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As this edition of Carbon Matters was going to press, a new UK Government was grappling with both a financial crisis and an energy crisis.

The latter has made no small contribution to the former.

While some critics of Government fiscal policy have long been arguing that the country has been living beyond its means in terms of expenditure on public services, the immediate crisis with regard to Government spending had much to do with the huge potential liabilities taken on by the Government as the result of the political need for it to cushion households against steeply rising energy bills.

While blame for that can certainly be placed on the actions of the Russian Government, there are many other reasons why both this country and its European neighbours have been temporarily in short supply of gas, and also dependent on it, so as to make us vulnerable to those actions.

Fortunately, there are signs that through a combination of adaptation to alternative sources of supply and economy measures European countries may prove more resilient than feared and the liabilities resulting from the crisis may also not be so great.

Undoubtedly there has been considerable scope for energy saving, and realisation of this may prove to be a positive outcome from the crisis. Going forward, appropriate management of the transition away from fossil fuels will be important not only for the UK and European countries, but also for the move to a low carbon economy globally.

Economies such as those of China and India are now far more significant than ours in terms of carbon emissions. They are also notable more dependent on fossil fuels. It will therefore be important for European countries to demonstrate that the move to a low carbon economy is not incompatible with economic growth.

It is therefore to be hoped that initiative such as the Skidmore Review discussed in this issue, which are aimed at showing that a net zero strategy can be developed in a business-friendly way, will bear fruit.

The importance of this has been perhaps highlighted by the outcome of COP27.

There has been considerable excitement over the decision to establish a Loss and Damage Fund to help compensate poorer and developing countries for events which may, at least in part, be attributed to historic anthropogenic carbon emissions from industrialised countries. Plainly however, it will take a considerable time for the detail of the proposed arrangements to be agreed, let alone implemented.

Meanwhile, there has been considerable criticism of the lack of progress in agreement on the curbing of current and future anthropogenic carbon emissions.

If it is apparently difficult to secure agreement at international level, that perhaps emphasises the importance of cost-effective national initiatives in that field.



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Climate Change Committee Annual Progress Report 2022

On 29 June 2022, the Climate Change Committee (**CCC**) published its annual Progress Report to Parliament. The CCC, an independent body responsible for advising on and monitoring the Government's measures on climate change, is obliged under the Climate Change Act 2008 to produce annual reports setting out the Government's progress in meeting its long term emissions targets.

The central message of the 2022 Report is ultimately one of mismatch between, on the one hand, the UK's ambitious, "world leading" emissions targets and, on the other, the lack of actual, tangible progress that has been made to reduce emissions in the past year. In particular, the CCC points to the Government's heightened policy ambitions, demonstrated by publication of the Net Zero Strategy in October 2021, but suggests that actual, effective delivery of such policies is lagging. This, it suggests, is the result of a lack of coordination at the top, distinct "policy gaps" and the failure to implement contingency plans where aspects of the Net Zero Strategy have not performed as intended.

The Report also makes commentary on the cost of living crisis, and the impact that this might have on the Government's emissions goals. Perhaps counterintuitively, the Report sees rising energy costs as providing "a window to encourage faster decarbonisation", both through promoting energy efficiency improvements in the home and by encouraging consumers to reduce their energy use more generally. These suggestions, while simple in practice, will require the effective communication to the public of information on energy efficiency, a strategy that may not sit well with the Government's aversion to appearing as a "nanny state".

In addition, the Report calls for more effective public engagement with the Net Zero Strategy, noting that the Treasury has not yet set out how the full range of costs and benefits associated with that strategy are to be shared fairly. Here, there is perhaps a sense that achieving Net Zero should be a collective goal, yet without proper communication – both with the public and with local and devolved governments – this is not being achieved.

It is with these key messages in mind that the Report sets out its recommendations to Government for further reducing emissions. A full table of recommendations can be found in the Annex to the report, and some of these have been designated "priority recommendations". The "priority recommendations" to Government include:

- effective coordination between the Cabinet Office, Number 10 and the Department for Business, Energy and Industrial Strategy (**BEIS**) in delivering the Net Zero Strategy;
- the preparation of contingency plans to deal with potential risks in delivering the Government's emissions policies;
- that BEIS:
 - strengthen existing plans to decarbonise buildings as a matter of urgency, in order to improve energy efficiency in homes;
 - consult on mechanisms to support electrification, for example investing in the collection and reporting of decarbonisation data to enable effective monitoring;

- publish a long term strategy to achieve a fully low carbon electricity supply by 2035;
- put in place proper funding mechanisms to deliver its commitment of 10 GW of low carbon hydrogen production; and
- put in place proper plans and funding models to support its ambition for engineered removals as part of the Net Zero Strategy;
- that HM Treasury consider a Net Zero Tax Review to see how the tax system can best support the Net Zero Strategy. As part of this, the CCC would promote moving policy costs due to historic subsidies on electricity onto general public spending;
- that the Department for Transport ensure that the uptake of electric cars is progressing as planned and in line with the Zero Emission Vehicle mandate, and that its Sustainable Aviation Fuel mandate is implemented as soon as possible;
- that the Department for Levelling Up, Housing and Communities ensure that it includes provision for sustainable transport in its upcoming Levelling Up and Regeneration Bill, as well as supporting both the BEIS and local government in achieving the Net Zero Strategy; and
- that the Department for Environment, Food & Rural Affairs:
 - apply a decarbonisation strategy to agriculture and land use, as a matter of urgency;
 - ensure proper funding is in place to secure the take up of low carbon farming practices, tree planting and peat restoration;
 - prepare a detailed decarbonisation plan for the waste sector; and
 - take steps to ensure that the UK is properly adapted for climate change.

Ordinarily, the Government is obliged to respond to recommendations in its Progress Reports by 15 October each year. However, the Government has postponed this deadline by statutory instrument in order to align with its obligations to submit a revised Net Zero Strategy. See our article below on the on the Skidmore Review.

