

Deforestation and forest degradation – reducing the impact of products placed on the EU market

Response to the public consultation

Conservation International (CI) welcomes the leadership of the European Commission to tackle EU-driven global deforestation and appreciates the opportunity to contribute to the public consultation on “*Deforestation and forest degradation – reducing the impact of products placed on the EU market*”. The commitment to present in 2021 a legislative proposal and other measures to avoid or minimise the placing of products associated with deforestation or forest degradation on the EU market, and the launch of the related impact assessment, have been great steps towards the implementation of the 2019 communication on “*Stepping up EU action to protect and restore the World’s forests*”. As more than one million people supported the Together4Forests campaign¹ and responded to the public consultation to call for an ambitious EU legislation, we encourage the Commission to stay the course.

Forests and other ecosystems harbour most of global terrestrial biodiversity and remove vast amounts of greenhouse gas emissions, while helping adapt to the adverse impacts of climate change. If managed well, forests also shield us from the risk of zoonotic disease outbreaks² – the current covid-19 pandemic being a stark demonstration of how human health directly relies on the health of nature. Forest and ecosystem destruction should therefore be tackled as a priority to achieve our global environmental commitments, such as the Paris Agreement and the Aichi Biodiversity targets. Furthermore, forests significantly contribute to sustainable development: 1.6 billion people depend on forests for their livelihoods and 60 million of indigenous peoples almost entirely depend on forests for livelihoods³. While indigenous peoples and local communities play a key role in forest protection and sustainable management, their rights are under increased threat due to expanding global commodity production.

Despite the essential contribution of the world’s forests, they are highly threatened, with an estimated 1.3 million square kilometers lost between 1990 and 2016.⁴ Representing 10% of global deforestation through its consumption, the EU has a lever to drive global transformation. We therefore invite the Commission to seize this opportunity to adopt urgently robust regulatory and non-regulatory measures, and to deliver on the five priorities outlined in the 2019 communication.

¹ <https://together4forests.eu/>

² <https://science.sciencemag.org/content/369/6502/379>

³ <http://www.indiaenvironmentportal.org.in/content/393553/the-state-of-the-worlds-forest-genetic-resources/>

⁴ https://eur-lex.europa.eu/resource.html?uri=cellar:a1d5a7da-ad30-11e9-9d01-01aa75ed71a1.0001.02/DOC_1&format=PDF

KEY RECOMMENDATIONS

- **Prioritise an EU due diligence regulation on forest and ecosystem risk commodities placed on the EU market**
 - Going beyond illegal deforestation
 - Ensuring a broad scope in terms of operators, ecosystems, and commodities
 - Including human rights
- **Reinforce multilateral and bilateral cooperation with partner countries to address the drivers of deforestation**
 - Increasing targeted support to producing countries
 - Improving Free Trade Agreements provisions and mechanisms
 - Systematically integrating forests in EU diplomacy

I. A new legislation as the cornerstone of EU action

The EU failed to achieve its objective to reduce gross tropical deforestation by 50% by 2020⁵. While voluntary zero-deforestation commitments made by companies have been foundational first steps, they have not driven significant transformation. Moreover, 40% of the most influential companies in forest-risk supply chains still do not have any deforestation commitments.⁶ This is a clear indication that several of the demand-side policy options currently under assessment⁷ – such as labelling, voluntary due diligence and consumer information campaigns – are not sufficient to trigger change at the scale and pace needed. A demand-side regulation is therefore more needed than ever, as acknowledged by a wide range of stakeholders, including companies from various sectors.⁸

1. Including illegal and legal conversion

Compliance with relevant local laws should always be ensured as a first step, but as such it is not sufficient to transition to deforestation-free supply chains. While several countries have put in place appropriate laws to address forest conversion, and this effort should be recognized and supported, some legislations are still fragmented – or inexistent. Other concerns include the fact that some countries, despite ambitious commitments and regulations, still suffer from weak law enforcement, and that laws can always be downgraded or repealed, depending on shifting political contexts.⁹

Furthermore, relying on local laws can be a considerable burden for companies, as they would be required to assess various complex legal frameworks across different countries and regions. Several companies already made commitments that go beyond legality and have been mobilising substantial resources to deliver on them. Initiatives like the Accountability Framework¹⁰ provide some support to companies to formulate and deliver on commitments on the basis of definitions and criteria endorsed by a wide range of stakeholders. The EU legislation must level the playing field and make sure companies deliver on their commitments.

