

# Legal Opinion EUDR Prewave Software

The Prewave software solution enables the fulfilment of key due diligence obligations of the EU Deforestation Regulation (EUDR) with automated support. Prewave assists users with information gathering, risk assessment, risk mitigation, submission of the due diligence statement, and the compilation of information for reporting.

The Prewave system allows users to generate a due diligence statement, which is then directly submitted to the relevant authorities via Prewave. To be able to generate such a statement within the system, the EUDR requirements must be met, i.e., the relevant product for which the statement is to be submitted must (i) be deforestation-free and (ii) comply with the relevant legislation of the country of production. If these conditions are not met, the system prevents the generation of the due diligence statement.

To demonstrate that the relevant products meet these conditions, due diligence obligations of the EUDR must be performed and documented in the Prewave system. Companies must (i) collect information re-garding potential deforestation-free status and compliance with the local legislation for the relevant prod-ucts, (ii) assess the risk, based on the collected information, that the relevant products may not be defor-estation-free or compliant with the local legislation, and (iii) implement risk mitigation measures where risks are identified to ensure product compliance. Once these obligations are fulfilled, the user can generate the due diligence statement through Prewave.

For information gathering, Prewave allows users to automatically email suppliers and request the neces-sary information. In the risk assessment phase, Prewave supports users with a risk matrix that evaluates risks based on various information. For risk mitigation, Prewave offers the ability to track mitigation measures and define the impact of these measures on the compliance of the relevant products.

It should be noted that the level of legal compliance achieved with Prewave also depends on whether the user does not inappropriately alter Prewave's settings and on the quality of the data used by the user. Prewave also relies on the provision of correct, complete, and up-to-date supplier and EUDR-specific in-formation by the user. The Prewave software solution does not exempt the user from the responsibility of independently implementing the EUDR and engaging with individual EUDR criteria. Despite the system support provided by Prewave, it is the user's responsibility to consider any necessary internal company information. The user must take additional measures beyond the Prewave solution to implement the EUDR.

Please note that this legal opinion cannot be conclusive at this time, as guidelines and clarifications from authorities on the EUDR are currently lacking and the issue is still rapidly evolving.

## Legal requirements of the EUDR and coverage by Prewave in detail:

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<p><b>Information Gathering</b> Companies shall collect information, documents and data which demonstrate that the relevant products are deforestation-free and have been produced in accordance with the relevant legislation of the country of production. (Art. 9 para. 1)</p> <p>The following information must be collected:</p> <ul style="list-style-type: none"> <li><b>a)</b> a description, including the trade name and type of the relevant products;</li> <li><b>b)</b> the quantity of the relevant products;</li> <li><b>c)</b> the country of production and, where relevant, parts thereof;</li> </ul>	<p>Prewave enables the collection of information from Art. 9 para. 1 lit. a, b, and e through various processes, such as (i) manual implementation within the platform by the user, (ii) uploading information by the user into an Excel document provided by Prewave, or (iii) automatically via an API to the customer's ERP system.</p> <p>Prewave allows the collection of information from Art. 9 para. 1 lit. c, d, and e fully auto-mated by contacting the relevant suppliers and/or producers. The user can manually or automatically contact one or more suppliers via the Prewave platform with a product origin inquiry.</p>