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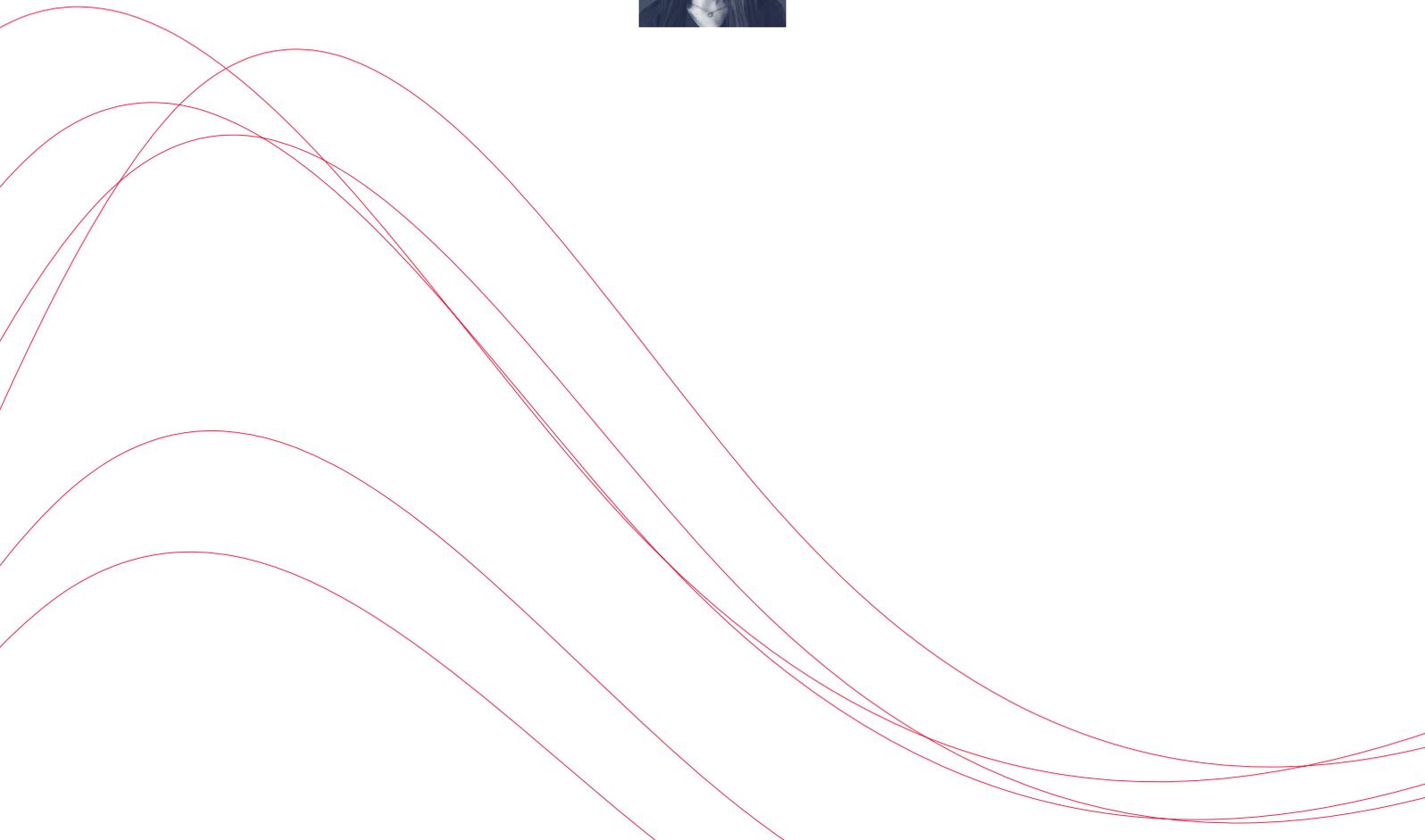


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Litigation challenge to the Government's Net Zero Strategy, and the Skidmore Review

In a recent addition of Carbon Matters, we reported on the UK Government's Net Zero Strategy "Build Back Greener", the long term plan which the Government has established in order to comply with legal obligations under UK law, as set out in the Climate Change Act 2008, and the UK's treaty obligations under the Paris Accord.

The strategy set out a number of key policy commitments to eliminate the use of fossil fuels in electricity generation by 2035, subject to requirements relating to security of supply, promoting low carbon alternatives and carbon capture and storage, and the installation of heat pumps and other low carbon systems by households, ending the sale of new petrol and diesel cars and vans by 2030, and requiring all new cars to be fully zero emissions capable by 2035.

Our article mentioned that litigation had been brought by way of judicial review proceedings initiated by ClientEarth, Friends of the Earth, and the Good Law Project.

Those proceedings were heard in June and July, and on 18 July the High Court issued a judgment finding in favour, in part, of the claimants.

The High Court found that the Secretary of State for Business, Energy and Industrial Strategy had approved the Government's Strategy without having been provided with sufficient information in terms of a quantitative analysis, properly to be satisfied that the statutory carbon budgets could be met, in particular given that it was likely that the quantitative effects of all the policies would deliver a 5% shortfall against



the reductions required by the Sixth Carbon Budget. Accordingly an analysis was required explaining which policies could make good that shortfall.

The Court also found that the strategy did not contain sufficient information to enable Parliament and the public properly to understand how the Government intended to meet the statutory targets.

Reading between the lines, it would seem that the preparation of the Strategy had been unduly hastened to ensure that it was “oven ready” for COP26 in Glasgow.

In consequence of the decision, the Government will now be required to submit a revised Net Zero Strategy to the High Court by 31 March 2023.

Partly in response to this, and one of the few policy announcements made by the incoming Truss administration before the death of HM Queen Elizabeth II and the suspension of political activity during the period of national mourning which followed, was to announce a review of the Strategy.

The task of conducting the review was entrusted to Chris Skidmore, MP for Kingswood, and a former BEIS minister. Mr Skidmore is known to be an enthusiastic supporter of the move to net zero, but his task has been to find the most efficient, fastest, and business friendly means of achieving those benefits, in line with the general approach of the new administration.

Plainly the review will need to be carried out in good time for the deadline for submission of the revised Strategy to the High Court. However Mr Skidmore has recently announced that his report should be submitted by the end of the year. The Government has also made a statutory instrument shifting the deadline for its response to the progress report submitted this year by the Climate Change Committee which would normally fall to be made in October, so as to align with the deadline set by the High Court.

Further information is expected soon, so we will be watching this space.

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Biodiversity, corporate risk and responsibility: COP 15 and beyond

Introduction

Negotiators are heading to Montreal for another round of meetings in December 2022 (known as COP 15, Part 2) under the auspices of the international Convention on Biological Diversity (**CBD**). Their ambition is to try to conclude a much-needed international agreement to tackle the World's biodiversity emergency.

This article explains the background to the pending negotiations and what can realistically be expected to emerge from them. It also explains why the global biodiversity crisis represents a clear threat and opportunity for clients across sectors and geographies, irrespective of the COP 15 talks.

Convention on Biological Diversity (CBD)



Overview

The CBD is an international treaty for the conservation of biodiversity, sustainable use of the components of biodiversity and equitable sharing of benefits derived from the use of genetic resources.

The CBD was concluded in 1992 at the Earth Summit in Rio de Janeiro and entered into force in December 1993. In many ways it is the sibling convention to the UN's Framework Convention on Climate Change (UNFCCC) of the same year. There are close practical connections between the two. The CBD currently has 196 ratifying parties and states (the Parties), the most notable absentee being the United States.

The CBD addresses global threats to biodiversity and ecosystem services through scientific assessments, development of tools, incentives and processes, transfer of technologies and good practices and involvement of stakeholders including indigenous peoples and communities, youth, women, NGOs, sub-national actors and business.



Implementation

The Parties to the CBD convene at plenary meetings roughly every two years, known as "Conferences of the Parties" or "COPs". COPs look to agree approaches to implement the Convention and Protocols through negotiation of goals and priorities to achieve the CBD's aims.

Article 6 of the CBD calls for Parties, in accordance with their particular conditions and capabilities, to *"develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, inter alia, the measures set out in this Convention"*.

National biodiversity strategies and action plans (NBSAPs) go to the heart of the CBD in that they represent the individual Parties' own interpretation of the CBD and its goals. Whilst the Parties negotiate and detail strategic plans to assist in implementing the spirit of the CBD, the NBSAPs directly reflect the Parties' alignment. The NBSAPs will ultimately drive the changes required under the CBD.



