



Ending deforestation: A proposal for a regulation on deforestation-free products

After years of commitments and promises of zero deforestation by supply chain actors, the European Commission has presented a proposal for a regulation on zero deforestation products, which has entered its negotiation phase with the co-legislators (the European Parliament and the Council). The regulation establishes - among other things - definitions and criteria for the identification of low and high risk countries, satellite imagery and access to forestry data, due diligence, operator and trader controls. The aim of the text is to reduce the footprint of EU consumption on land and to encourage the consumption of products from deforestation-free supply chains.

Cleansing EU supply chains of products responsible for most of the tropical deforestation must be a common goal for all parties involved. A strong framework is therefore not only necessary, but also the most effective tool against climate change, as reducing deforestation has the largest mitigation potential worldwide (3.5 Gt CO₂ eq/year - 25% of total mitigation potential).

This note therefore aims to identify and highlight the crucial elements of the Commission's and co-legislators' positions, and then to make concrete, practical and compatible recommendations that could contribute to the achievement of the Green Deal objectives.

According to the Commission, the proposed new environmental action rules would ensure that the products EU citizens buy, use and consume on the EU market do not contribute to global deforestation and forest degradation. Through its proposal, the Commission hopes to achieve a reduction of at least 31.9 million metric tonnes of carbon emissions into the atmosphere each year, which could translate into savings of at least €3.2 billion per year.

While the Council had agreed on its general approach in June, the Parliament only had its position ready after the summer break. In September, the European Parliament adopted the report by rapporteur Christophe Hansen (RE/LUX) by a large majority, following earlier agreements by the political groups in the Environment Committee. The end of 2022 will see the compromise between the European institutions and the adoption of the final text.

Elements of the text

Country comparison - standard, low and high risk

Firstly, the Commission proposal establishes a three-tier system for the assessment of countries (country benchmarking system) or parts thereof/sub-national jurisdictions as "standard, low and high risk". (Article 27) This identification and assessment is based on the six assessment criteria of Article 27(2), but there are differences between the approaches of the co-legislators.

This categorisation is important because in the proposal, the obligations of operators and Member State authorities vary according to the level of risk posed by the country of production, with simplified due diligence obligations for low-risk countries and increased monitoring for high-risk countries. Clearly, heated debates and possible retaliation are expected at political level with third countries, where the EU intends to assign a change to the existing risk category for one of these countries.

Due diligence - scope

The mechanism of the Regulation is to establish obligations for operators and traders, in the form of mandatory due diligence rules (normal or simplified), who wish to "*place on the Union market, as well as export from the Union market, bovine animals, cocoa, coffee, palm oil, soybeans and timber ("relevant commodities")*". The European Parliament's list is much more ambitious, covering other products such as pigs, sheep and goats, poultry, as well as palm oil derivatives, soya, maize, rubber and products including charcoal and printed paper products. A detailed list of these products is set out in an annex, and a review is planned to assess whether the products concerned should be amended or extended to ensure that all products that contain, have been fed with, or are produced using the products concerned are included in this list, unless the demand for these products has a negligible effect on deforestation. The Council, on the other hand, distinguished between 'relevant commodities' - namely cattle, cocoa, coffee, palm oil, soya and timber - and 'relevant products', which are to be listed in an annex for products that contain, have been fed with, or have been produced using relevant commodities.

The initial proposal of the text does not use the terms "producer" or "smallholder", but rather distinguishes between an "operator" and a "trader". The difference is that an "operator" means any natural or legal person who, in the course of a commercial activity, places relevant goods and products on the Union market or exports them from the Union market; whereas a "trader" means any natural or legal person *in the supply chain* other than the operator who, in the course of a commercial activity, makes relevant goods and products available on the Union market.

Definitions

According to the wording of the text, '**deforestation**' means *the conversion of forests to agricultural use, whether or not it is human-induced*. In parallel, the Parliament added wording for the *conversion of forests or other wooded land to agricultural land or forest plantations, as well as a new definition of "conversion of ecosystems"*.

The definition is quite broad, but does not fully correspond to definitions used before, even though the text states that "*definitions are based as far as possible on internationally developed concepts*", e.g. by the FAO ("*conversion of forest to other land use, whether human-induced or not*")¹, as it limits conversion to "agricultural use" - thus not including urban use, logged areas or wasteland - which is not exactly defined further in the text. On the other hand, the definition of forests is that of the FAO.

In addition, the definition of "**no deforestation**", considered the main innovation of the proposed regulation by the Commission, means that

- a) *the raw materials and products concerned, including those used for or contained in the products concerned, have been produced on land that has not been subject to **deforestation after 31 December 2020**, and*
- b) *the wood was harvested from the forest without causing forest degradation **after 31 December 2020**;*

However, the Parliament and the Council have different positions on these deadlines.

As regards the Parliament's position, 'deforestation-free' means that the raw materials and products concerned, including those used or contained in the products concerned, have been produced on land that has not been subject to deforestation and have not induced or contributed to forest degradation or conversion after 31 December 2019, while the Council states that the term "deforestation-free" means that the products concerned contain, have been supplied with or have been produced using relevant raw materials that have been produced on land that has not been subject to deforestation after 31 December 2021.

