the same objective, nature and effect in this Regulation which can be adapted in the light of future amendments to Union legal acts. The existence of this Regulation should not exclude the application of other Union legal acts that lay down requirements regarding value chain due diligence. Where such other Union legal acts provide for more specific provisions or add requirements to the provisions laid down in this Regulation, such provisions should be applied in conjunction with this Regulation (…).*

*on the legal status of the production area"* and refers, among other things, to a) land use rights; (e) workers' rights; f) Human rights protected under international law. The EUDR's Art. 11 (2a) describes actions that companies have to take vis-à-vis their suppliers to mitigate risks on a very high level, stating that they "*shall have in place adequate and proportionate policies, controls and procedures to mitigate and manage effectively the risks of non-compliance of relevant products identified. Those policies, controls and procedures shall include: (a) model risk management practices, (…) internal control and compliance management.*"[25]

(2) The CSDDD establishes a detailed and carefully balanced system in line with international legal standards on human and labour rights in supply chains

The **CSDDD**, on the other hand, contains a much more detailed and balanced system with regard to compliance with human rights in supply chains on how to react in the event of adverse impacts, that is built on established international standards:

- The CSDDD **adds requirements** as to when adverse impacts need to be addressed: Companies must analyze and prioritize such adverse impacts. They must address not all impacts at the same time but can start with those that are most severe and likely. (Art. 8 and 9 CSDDD);
- The CSDDD is **more specific** on the potential measures and what to take into account when designing them: Companies must consider their relationship to the impacts identified and several other factors to assess what appropriate measures to address them would be (Art. 10 (1) and 11 (1) as well as Art. 3 (o) CSDDD) Companies are then required to take appropriate measures to address the risks, on which the CSDDD foresees detailed obligations and examples including measures that reflect their own role in jointly causing impacts by addressing purchasing practices and support for suppliers (Art. 10 (2-6); Art. 11 (2-6));
- The CSDDD is **both more specific and adds requirements** regarding the improvement of human rights situations over time: Part of the obligations to take measures is an obligation to implement action plans "*with reasonable and clearly defined timelines for the implementation of appropriate measures and qualitative and quantitative indicators for measuring improvement*" (Art. 10 (2a), Art. 11 (3b)) and to minimize adverse impacts where they cannot be immediately ended (11 (2);
- Lastly and most importantly, the CSDDD establishes **more specific**, very detailed rules that regulate when, after the consideration of the **additional requirements** of a last attempt of implementing enhanced action plans and of careful ponderation adverse impacts for human rights that a termination might cause, companies may be as a last resort required to terminate a business relationship in cases of human rights violations (Art. 10 (6) and Art. 11 (7)).

These rules are accompanied by detailed explanations in the Recitals.[26] They are a continuation of the well-established and globally accepted framework on how to deal with human rights and labour violations in supply chains. All relevant frameworks, from the UN Guiding Principles on Business and Human Rights and the OECD Guidelines to the LkSG;

[25] The measures under Art. 11 (1) are actually about additional information about risks, not measures to adress risks. The rest of Art. 11 (2) is about internal measures.
[26] Recitals 41-58.

LdV and the CSDDD, provide for the approach of **obligations of means with prioritization and continuous improvement instead of obligations of result.**[27] Due to the negative consequences of the termination of business relationships for human rights and the environment, they also provide for contract terminations only as a *last resort*. This is a consciously set **objective** with the **effect** of the creation of a carefully crafted system is based on the consideration that the observance of human rights in supply chains is subject to complex interdependencies and cannot simply be completely ensured in the short term. It also recognizes business interruptions often cause additional damage to human rights in human rights violations.