Outcomes of the CBD process

Currently, the Parties are looking to conclude the CBD post-2020 Global Biodiversity Framework process (the Post-2020 Framework). The Post-2020 Framework is intended to be a strategic plan detailing steps to be taken through the remainder of the decade and beyond, to 2050. It will set out a plan to bring about a transformation in society's relationship with biodiversity to preserve and protect nature and its essential services.

The Post-2020 Framework will – if agreement on it can be reached at or after COP 15 – be the third strategic plan negotiated by the Parties.

The First Strategic Plan was adopted in 2002 at COP 6, but detailed targets were not adopted until COP 7 in 2004. Only 76 Parties had NBSAPs by 2000, increasing to 132 by 2010. The implementation of the First Strategic Plan was however seen as a failure by 2010. The targeted “*significant reduction of the current rate of biodiversity loss*” was deemed wholly unsuccessful.¹

The second strategic plan, the Global Strategy on Biodiversity for 2011 to 2020, was adopted in 2010 at COP 10. It established five broad objectives and 20 Global Biodiversity Targets, known as the “Aichi Targets”. Since COP 10, 193 of 196 (99%) Parties have either updated or renewed NBSAPs, aligned with the Aichi Targets.²

Despite this effort not a single Aichi Biodiversity Targets was fully met by the 2020 deadline.³ This led conservationists to condemn nature protection efforts through the CBD as a “massive failure”.⁴

The Parties describe these past efforts to address global threats to biodiversity and ecosystem services as stepping stones toward an ultimate “*2050 Vision*” of a world “*Living in harmony with nature*”. The 2050 Vision requires that by 2050 “*biodiversity is valued, conserved, restored and wisely used in maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people*”.⁵

The previous strategic plans and, to a greater extent than desirable, the upcoming strategic plan focus primarily on slowing the loss of biodiversity via NBSAPs. Getting to a point of no net change and even net-gain of biodiversity is only envisaged for the subsequent phase of effort, taking place between 2030 and 2050.

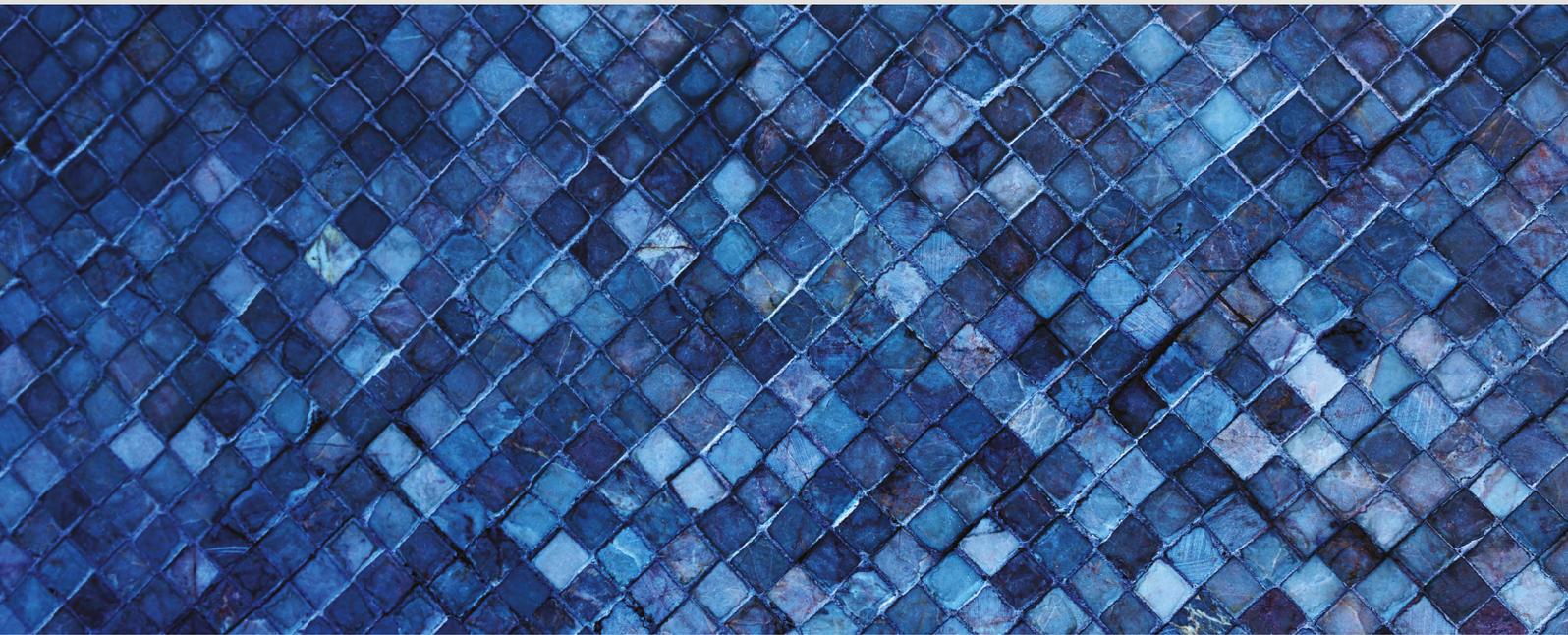
¹ Global Biodiversity Outlook 3 (GBO-3), 31 May 2010, <https://www.cbd.int/gbo3/>

² UN Environment Programme, Parties that submitted an NBSAP following the adoption of the Strategic Plan for Biodiversity 2011-2020, including the Aichi Biodiversity Targets, <https://www.cbd.int/doc/nbsap/nbsap-status.doc>

³ Global Biodiversity Outlook 5 (GBO-5), 18 August 2020, <https://www.cbd.int/gbo5>

⁴ Patrick Greenfield, World fails to meet a single target to stop destruction of nature – UN report, The Guardian (15 September 2020) <https://www.theguardian.com/environment/2020/sep/15/every-global-target-to-stem-destruction-of-nature-by-2020-missed-un-report-aoe>

⁵ UN Environment Programme, Convention on Biological Diversity, COP 10 Decision X/2 Strategic Plan for Biodiversity 2011-2020 <https://www.cbd.int/decision/cop/?id=12268>



**The planned talks in Montreal, Canada in December 2022:
the 15th Conference of Parties to the UN Convention on
Biological Diversity (COP 15)**



Interrelationship with the Climate Change Convention

The CBD is closely aligned with the UNFCCC, with the 26th Conference of Parties (UNFCCC COP 26) held in Glasgow, UK. The CBD process follows a similar format. The UNFCCC and CBD COPs act as decision-making bodies that monitor and review implementation of the conventions.

UNFCCC and CBD COPs both involve meetings of countries where, after long preparations, joint agreements and declarations are devised. These agreements and declarations are translated into laws, regulations and policy before they reach citizens and businesses.

Originally planned to have begun and ended in Kunming, China in 2020, COP 15 was postponed due to the COVID-19 pandemic. It was later split into a two-part event.

Part 1 was held virtually in Kunming in October 2021. Chinese President XI Jinping, other state leaders and the UN Secretary General made online presentations through which commitments to addressing the biodiversity crisis were reinforced. The Parties also held meetings on administrative and technical issues essential for the continuation of the operations of the CBD and the Protocols. A high-level segment focused on the development of the Post-2020 Framework was amongst the most important meetings held.