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<p><b>d)</b> the geolocation of all plots of land where the relevant commodities that the relevant product contains, or has been made using, were produced, as well as the date or time range of production;</p> <p><b>e)</b> the name, postal address, and email address of any business or person from whom the operator has been supplied with the relevant products;</p> <p><b>f)</b> the name, postal address, and email address of any business, operator or traders to whom the relevant products have been supplied;</p> <p><b>g)</b> adequately conclusive and verifiable information that the relevant products are deforestation-free;</p> <p><b>h)</b> adequately conclusive and verifiable information that the relevant commodities have been produced in accordance with the relevant legislation of the country of production.</p>	<p>If the contacted supplier is not the producer of a relevant product and does not have the necessary information on the product's origin, the supplier is prompted to forward the inquiry to their relevant suppliers down to the producer. The supplier is supported with predefined formulations, texts, and illustrations from Prewave to facilitate the information gathering. If the supplier forwards the inquiry to other suppliers in the supply chain, they must register via an included link, making it traceable which company provided the necessary information. Besides manual input of production- and geolocation-specific information by suppliers/producers, Prewave also allows the corresponding due diligence statement to be uploaded into the system.</p> <p>Regarding the entry of geolocations into the system, Prewave has embedded various validation steps to ensure that the data complies with EUDR requirements, specifically that polygons (i) do not contain holes, (ii) do not have intersecting lines (e.g., in the shape of an "8"), (iii) form closed shapes, and (iv) are located in the specified country of production.</p> <p>For determining the information on deforestation-free status according to Art. 9 para. 1 lit. g, Prewave offers a process where increasingly advanced/complex analyses are performed: First, the collected geolocations are transferred to the EU Forest Observatory map to check if there was forest in the specific areas as of the cut-off date. If confirmed, the next step is a check using an open-source satellite imagery analysis tool to determine whether deforestation occurred between the cut-off date and the production time. If this is also confirmed, the solution from Prewave's partner Satelligence is offered to reduce "false positives" (geolocation data where deforestation is detected using open-source tools, although deforestation per EUDR criteria may not have occurred).</p> <p>For determining compliance with the relevant legislation in the country of production (Art. 9 para. 1 lit. h), Prewave uses the following sources, which are further detailed under the "Risk Assessment" section:</p> <ul style="list-style-type: none"> <li>• Compilation of various EUDR-relevant indices and public sources (country risk and industry risk),</li> <li>• Web screenings of pre-selected producers,</li> <li>• Self-assessments filled out by suppliers/producers,</li> <li>• Information provided by the company about specific risks.</li> </ul>
<p><b>Risk Assessment</b></p> <p>Companies shall verify and analyze the information collected in accordance with Article 9 and any other relevant documentation. On the basis of that information and documentation, companies shall carry out a risk assessment to establish whether there is a risk that the relevant products intended to be placed on the market or exported are non-compliant. (Art. 10 para. 1)</p> <p>The following criteria are particularly taken into account during the risk assessment (Art. 10 para. 2):</p> <p><b>a)</b> the assignment of risk to the relevant country of production or parts thereof in accordance with Article 29;</p> <p><b>b)</b> the presence of forests in the country of production or parts thereof;</p>	<p>Prewave classifies the risk of non-compliance under <u>EUDR guidelines as either negligible or non-negligible. Non-negligible risks are further categorized as critical, high, mid, or low risk.</u></p> <p>The assessment of the risk of deforestation is conducted as described above under "Information Gathering".</p> <p>The assessment of the risk of a violation of the relevant legislation of the country of production is based on a classification of producers (i) into risk and non-risk countries/regions ("<b>country risk</b>") (based on the location of the producer), (ii) according to the goods delivered into a risk or non-risk industry category ("<b>industry risk</b>"), and (iii) on a web screening</p>

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- c)** the presence of indigenous peoples in the country of production or parts thereof;
- d)** the consultation and cooperation in good faith with indigenous peoples in the country of production or parts thereof;
- e)** the existence of duly reasoned claims by indigenous peoples based on objective and verifiable information regarding the use or ownership of the area used for the purpose of producing the relevant commodity;
- f)** prevalence of deforestation or forest degradation in the country of production or parts thereof;
- g)** the source, reliability, validity and links of other available documentation of the information referred to in Article 9 para. 1;
- h)** concerns in relation to the country of production and origin or parts thereof, such as level of corruption, prevalence of document and data falsification, lack of law enforcement, violations of international human rights, armed conflict or presence of sanctions imposed by the UN Security Council or the Council of the European Union;
- i)** the complexity of the relevant supply chain and the stage of processing of the relevant products, in particular difficulties in connecting relevant products to the plot of land where the relevant commodities were produced;
- j)** the risk of circumvention of this Regulation or of mixing with relevant products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring;
- k)** conclusions of the meetings of the Commission expert groups supporting the implementation of this Regulation, as published in the Commission's expert group register;
- l)** substantiated concerns submitted under Article 31, and information on the history of non-compliance of operators or traders along the relevant supply chain with this Regulation;
- m)** any information that would point to a risk that the relevant products are non-compliant;
- n)** complementary information on compliance with this Regulation, including information from certification systems or other third-party verified systems.

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for selected producers. Optionally, (iv) self-assessments completed by producers and (v) information provided by the company on specific high-risk producers can also be included in the assessment.

For (i), the country risks are determined based on 23 publicly available indices and classified into no risk, low risk, mid risk, high risk, and critical risk. Additionally, country-specific alerts related to the respective event types are taken into account. These indices cover, where evident, human rights and environmental risks mentioned in the EUDR and are adjusted as necessary.

For (ii), Prewave uses its database of over 1.5 million suppliers to determine industry risks. These suppliers are categorized by industries (ISIC standard). Prewave has a history of incidents in each industry for approximately 1.5 million suppliers. Based on the frequency of these incidents, Prewave also rates suppliers as no risk, low risk, mid risk, high risk, and critical risk.

(i) and (ii) are intended to reflect Art. 10 para. 2 lit. a), b), c), d), e), f), and h).

For (iii), AI-supported web screening is conducted for a certain number of producers. How many companies are monitored by web screening depends on how many producers are deemed necessary under the EUDR but can ultimately be decided by the respective company. This involves checking social media, news, and other online sources based on producer-related and risk-related keywords to see if there are any reports concerning the producers. These reports are communicated to the user as so-called "Risk Alerts." (iii) is intended to reflect Art. 10 para. 2 lit. l), m), and n).

For (iv), the risk identification can optionally be supplemented by the results of producer self-assessments, which high-risk producers must complete. Prewave has its own questionnaires, especially on EUDR-specific topics such as "Labor Rights," "Human Rights," "Land Use Rights," "Community Rights," "Forest-Related Rules," and "Environmental Protection." Producers can be contacted manually or automatically via Prewave to complete the questionnaires. The producers' responses are automatically evaluated and incorporated into the risk assessment of the respective producer. (iv) is intended to reflect Art. 10 para. 2 lit. g), m), and n).