(3) An interpretation as an obligation of results in supply chains would undermines the effective application of other Union legal acts on due diligence

Even if the EUDR would be seen as being more specific regarding human and labour rights in the supply chain, interpreting them as obligations of results would not be admissible as that would undermine the effective application of the CSDDD:[28] The interpretation as obligations of results would undermine this balanced and established system, which companies have been following for more than a decade, for the products and raw materials covered by the EUDR. It cannot be assumed that the European legislator wanted to do this without further explanation, when European law has established a balanced system on the issue. Indeed, seeing the risk of these kinds of contradictions, the established cooperation obligation for authorities implementing the EUDR and the CSDDD is explicitly addressed in the Recitals: "(…) *Competent authorities should also cooperate with the competent authorities for the supervision and enforcement of other Union legal acts that set out due diligence requirements in the value chain with regard to adverse impacts on human rights or on the environment*."[29]

(4) Stricter Sanctions in the CSDDD

The application of the CSDDD as lex specialis can also not contradicted by the aspect of the stricter sanctions, which is not the only relevant aspect of the question of lex specialis, because Art. 27 (4) CSDDD provides for stricter sanctions with a fine range of at least 5% of the company's worldwide net turnover than Art. 25 (2) a) EUDR with at least 4 % of the total EU-wide turnover.

4. Disproportionality of obligations to achieve results regarding human rights in supply chains

The EUDR's requirements around companies and authorities having to take "*proportionate*" actions are firmly grounded in European Law: The principle of proportionality is a general principle of EU law, enshrined in Article 5(4) of the Treaty on European Union: "*Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.*" The Court of Justice of the European

[27] Principle 13 (b) and 17 (c) UN Guiding Principles on Business and Human Rights, UN doc A/HRC/17/31, Chapter IV Guiding Principle 3 OECD Guidelines, Recital 19 CSDDD, Explanatory Memorandum Supply Chain Due Diligence Act, BT-Drucksache 19/ 28649 p. 2, Article L. 225-102-4, I: "mesures propres à identifier les risques et à prévenir les atteintes graves".

[28] Recital 56: „(…) *Furthermore, where this Regulation contains more specific provisions, they should not be interpreted in a way that undermines the effective application of other Union legal acts on due diligence or the achievement of their general aim. (…)"*

[29] Recital 77.

Union (ECJ) concretizes this with the following three requirements of appropriateness (a), necessity (b) and proportionality in stricto sensu (c).[30] An interpretation of Art. 2 No. 40 and Art. 3 as an obligation of achieving the result of no violations of the relevant local legislation for all commodities and products and their supply chain would fail all three criteria established by the ECJ. Since another interpretation, more consistent with the principle of proportionality, as an obligation of means is possible (see above, 1-3), this interpretation must therefore be followed.

a. Appropriateness

Union law has to be **appropriate**: "*By virtue of that principle* [proportionality]*, the lawfulness of the prohibition of an economic activity is subject to the condition that the prohibitory measures are appropriate*"[31]. An interpretation of obligations of results for human rights and labour rights violations in supply chains would fail this test. It is not appropriate, as it sets a standard that cannot be reasonably met.[32] EUDR relevant supply chains commonly include agricultural pre-products and commodities from all over the world which contain structural human rights and labour risks. The problems of living wages, non-discrimination and healthy and safe working conditions in many agricultural and forestry supply chains show this. This often has complex and structural causes and improvements can usually only be achieved gradually and over time. Obligations of results from the outset would therefore be almost impossible to be reasonably met. A standard that cannot reasonably be met cannot be called appropriate.

b. Necessity

Union law has to be **"*necessar*y *in order to achieve the objectives legitimately pursued by the legislation in question, when there is a choice between several appropriate measures recourse must be had to the least onerous*".[33] An interpretation is not necessary to achieve the legitimate result of improving the human rights and labour situation in the affected supply chains, because this result can be achieved in a more suitable manner following an obligation of means interpretation: An interpretation as an obligation of results disincentivizes proactive collaboration between buyers and suppliers and incentivizes an approach of immediate termination by buyers, thereby making worse outcomes more, not less likely.[34]

c. Proportionality in stricto sensu

Some might argue that the clear signal of zero tolerance of an obligation of results approach could be more effective than the collaborative, continuous improvement framework of an obligation of means approach. Even if that was true, it would still fail to be proportional in stricto senso. Union actions have to be **proportional in stricto sensu**: "*the disadvantages caused must not be disproportionate to the aims pursued*". [35] The disadvantages of an obligation of results approach are very significant[36] in comparison with those of an obligations of means approach. Even if it would be assumed that it is at least as effective as an