Part 2 was expected to be a face-to-face meeting, also in Kunming, but after several postponements and date changes due to the pandemic Part 2 was moved to Montreal, Canada and will take place in December 2022. It will likely be a combined in-person and online event. China, as COP 15 President, will continue to preside, with the logo and the theme of COP 15 maintained. China will also lead the facilitation of negotiations.



COP 15 objectives

The key aim of COP 15 is to try to agree the text of the Post-2020 Framework up to the year 2030, and set in motion the ambitious 2050 Vision.

Already two years late, the draft text of the Post-2020 Framework is still far from complete. The text is littered with square brackets where the Parties have not yet agreed wording. The fourth working group meeting to negotiate the Post-2020 Framework behind the scenes prior to the plenary meeting took place in Nairobi, Kenya in June 2022. It was meant to be the last, but so little progress was made that a fifth meeting will take place in December, just before COP 15 (Part 2).⁶

The latest draft of the Post-2020 Framework envisages four long-term goals for 2050 and 22 targets to achieve by 2030.⁷

The four goals focus respectively on conservation, sustainable use of biodiversity, fair benefit-sharing and adequate means of implementation through finance and technical capabilities.

The targets cover a wide range of topics, from expanding protected areas and reducing pollution to ensuring that food production is sustainable and phasing out nature-harming public subsidies.⁸

The Parties, international community, scientists and NGOs are divided about whether or not to have a top-level target to be achieved by 2030 such as an overall biodiversity status or global rate of extinction. It is believed by some that this would distract from the work of implementing the Post-2020 Framework and capturing the complexity of ecosystems and species with a single metric is impossible.

What to expect

Should the Post-2020 Framework be agreed at COP 15, it will result in a shifting of the goalposts for the Parties in terms of their NBSAPs. Existing national plans and programmes will need to be brought in line with the four long-term goals for 2050 and 22 targets to achieve by 2030.

Those plans will then be subject to a global analysis of the adequacy of their collective ambition over the course of COPs 16-19.

The way in which Parties will adapt and update their NBSAPs, and the tangible steps they will implement at local level, will vary drastically dependent on their particular conditions and capabilities. Ultimately the Post-2020 Framework will lead to gradual change in the Parties' biodiversity policy landscapes over the course of the next decade to 2030 and beyond. Even if agreement is reached on the Post-2020 Framework at COP 15 therefore, there will be little to no immediate effect on business.

⁶ UN Environment Programme, Negotiation of Global Biodiversity Agreement will Resume at Special Three Day Meeting in Montreal, Dec. 3 - 5, Immediately Prior to COP15, Dec. 7 - 19 <https://www.cbd.int/doc/press/2022/pr-2022-07-22-cop15-MediaAdvisory-en.pdf>

⁷ UN Environment Programme, Open-ended Working Group on the post-2020 Global Biodiversity Framework, Post-2020 Global Biodiversity Framework <https://www.cbd.int/doc/c/079d/0d26/91af171843b6d4e9bee25086/wg2020-04-l-02-annex-en.pdf>

⁸ China Dialogue, Will 30x30 reboot conservation or entrench old problems? <https://chinadialogue.net/en/nature/will-30x30-reboot-conservation-or-entrench-old-problems/>



Business impacts of biodiversity

The relationship between business and biodiversity is intrinsically linked in many industries.

Direct impacts on biodiversity from industrial and business activity stem primarily from land use and waste generation that occur at the same time and place as the activities. This results in habitat loss and degradation, erosion, species loss, air and water pollution and soil and water contamination.

Indirect impacts from the habits of third-party suppliers in the sourcing and production of goods and services and disposal of products can also occur in different places and times. This makes them challenging to predict, identify, manage and control.⁹

COP 15 will generate further, much needed awareness of the issue, and may in turn lead to yet further policy and regulation that will drive responsibilities and liabilities in this space. However, significant biodiversity-related risks, responsibilities and potential liabilities already exist for your company today.

⁹ International Finance Corporation, The Relationship of Business to Biodiversity, https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/biodiversityguide_understanding_business#:~:text=Biodiversity%20is%20a%20fundamental%20component,help%20control%20the%20air%20composition.



Biodiversity litigation

Just as we are seeing exponential growth in climate change litigation, we are also seeing growth in “biodiversity litigation”.

As a result of increased scrutiny of both the dependencies and impacts of business on biodiversity and the increasing harms caused by biodiversity loss, businesses are becoming increasingly exposed to biodiversity-related litigation risk. The growing use of data from remote sensing and in supply chain management is facilitating a better understanding of where biodiversity loss is occurring and who may be responsible.

In the years since the negotiation of the Paris Agreement the number of climate cases globally has more than doubled to over 2,000 in 39 jurisdictions. These cases are setting new precedents and inspiring other actors to use litigation as a tool in the global fight to mitigate and adapt to climate change.¹⁰

It is anticipated that biodiversity litigation will follow a similar trajectory. The impetus for biodiversity litigation is likely to increase should the COP 15 negotiations fail or under deliver, as activists and other stakeholders pursue the recognised tactic of using litigation to fill policy and regulatory voids.



Sustainability reporting and biodiversity

Mandatory non-financial reporting and sustainability due diligence laws are increasingly prevalent in the EU and many other jurisdictions. Larger entities are already legally obliged to publicly report on their ESG performance under such laws. Many other companies will become bound to do so in the near term (long before the effects of any agreement at COP 15 may be felt).

These duties extend beyond climate change mitigation and adaptation to include binding duties in relation to the reporting of management and mitigation of business impacts on natural capital and biodiversity.

The EU *Taxonomy Regulation* of 2020, for example, includes as one of its six environmental objectives the protection and restoration of biodiversity and

ecosystems. Certain companies are already obliged to report under this regulation. All large EU-established entities satisfying two of (i) 250 employees, (ii) EUR40 million turnover and (iii) EUR20 million will also find themselves obliged to report from 2025.

The EU’s twin Corporate Sustainability Due Diligence (CSDD) and Corporate Sustainability Reporting Directives (CSRD) are also designed to tackle human rights and environmental impacts across value chains. This includes biodiversity matters. The CSRD will apply to the same entities and from the same dates as above, and whilst the CSDD has slightly different thresholds, it is similarly expected to start to apply to businesses from 2025/2026. Businesses are already taking steps to gear up for compliance.

¹⁰ Commonwealth Climate and Law Initiative, The emergence of foreseeable biodiversity-related liability risks for financial institutions: A gathering Storm? <https://ccli.ouce.ox.ac.uk/wp-content/uploads/2020/09/CCLI-Biodiversity-liability-risks-report-vFINAL.pdf>



Biodiversity and access to capital

Biodiversity loss can also directly impact businesses by disrupting their supply chains, increasing regulatory compliance costs and eroding social goodwill. Investors are already considering how to address biodiversity as part of their investment risk assessments. In many cases they are seeking to direct capital toward companies that can better demonstrate a nature-positive strategy, underpinned by robust, science-based targets.¹¹

This means that there is a real risk of loss of access to financing for companies that cannot show a commitment to the global challenge of protecting and enhancing biodiversity.