For these reasons, we encourage the Commission to consider the inclusion of additional sustainability criteria, making full use of the processes and initiatives already supported by a wide range of stakeholders. Such a process should also be envisaged as an opportunity to increase the

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008DC0645&from=EN>

⁶ https://forest500.org/sites/default/files/forest500_annualreport2019_final_0.pdf

⁷ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=43940>

⁸ e.g. https://www.tropicalforestalliance.org/assets/Uploads/TFA-EU-position-paper_9-Dec.pdf ; <https://palmoilalliance.eu/wp-content/uploads/2020/05/EPOA-position-Sustainable-deforestation-free-palm-oil-the-norm-FINAL.pdf>

⁹ <https://blog.globalforestwatch.org/data-and-research/global-tree-cover-loss-data-2019/>

¹⁰ <https://accountability-framework.org/>

cooperation and dialogue with producing countries to work towards a common vision and deliver jointly on global environmental and development goals.

2. Mandatory due diligence as the most effective tool

The feasibility study on options to step up EU action against deforestation¹¹ and the European Parliament Research Service's European Added-Value assessment on an EU legal framework to halt and reverse EU-driven global deforestation¹² both concluded that mandatory due diligence would be to most effective instrument to halt EU-driven global deforestation. Recently, the European Parliament also adopted a resolution on an EU legal framework to halt and reverse EU-driven global deforestation¹³, which recommends to the Commission to introduce mandatory due diligence. This framework would oblige companies that want to place specific commodities and their derived products on the EU market to demonstrate via due diligence that the risk for forests, ecosystems and human rights is negligible. It also recommends effective, dissuasive, and proportionate penalties for operators placing commodities on the EU market without mitigating the related risks. CI supports this approach, as an appropriate way to effectively tackle deforestation in agricultural supply chains, while ensuring the burden is fairly distributed between supply chain actors.

The future EU legislation should include mechanisms to prevent companies from simply ceasing their relationships with "risky" suppliers or disengaging from high-risk regions, to prioritise the improvement of practices and maintain as much as possible the producers' livelihoods. The mitigation measures that companies should take in the face of non-negligible risks in their supply chains should be adequate and proportional, with the objective to effectively reduce the risks to a negligible level and to maintain the commercial relations with suppliers, except when adverse impacts cannot be prevented or mitigated.

Finally, we also support the duty of transparency laid out in the resolution, with an obligation for companies to report on their due diligence exercise publicly.

3. A broad and future-proof scope to deliver

3.1. A relevant and adaptable scope of commodities

The 2018 feasibility study highlighted that the EU forest footprint is particularly associated with the following agricultural commodities: maize, soy, coffee, cocoa, palm oil, rubber, beef, and leather, so these should be considered in priority for inclusion in the future legislation. We recommend integrating mechanisms in the legislation to make sure its scope can be adapted easily to new developments, such as changing production and consumption patterns. Future risks (e.g. shifts in production due to climate change impacts) should be considered to establish the list of commodities falling into the scope, to make sure it effectively prevents further deforestation. For example, while a commodity like coffee currently might present a lesser threat to forests and/or remains undetected compared with other commodities, projected increase in global demand as well as the increasing impact of climate change is likely to drive expansion of production into forested areas¹⁴.