For (v), the company can optionally name specific high-risk producers/risks to Prewave, such as known internal human rights or environmental violations under the EUDR, which will also be assigned a certain risk level. (v) is intended to reflect Art. 10 para. 2 lit. i), j), k), l), and m).

The results from (i) to (iii), and optionally (iv) and (v), are then combined to form the so-called 360-degree Risk Score of the producer.

According to Art. 4 para. 9, companies may refer to already submitted due diligence statements if they have determined that the party who submitted the statement has fulfilled their due diligence obligations under the EUDR.

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	<p>To perform this ascertainment of a previously submitted due diligence statement, Prewave offers an assessment form that can be sent to companies that have submitted a statement for their response. Depending on the quality of the answers, an additional risk assessment process may follow.</p>
<p><b>Risk Mitigation</b>          Except where the risk assessment (Art. 10) reveals that there is no risk or only a negligible risk that the relevant products are non-compliant, companies shall adopt risk mitigation procedures and measures prior to placing the relevant products on the market or exporting them. These procedures and measures should ensure that there is no risk or only a negligible risk. (Art. 11 para. 1)          Such procedures and measures may include:</p> <ul style="list-style-type: none"> <li>• <b>a)</b> requiring additional information, data or documents;</li> <li>• <b>b)</b> carrying out independent surveys or audits;</li> <li>• <b>c)</b> taking other measures pertaining to the information requirements set out in Article 9.</li> </ul> <p>Such procedures and measures may also include supporting compliance with this Regulation by the operator's suppliers, in particular smallholders, through capacity building and investments.</p>	<p>Based on the priority of the identified measures, the Prewave system suggests risk mitigation actions (taking into account previously implemented measures), particularly for (1) requiring additional information, data or documents according to Art. 11 para. 1 lit. a), such as producer self-assessments (see (iv) under Risk Assessment), and for (2) carrying out independent surveys, audits or information requests according to Art. 11 para. 1 lit. b) and c). These actions can be documented using the Prewave Action Planner. Prewave plans to further refine its suggestions for possible risk mitigation actions in the near future, especially to enable certain risk mitigation actions to be carried out directly via third-party providers through the Prewave system.</p> <p>After effective risk mitigation measures have been taken, resulting in no or only negligible risk, it is possible to generate a due diligence statement within the system.</p> <p>It should be noted that the options provided in the Prewave system are merely non-binding suggestions for potential risk mitigation actions. These options do not replace a risk-based risk mitigation strategy that the user must develop, nor the creation and implementation of appropriate risk mitigation measures.</p>
<p><b>Submission and Forwarding of Due Diligence Statements:</b>          Without the prior submission of a due diligence statement, companies are not permitted to place relevant products on the market or export them. (Art. 4 para. 2) Companies that, on the basis of the due diligence exercised (i.e., information gathering, risk assessment if applicable, risk mitigation if applicable), conclude that the relevant products comply with the EUDR, shall make available a due diligence statement to the competent authorities through the information system referred to in Article 33 before placing the products on the market or exporting them. Such electronically available and transmittable due diligence statement shall contain the information set out in Annex II for the relevant products and a declaration by the company that it exercised due diligence obligations and that no risk, or only a negligible risk, has been identified. (Art. 4 para. 2)</p> <p>Companies may refer to a due diligence statement that has already been submitted in accordance with Article 33 only after having ascertained that the due diligence relating to the relevant products contained in or made from the relevant products, was exercised. They shall include the reference number of such due diligence statements that have already been submitted in accordance with Article 33 in the due diligence statements that they submit. (Art. 4 para. 9)</p>	<p>The due diligence statement can be generated by the system once the due diligence obligations have been fulfilled and no risk or only a negligible risk is present. It is then directly submitted to the EU information system, and the EU reference number is generated. The due diligence statements can subsequently be (i) manually retrieved via the Prewave platform or (ii) automatically transmitted via an API to the customer's ERP system.</p> <p>Prewave acts as an authorized representative under Art. 6 in this regard.</p> <p>Prewave offers storage of the generated due diligence statements in accordance with Art. 4 para. 3 for a period of five years from the date of submission.</p>

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<p><b>Reporting</b>  Companies who do not fall under the categories of SMEs, including micro-enterprises or natural persons, shall, on an annual basis, publicly report as widely as possible (including via the internet) on their due diligence system, including the steps taken by them to fulfil their obligations as set out in Article 8. Companies who also fall within the scope of other Union legal acts that lay down requirements regarding the value chain due diligence may fulfil their reporting obligations under this paragraph by including the required information when reporting in the context of these other Union legal acts. (Art. 12 para. 3)</p>	<p>Prewave supports users in documenting the actions they have taken through the platform. Prewave generates text passages and quantitative data related to the various due diligence statements, which are helpful for the reporting required under the EUDR. However, the information provided by Prewave does not replace the report that the user must independently prepare in accordance with the EUDR.</p>

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