Such tools help investor decision making and efforts to influence corporate behaviours, thereby having a material impact on the allocation of capital.



Biodiversity and urban planning

Concerns regarding the biodiversity crisis pervade many disciplines and industries, one the most notable being urban planning. As a particularly destructive practice, development has enormous implications for the protection and promotion of biodiversity because it can directly affect habitats of native species.

This is reflected in national laws, such as the *UK Environment Act 2021*, which introduced a new mandatory requirement for developments to start with an assessment of the biodiversity value of the plot. This must be prior to development and a plan must be submitted to the local authority providing for a minimum 10% biodiversity net gain. This ensures the development project will not result in a net loss or degradation of habitat.

¹¹ EY, *Why biodiversity may be more important to your business than you realize*, https://www.ey.com/en_gl/assurance/why-biodiversity-may-be-more-important-to-your-business-than-you-realize

Final thoughts

It remains uncertain whether an impactful agreement will be achieved at COP 15. What is certain is that the biodiversity crisis will continue to have an ever-increasing impact on businesses across the globe.

This translates into direct risks to business operations and, moreover, increasingly stringent demands from financiers and investors, customer awareness and various forms of biodiversity litigation that will more than fill the gap left by COP 15.

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The new EU Forest Strategy: seeing the wood for the trees?

The European Parliament has recognised the multifunctional role of forests through endorsement of the European Commission's new proposal for a forest strategy for 2030 (**Strategy**). The Strategy is part of the emission reduction Fit for 55 Package, a cornerstone of the EU Green Deal.

According to the Strategy forests cover over 43.5% of the EU's land space, providing valuable ecosystem services for the air we breathe and water we drink, as well as essential habitat for species. The Strategy also makes clear the importance of the EU's forest economy, with an estimated 16 million private forest owners and 3.3 million workers in forest product, wood furniture and paper manufacturing industries generating over EUR56 billion in 2018.

The need to protect EU forests and ensure a sustainable forest economy is therefore clear. The recent majority vote in the European Parliament (**Parliament**) reflects their view that the Strategy sets “a vision and concrete actions to improve the quantity and quality of EU forests and strengthen their protection, restoration and resilience”.

The Strategy has, nonetheless, been hotly debated between EU lawmakers, stakeholders and industry.

This article discusses the Strategy's aims, the views of the Parliament and the opinions of its most vocal stakeholders in identifying whether the Strategy represents a turning point in sustainable forest management, or an instrument that ‘cannot see the wood for the trees’ in its failure to balance conservation and the forest economy.

What is the new forest strategy for 2030?

This Strategy replaces the previous 2013 strategy. A report from the European Commission (**Commission**) on the progress of the 2013 strategy's implementation provided the basis for roadmap and open public consultations, used to determine the scope of the new Strategy.

The Strategy's headline measures, the progress of which are due to be reviewed in 2025, can be divided across three areas: the supporting of socio economic forest functions, protection and restoration of forests and strategic policy objectives.



Supporting of socio economic forest functions

A large section of the Strategy is based upon the understanding that, whilst forests play a key environmental role in fighting climate change and providing habitat for numerous species, they are also a key economic resource. In light of this, this section of the Strategy deals with the forest economy. Wood products and resources still make up a large proportion of value chains within, and exports from, the EU as raw materials and for bioenergy.

A key area in which the Strategy looks to promote the use of wood products is construction. Currently only 3% of building materials in Europe are wood derived. A shift in the industry toward using wood products has benefits in terms of their low cost, but also a conversion of traditionally carbon intensive structures to net carbon sinks. The Commission is looking to identify the climatic benefits of wood products as part of a review of the Construction Products Regulation. Extraction of wood as a natural resource also facilitates the removal of carbon which would otherwise be released into

the atmosphere when trees decay, feeding into an accompanying proposal for the revision of the Land Use, Land Use Change and Forestry Regulation, which sets out reporting, monitoring and accounting requirements for carbon stocks.

The Strategy also highlights the effectiveness of wood based bioenergy as an energy source. Bioenergy currently represents 60% of EU renewable energy use, aligning with the objectives of the Fit for 55 Package and revision of the Renewable Energy Directive (**RED**). This revision includes certain sustainability criteria, coinciding with the EU's Biodiversity Strategy target to minimise use of whole trees for energy production. The Strategy proposes the prohibition of the sourcing wood for bioenergy from primary forests (i.e. forests that have established themselves over a long period without significant disturbance), which represent around 3% of total EU forest cover, as well as limiting the sourcing of wood for bioenergy from highly biodiverse forests.



Protection and restoration of forests

This section of the Strategy is focussed on preserving and expanding existing EU forests to facilitate a sustainable forest economy. The Strategy acknowledges that the forest economy requires larger, healthier and more diverse forests. This, coupled with the need to combat climate change and reverse biodiversity loss, means the Strategy considers the protection and restoration of EU forests to be of utmost importance.

The Strategy sets out measures to this end including protecting the EU's remaining primary forests, reinforced sustainable forest management for climate adaptation and forest resilience, reforestation and afforestation, as well as financial incentives for forest owners and managers to improve the quantity and quality of EU forests.

Most notable of these is the legal framework on sustainable forest management, including binding targets for the restoration of healthy ecosystems. The Strategy aims to protect at least 30% of forested EU land, with a higher level of 'strict protection' applying to 10%. All primary forests will be under strict protection.

Payment schemes and carbon farming practices will be rolled out under the sustainable forest management framework through the Common Agriculture Policy and the Farm to Fork Strategy. Such financial incentives are intended to encourage forest owners and managers to provide valuable ecosystem services, contributing to our health and well being through water regulation, provision of food, medicine and materials, disaster risk reduction and control, soil stabilisation and erosion control and air and water purification. The sustainable forest management framework should also incentivise climate and biodiversity friendly management best practice.

Despite the objectives of the sustainable forest management framework and the protective measures in the Strategy, the EU Council notably commented that it lacked international reach in terms of curbing global deforestation. The Commission therefore proposed a regulation to coincide with the Strategy to ensure that products on EU markets do not contribute to deforestation and forest degradation. This will be achieved through prohibiting products derived from certain agricultural practices. The main driver of these practices is the expansion of agricultural land, which is linked to the production of commodities such as soy, beef, palm oil, wood, cocoa and coffee. By prohibiting the import of products containing such commodities that have been derived from non sustainable agricultural practices, the EU hopes to reduce global deforestation.

A more recent development is the inclusion of a pledge to plant at least 3 billion trees by 2030 under the EU's Biodiversity Strategy. Alongside increasing the area of forest coverage in the EU "in full respect of ecological principles", the EU aims to increase resilience of forests and their roles in reversing biodiversity loss and mitigating the effects of climate change through this pledge.



Strategic policy objectives

The Strategy also sets out a number of policy objectives related to monitoring, reporting, data collection, observation, training and governance to ensure that the forest economy is supported and EU forests are protected and restored.

Collecting data on forests through observation and reporting will feed into a new, comprehensive legal requirement imposed on EU member states to develop strategic plans for climate change, biodiversity, bioenergy and forest use under a new legislative proposal on ecosystem restoration. The existing Forest Information System for Europe will also benefit from this new data, with the addition of satellite recorded observation data. These improved data collection standards are designed to allow for improved screening criteria for forestry and bioenergy under the EU Taxonomy Climate Complementary Delegated Act, which extends the EU Taxonomy Framework. The new Delegated Act sets out technical screening criteria to identify economic activities that have the potential to contribute to climate change mitigation and climate change adaptation.