[30] ECJ, C-331/88, paragraph 13.
[31] ECJ, C-331/88, paragraph 13.
[32] See above, I 1.
[33] ECJ, C-331/88, paragraph 13.
[34] See above, I 2.
[35] ECJ, C-331/88, paragraph 13.
[36] See above, I 2 a).

obligation of means approach (which it is not, see above), it would therefore still be disproportionate to the aims pursued. The disadvantages for both EU businesses, their suppliers and rightsholders would be significantly less onerous under an obligation of results interpretation. Imports of goods and commodities would face the risk of being prevented from entering the EU where buyers and suppliers fail to show adequate and effective HRDD measures. That is a threshold which is in practice not always easy to meet, however, as termination would be a last resort, with differentiated rules allowing businesses to remain in situations of risks if they work to improve them, business disruptions would be an absolute exception. Where companies show they understand the prioritized risks in their supply chain and take measures to address them, the standard would be met and import stops could be prevented even where violations occur – if companies react with effective and adequate remedial measures. Importers and their suppliers could work together to improve the situation over time. Rightsholders would benefit from measures to continuously improve their situations.

4. Limitation of the obligations to achieve results to the legal status of the production area
In any case, an interpretation of the EUDR's human rights requirements as obligations of results would need to be strictly limited to regulations relating to the legality of specific land use. Article 2(40) limits the requirement of compliance to the local law "*concerning the legal status of the area of production*". This term needs to be interpreted narrowly, given consequences that range from fines to penal sanctions under the EUDR for severe violations.[37] In line with this EU Commission clarifies that the legality requirement of Article 3 b) EUDR only applies to legal provisions, including human rights, insofar as they affect the legal status of the production area.[38] This cannot include aspects of labour law and human rights in general purely by definition, because most of them do not concern the legal status of the area but the legal status of a work relationship, or of a certain human relationship and not the legal status of the area. Relevant human rights aspects would need to include a connection to the status of the area itself, such as conflicting land rights or participation rights of indigenous groups.

III. Suggestion for Clarification

To avoid confusion in the application of the EUDR, the relationship between Art. 2 No. 40 and Art. 3 EUDR and rules of HREDD should be explicitly clarified. Ideally in the legal text itself, but at least in the guidance by the European Commission, it should be stated clearly that the standard to be met under Art. 3 to protect the goods listed under Art. 2 No. 40 is a standard of human rights due diligence as laid out by Art. 5-16 CSDDD.

[37] Under the Directive (EU) 2024/1203 on the protection of the environment through criminal law.
[38] *"According to the definition, the legislation listed in Art. 2(40) letters (a) to (h) must be interpreted as being concerned with the legal status of the area of production."* Frequently Asked Questions Implementation of the EU Deforestation Regulation, Version 4 – April 2025.

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The German Association of the Automotive Industry (VDA) consolidates around 620 manufacturers and suppliers under one roof. The members develop and produce cars and trucks, software, trailers, superstructures, buses, parts and accessories as well as new mobility offers.

We represent the interests of the automotive industry and stand for modern, future-oriented multimodal mobility on the way to climate neutrality. The VDA represents the interests of its members in politics, the media, and social groups.

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| Publisher | German Association of the Automotive Industry<br>Behrenstraße 35, 10117 Berlin<br>www.vda.de/en<br><br>German Bundestag Lobby Register No.: R001243<br>EU Transparency Register No.: 9557 4664 768-90 |

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| Version | January 2026 |



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USt-IdNr. DE114108668 | St-Nr. 27/622/51460
Lobbyregister-Nr.: R001243
EU-TR-Nr.: 9557 4664 768-90