Combining these main elements, the result is the prohibition in Article 3, which states that:

The relevant goods and products may only be placed on the Union market or exported from the Union market if all the following conditions are met:

- (a) they are free from deforestation;*
- (b) they have been produced in accordance with the relevant legislation of the country of production; and*
- (c) they are covered by a statement of due diligence as provided for in Article 4(2).*

¹ <https://www.fao.org/3/I8661EN/i8661en.pdf>

Comments, analysis and recommendations for the text

After the European Parliament asked the Commission in a resolution to propose binding measures against imported deforestation, this regulation is a further action with a wider scope. For the record, the European Parliament has noted that just under a quarter (by value) of all agricultural commodities in international trade from illegal deforestation are destined for the EU.² These previously identified agricultural products include palm oil, soy, rubber, beef, maize, cocoa and coffee.³

Last year, a new set of announcements on deforestation was made at the Glasgow COP, signed up to by 141 countries - including some of the countries with the highest deforestation rates in the world, such as Brazil, Indonesia and Nigeria - to "*commit to work collectively to halt and reverse forest loss and land degradation by 2030 while ensuring sustainable development and promoting inclusive rural transformation*".

- [Glasgow Leaders' Statement on Forests and Land Use](#)
- [The global commitment to forest finance](#)

This also means that if this commitment were to be realised, the period of application of the regulation would be from 2023 to 2030, which is only 7 years.

Recommendations:

1) DEADLINE

The proposed deadline for banning deforestation - 31.12.2020 or even later (Article 36) - is too recent. Ongoing deforestation and products from recently deforested areas are already occurring at an alarming rate as we speak. Furthermore, if all countries are assigned a standard level of risk at the outset, this will further slow down the effective use of the regulation. Farm Europe believes that an earlier date would be justified. The global deforestation history and the solid information available would make a date such as 2015 or even a few years earlier credible.

2) SCOPE OF APPLICATION

As regards the scope of the 'products and goods concerned' (*i.e. livestock, cocoa, coffee, palm oil, soybeans and timber*), this should be broadened to ensure that other processing residues on the said list, such as palm fatty acid distillate (PFAD), are also included, in order to limit the options for diverting the products and goods concerned onto the EU market.

² https://www.europarl.europa.eu/doceo/document/TA-8-2017-0098_EN.pdf

³ Feasibility study on options for strengthening EU action against deforestation, <https://ec.europa.eu/environment/forests/pdf/KH0418199ENN2.pdf>

In addition, the proposed Regulation stresses that "*ecosystems such as wetlands, savannahs and peatlands are of great importance for global efforts to combat climate change*", but does not include this in the Regulation, as Article 32 specifies that only the first review report of the Regulation focuses on the assessment of the *need and feasibility of extending the scope* of this Regulation to other ecosystems, including land with high carbon stocks and land with high biodiversity value such as grasslands, peatlands and wetlands.

It is easy to understand that deforestation is also taking place in these high carbon value areas. Not including these areas in the scope of the regulation while having indicated that they could be included in a next step would have major negative consequences in terms of encouraging economic actors to carry out deforestation operations in these areas. Therefore, relying on a report only two years after the entry into force of the regulation would have detrimental effects in the very short term, which must be limited by the co-legislators. Parliament's approach is a step in the right direction.

3) CONTROL AND MONITORING

Although some of the points in the risk assessment criteria are designed in a general way to ensure that the company has sufficient leverage against different types of fraud, the challenge at the heart of the legislation is to ensure that these operator-level controls and assessments are not just paper checks.

It is unlikely that the competent authorities in the Member States will be able to carry out on-the-spot checks, especially in high risk countries. Therefore, basing the whole system on due diligence could lead to an over-reliance on paper guarantees provided by operators or certification bodies, particularly in third countries where deforestation is taking place and controls are weak.

Therefore, in order to strengthen the text and its effectiveness, Farm Europe proposes to make independent monitoring of deforestation trends by remote sensing and accredited European operators *mandatory*, and to compare the information collected with the operators' declarations. In practice, this means that Member States have an obligation to verify compliance through these independent earth observation tools. Only in this way can the proposed due diligence system become an effective and watertight tool and ensure an effective way to block imports from deforested areas.

The texts already provide for the use of existing and verifiable technologies, such as satellite imagery and positioning, which is welcome, as well as the geographical information approach linking products to the parcel to ensure traceability from departure to arrival, which allows for their maximum use.

Tools such as geolocation and data from Earth observation satellites, whether from the Copernicus programme or from other public or private sources, are crucial levers for effectively combating the scourge of deforestation, particularly in tropical forests, which are carbon reservoirs that must be preserved as a matter of urgency. The European Commission should put in place tools accessible to economic operators

based on satellite imagery that allow them to analyse the impact of their supply chain, which is an inclusive and concrete way to fight deforestation in a tangible way.

This fits perfectly with and reinforces the spirit of the text, which emphasises that deforestation is linked to land use change, and that monitoring deforestation therefore requires a clear link between the commodity or product placed on or exported from the EU market and the parcel of land on which it was grown or raised.

In addition, this could be reinforced by the EU Observatory on Deforestation, Forest Degradation, Global Forest Cover Change and Related Factors, which would be transformed into an information platform for all economic operators to provide a robust set of information and evidence on the deforestation situation in specific regions.