The bodies that oversee EU forests will also be revised, with organisations that bring foresters, the public and governments together including the Standing Forestry Committee and the Working Group on Forest and Nature merging. EU member states are encouraged to engage with these multi stakeholder dialogue platforms through voluntary reporting points such as ecosystem health, biodiversity and climate change. These reporting points were mandatory in previous versions of the Strategy, but have since been watered down.

The Strategy also sets out that good governance of EU forests can be fostered through training, innovation and knowledge research programmes rolled out to foresters by EU member states. Voluntary certification schemes such use of the Natura 2000 logo on products are also suggested as measures to indirectly promote forest sustainability.

What are stakeholders saying?

It is understandable, given the importance of forests to the EU economy, that stakeholders from a range of disciplines including industry, NGOs and forest owners

contributed to discourse on the Strategy. Some key viewpoints are discussed below.



Industry stakeholders

Bodies representing landowners criticised the broad brush approach of the Strategy. The European Landowners Organization (**ELO**) argue that the Strategy is a catch all, and that there is no “one size fits all” forest management methodology, alongside Copa Cogeca who claim that certification schemes undermine the forest economy with regulatory burden and restrict sources of income.

The Confederation of European Forest Owners (**CEPF**) published a position jointly signed by a number of stakeholders (**Position**), which is critical of the Strategy’s approach toward sustainable forest management, a lack of recognition of the importance of the forest economy and coherence with other EU policy, and lack of clarity and explanation as to implementation.

The Position suggests that the approach and tone of sustainable forest management practices in the Strategy need to significantly change from the current simplistic approach, which ignores the complexity of forest management and property rights. The Strategy’s approach to sustainable forest management cannot be effectively enacted due to the difficulty in balancing

forest functions with protection and restoration. According to the Position, favouring one aspect disturbs the balance. The Position suggests that support for investment in wood producing and forestry is neglected in favour of support for forest owners and managers to provide environmental and climate related ecosystem services.

A lack of coherence with climate objectives is set out as one of the most problematic points in the Strategy, given its emphasis on conserving biodiversity, restoring ecosystems and increasing carbon sinks. This is highlighted specifically in respect of the role that wood products play in combatting climate change by reducing fossil fuel consumption. Whilst there is heavy focus on the importance of supporting wood in the construction and building sector, other uses of wood are not granted similar attention. The Position proposes that this raises doubts as to the realities of sustainable forest management. The CEPF claim that the Strategy focusses too much on protective measures and not forest multifunctionality.



Political stakeholders

The new legally binding observation, reporting and data collection requirements are also major sticking points. Political stakeholders claim that they challenge EU member states' competence on forestry and raise questions on the objectives of the Strategy. The Commission faced significant pushback on this point from several EU member states, the forestry sector and MEPs resistant to allowing data to be scrutinised.

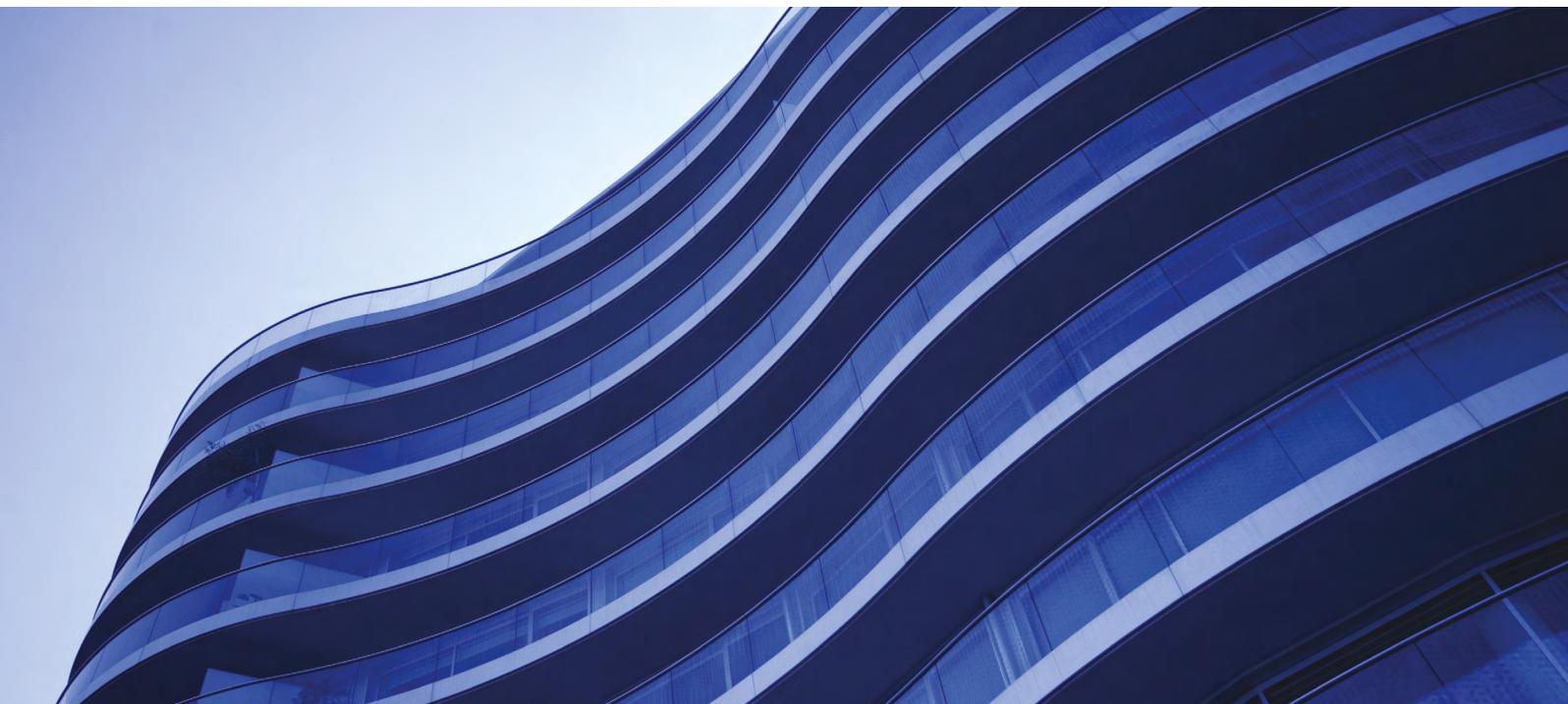
The European Economic and Social Committee's (**EESC**) opinion on the Strategy acknowledges that, whilst socio-economic opportunities are addressed to a certain extent, a more comprehensive approach is necessary to ensure preservation of non commercial forest ecosystem services. The EESC also criticise one size fits all solutions and stress the importance of making competent decisions at the right level.



Environmental groups

Environmental groups were more positive about the Strategy. NGO Fern set out that the new framework and criteria for sustainable forest management have "transformative potential" as regards current practices, restoration obligations and assessment of forest biodiversity value. Fern also expressed that the legislative proposal for monitoring and data collection and the reinforced forest governance mechanism were positive steps for conservation. The certification schemes were criticised in that they are unlikely to work due to a lack of a strong regulatory framework and long term impact in the context of the Fit for 55 Package, however.

WWF welcomed the Strategy and its goals, including recognition that the forest economy should only be furthered sustainably. WWF were however critical of the lack of measures to minimise intensive forestry and harvesting of natural resources which, in WWF's view, creates a disconnect with EU climate and biodiversity objectives. WWF warned that nearly all EU forests are managed to varying degrees, and even those protected under EU legislation are experiencing rapid declines in biodiversity and carbon sequestration. WWF note that some components appear to be weakened in the final Strategy compared to previous drafts, shifting more toward voluntary measures rather than legislative.



The European Parliament's report on the New Forest Strategy for 2030

The considerable debate around the Strategy coupled with extreme forest fire inducing weather events across Europe this summer saw stakeholder attention concentrated on the Parliament's plenary vote on the Strategy. On 13 September 2022 the Parliament cast 417 votes in favour and 144 against on a draft report on the Strategy (**Report**). The own initiative Report, founded on the Parliament's Environment and Agriculture Committees feedback, endorses the Strategy but highlights the need to balance "multiple forest functions", with forests being "essential to provide ecosystem services and jobs in the EU". A key feature is the Report's discussion around sustainable forest management; "only active, sustainable and dynamic forest management will enable resilience and successful adaptation to climate change".

The Report accounts for criticisms from EU agriculture ministers, who adopted the Commission's proposal in November last year, but took issue with the

multifunctional role of forests being "reduced to environmental considerations." The Report sets out that EU forests should provide ecosystem services whilst sustaining the forest economy and jobs, the effect upon which the Strategy's forest protection measures "have not yet been assessed sufficiently." "Balanced and responsible management" is called for in decentralising forest protection measures with local experience used to manage forests in a bottom up approach. The Report's appreciation of the multifunctional role of forests is further recognition of the importance of economies in sustainable forest management.

Those MEPs that opposed the Report warned of a risk that exploitative forest management processes could take precedence over protective measures. In this respect the Report seems to be welcomed by industry. CEPF commented that "unlike the Commission's proposal" the Report "adopts a balanced approach to sustainable forest management".



So, is the new EU Forest Strategy seeing the wood for the trees?

According to the Strategy, “the forest based sector is an essential part of Europe’s transition to a modern, climate neutral, resource efficient and competitive economy”. A number of stakeholders vocalised their concerns as to how effectively the Strategy balances what are, in effect, opposing concepts: that forests and their natural resources should be integrated into economic value chains, and that forests, as an integral part of ecosystems and the fight against climate change, need conserving and protecting.

The Strategy’s answer to this is sustainable forest management, but how this is interpreted between the Commission’s Strategy, Parliament’s Report and stakeholder opinion widely varies. The Commission seem to favour an approach that ensures forests are conserved and protected to provide ecosystem services and combat climate change. The Parliament stresses the importance of the forest economy and, whilst suggesting that forest practices ought to be sustainable, favour a decentralised approach to sustainable forest management, with national and regional bodies being responsible for conservation efforts. Industry views the Strategy as inconsistent and incomprehensive, encompassing vague actions and initiatives rather than detailed policy. This is derived namely from the Strategy allegedly not accounting for ‘forest multifunctionality’. Conversely, NGOs and environmental groups continually stress that forests must be protected and damaging forestry practices kept to a minimum.

In what is a heavily debated and politicised area, evidence that 23% of all EU forests are in bad or poor condition and the condition of the remaining 77% forests being unknown lends itself to the need for an EU forest strategy that harmonises efforts to produce comparable data across the EU, whilst also ensuring that forests are protected and conserved whilst respecting their value as a natural and socio economic resource. With a staggering 526 amendments since the Commission presented the Proposal a year ago, it remains to be seen whether the EU forest strategy for 2030 will indeed see the wood for the trees in presenting a framework for valuable sustainable forest management.

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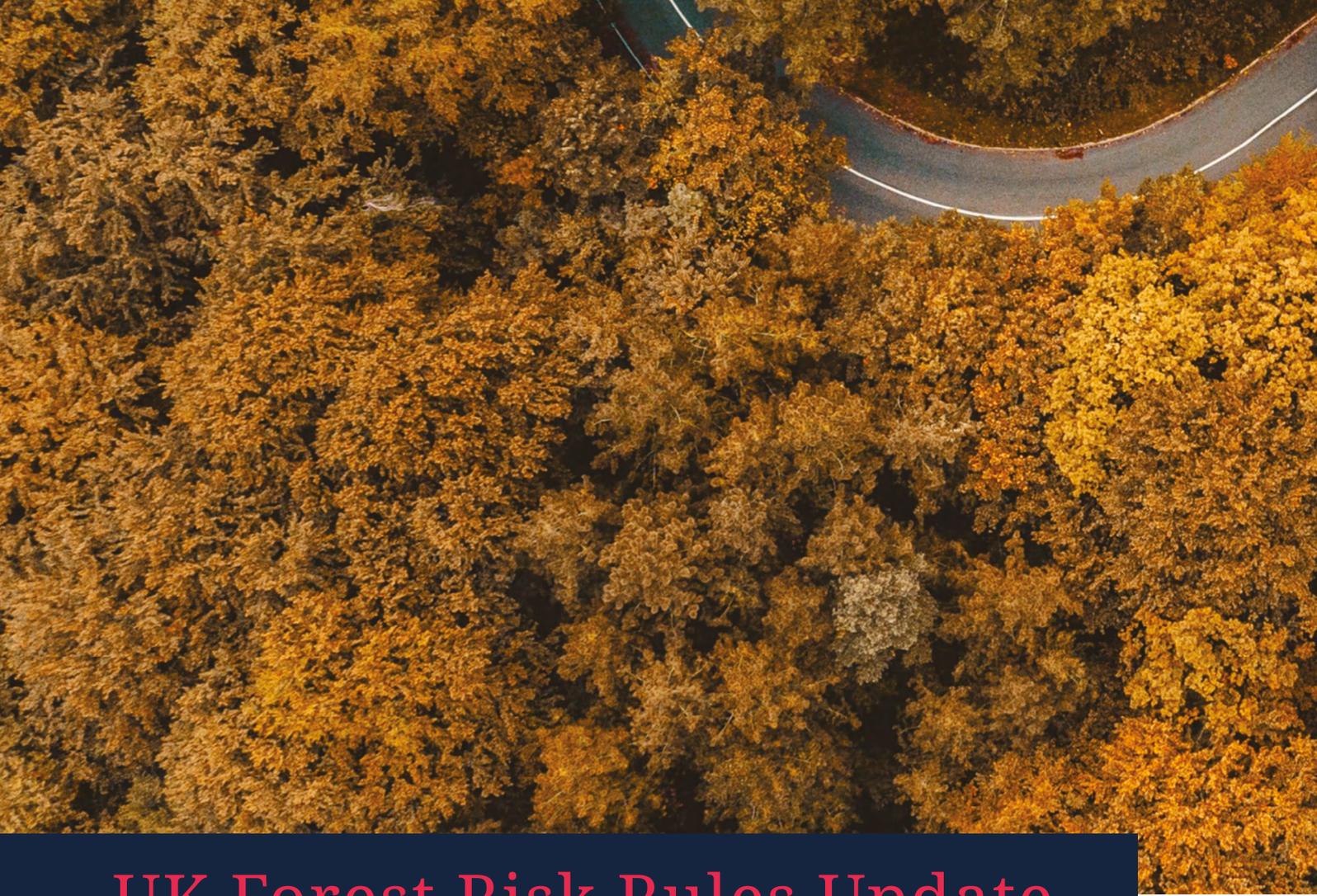
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UK Forest Risk Rules Update

In June 2022 the Department for Environment, Food and Rural Affairs published a response to its consultation on the implementation of provisions in the *Environment Act 2021* on due diligence as regards forest risk commodities.

These provisions require regulated businesses to establish and implement a due diligence system for any regulated commodity used in their commercial activities in the UK. They will be required to collect information on the commodities they use, assess the risk of violation of local laws on land use and ownership which may have occurred in the course of their production, and mitigate those risks. They will also be required to submit an annual report to the enforcement authority (yet to be designated).

In its response to the consultation, the Government indicated that it would take the earliest opportunity to implement the due diligence regime by means of secondary legislation. The response has also clarified a number of points in respect of the Government's proposals. However a number of key aspects of the regime remain uncertain, and it seems likely that there will be at least one round of further consultation.

But for example it remains unclear what forest risk commodities will and will not be in scope.

The Government confirmed that the due diligence provisions will regulate larger businesses based on turnover, with different thresholds set for different commodities.

The definition of turnover will be aligned with that in the Companies Act and based in each financial year on turnover in the previous year.



The Government will be giving further consideration to the level of risk mitigation required, and will publish guidance on this and related questions, such as the use of certificates and standards to evidence compliance.

The Government will also give further consideration to the designation of the enforcement authority.

It has been indicated that the regime will be enforced by imposing variable monetary penalties on offenders, but the Government is giving further consideration to the level of the maximum penalty which can be imposed.

Perhaps unsurprisingly, among the list of responses to the consultation, figured responses from the Brazilian Agribusiness Association (**ABAG**), and that probably that of the Government of Brazil. Those responses were the subject of a request made under the environmental information regulations, though the identity of the individual or organisation which made the request is unknown, as it was redacted from the response letter from DEFRA published on the government website.

The Government did publish a version of the ABAG response redacted so as to withhold certain personal data. However DEFRA refused to release the response from the Government of Brazil, on the grounds of the need to protect the confidentiality of international relations.

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Fracking Moratorium UK

In November 2019, the Government announced a moratorium on hydraulic fracturing (commonly known as “fracking”) for onshore shale gas.

“Fracking” refers to a set of techniques used for a long time by the Oil & Gas Industry to enhance recovery of oil and gas from “conventional” reservoirs (strata into which oil and gas has migrated, and can therefore relatively easily flow through) by injecting water gas and chemicals at high pressure into the strata, in order to fracture them. That has enhanced recovery of oil and gas from reservoirs nearing the end of their economic life.

Techniques of this type have been extensively used offshore in the North Sea on UK-controlled reservoirs, and occasionally also at some onshore locations in the UK. However, the techniques became the subject of intense public controversy as a result of their extensive use in US to exploit the new shale gas resources in what are call “unconventional” reservoirs. These are strata in which oil or gas has formed, as opposed to migrated to, because the strata are relatively impermeable.

The techniques became particularly controversial in the UK in the context of proposals for similar onshore exploration for shale gas resources, which would represent new fossil fuel developments here.

Controversy was heightened following the suspension of operations at the “Cuadrilla” site in Lancashire after seismic events which exceeded the very tight limits set by regulatory controls. That led to the November 19 moratorium.

The moratorium followed a report issued by the Oil and Gas Authority into that seismic activity which concluded that potentially unacceptable impacts to the local community could not be ruled out. As a result, the Government confirmed that it would institute a presumption against issuing any further hydraulic fracturing consents until there was new scientific evidence about the safety of “fracking”. The move followed a decision by the Scottish Government to introduce an indefinite ban on shale gas fracking in Scotland and a December 2018 policy of the Welsh Government that fracking would not be supported in Wales.



The moratorium, which undoubtedly enjoyed considerable support, was also made a political commitment in the Conservative manifesto issued in advance of the General Election which took place on 12 December 2019.

Fast forward to September 2022, the Government, then under new leadership, announced that the ban in England would be lifted. A ministerial statement was released on 22 September 2022 indicating that:

“...HM Government considers it appropriate to pursue all means for increasing UK gas production, including shale gas extraction. The Government is therefore lifting the pause on shale gas extraction and will consider future applications for Hydraulic Fracturing Consent with the domestic and global need for gas, and local support for developments, in mind”.

The Government also indicated that the purpose of the lifting of the moratorium was primarily to enable drilling to be carried out to gather further data to build a greater understanding of UK shale gas resources and to ensure that shale gas extraction can safely be carried out where there is local support. Accordingly, the lifting of the moratorium could be described as providing only a heavily qualified support for fracking.

Before the ban was introduced, any company wishing to explore for shale gas had to seek a number of different regulatory licences. These included obtaining a Petroleum Exploration and Development Licence from the Oil and Gas Authority, planning permission, a Hydraulic Fracturing Consent licence and relevant environmental permits. Advance notification of drilling was also required to be given to the Health and Safety Executive.

These regulatory hurdles and the timescales associated with them, together with the actual time that it takes for exploration wells to be drilled and tested to determine where commercially viable sites are located, meant that it would be some time before we could see extensive fracking activities, even if there were support for fracking in certain areas. To date, only three test wells for shale gas have been hydraulically fractured in the UK.

Around the time of the Government's announcement, a report from the British Geological Survey was published which considered new scientific evidence from the time the ban was introduced in 2019 to present day. It concluded that new data analysis methods could help manage the risk of seismic activity, but that forecasting magnitude of earthquakes remained challenging. The BGS is no doubt entirely correct in displaying scientific caution in that respect. However, it would not make the task of gaining local support for fracking easier. Furthermore, there are other potential grounds for local opposition to fracking operations, notably the significant demands fracking sites make in terms of water abstraction, and also the extensive traffic movements normally associated with such developments.

It should however be pointed out that many supporters of fracking have argued that water abstraction from a typical site may be compared with those associated with a medium-size golf course. Supporters also point out in respect of traffic movements, that many agricultural operations also involve significant local traffic. Indeed, the typical seismic effects of fracking operations have proved comparable with those of traffic. However, they have attracted far greater public attention. This is partly because of public misunderstanding of the logarithmic scales used to measure seismic effects, and partly because of the use of the term "earthquakes", more generally associated with catastrophic natural events with significant impacts on life and property in parts of the world which are seismically far more active than the UK. Accordingly, the announcement of the lifting of the moratorium prompted further debate. However, following a further change in government leadership, the moratorium was reinstated.

It would appear that on reflection the new leadership took the view that the unpopularity of fracking outweighed the potential benefits. Accordingly it now seems unlikely that shale gas fracking will proceed in the UK.

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