3.2. Extending the protection beyond forests

Limiting the scope of the legislation to forests only could create significant perverse incentives: beyond depriving from protection natural ecosystems as critical as forests in terms of carbon storage and sequestration, biodiversity and ecosystem services, it could contribute to a shift in conversion pressures from forests to other ecosystems like savannas, peatlands and mangroves.¹⁵ Extending the obligations to other natural ecosystems also makes sense ecologically, as they are oftentimes interconnected with forests.¹⁶

¹¹ https://ec.europa.eu/environment/forests/pdf/feasibility_study_deforestation_kh0418199enn_main_report.pdf

¹² [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654174/EPRS_STU\(2020\)654174_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654174/EPRS_STU(2020)654174_EN.pdf)

¹³ https://www.europarl.europa.eu/doceo/document/TA-9-2020-0285_EN.pdf

¹⁴ <https://www.conservation.org/docs/default-source/publication-pdfs/ci-coffee-report.pdf>

¹⁵ <https://link.springer.com/article/10.1007/s11442-018-1539-0>

¹⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3357682/>

3.3. Including human rights as an enabler to halt deforestation

Human rights, in particular indigenous peoples' and local communities' rights, are not a central element of the impact assessment and the public consultation. Along with its environmental impacts, deforestation also has dramatic impacts on the rights and livelihoods of indigenous peoples and local communities, which can become a vicious circle where weak land tenure and community rights can further lead to deforestation.¹⁷

It has been widely documented that strengthening indigenous peoples' and local communities' rights, in particular land tenure rights, has a positive impact on the status of biodiversity.¹⁸ However, they still face severe and unique challenges, such as discriminations and land grabbing. In recent years, there have been increased waves of violence against indigenous rights defenders, with many violent outbreaks taking place on the frontiers of global commodity production.¹⁹ As deforestation and human rights violations are interconnected, we believe these cannot be tackled separately. We therefore strongly recommend including human rights in the core requirements of the legislation.

3.4. Reaching further down the supply chains

We recommend a broad coverage of the EU legislation, beyond first importers, to impose similar obligations on companies throughout the supply chain including downstream. Producers bear most of the costs of compliance to sustainability requirements, which can be insurmountable for smallholders. Considering that smallholders produce an important share of forest risk commodities (e.g. 40% of total global palm oil production²⁰, 80% of global coffee production²¹, 90% of global cocoa production²² and 80% of global rubber production²³) – the future EU legislation must ensure downstream companies are held liable for their supply chains and that the right mechanisms are in place so that the burden is fairly spread throughout the supply chains.

We also recommend covering the finance sector, that invests in or lends to companies involved in deforestation. Investments driving deforestation worldwide are about 40 times more important than investments to protect them.²⁴ Very few private investors, including those operating in the EU, have zero deforestation policies, and even less report and account on how they put commitments into practice.²⁵ Private investors should face the same level of obligations as companies involved in deforestation and related risks, and fully embed them in their decisions. Leaving them "off the hook" would be a significant gap, hampering EU action to tackle its global forest footprint.

4. Ensuring complementarity and consistency

It is of utmost importance to consider the future EU legislation in the broad landscape of EU policies. Synergies with and coherence between existing legislations, such as the Non-Financial Reporting directive²⁶ and the EU Taxonomy to facilitate sustainable investment²⁷ should be ensured, to facilitate and harmonize future implementation.

Specifically, we recommend ensuring the complementarity between the future legislation to tackle EU-driven global deforestation and the future initiative on sustainable corporate governance, so that they are mutually reinforcing. The horizontal mandatory due diligence that would be introduced by the sustainable corporate initiative aims to establish a minimum obligation to identify, prevent and mitigate human rights, social and environmental risks, in line with relevant international standards.

¹⁷https://www.researchgate.net/publication/283938644_Indigenous_Peoples_National_Parks_and_Protected_Areas_A_New_Paradigm_Linking_Conservation_Culture_and_Rights

¹⁸ <https://ipbes.net/news/Media-Release-Global-Assessment>

¹⁹ <https://www.globalwitness.org/en/campaigns/environmental-activists/defending-tomorrow/>

²⁰ <https://rspo.org/smallholders>

²¹ <https://www.agrilinks.org/post/building-more-sustainable-and-resilient-coffee-supply-chain>

²² <https://www.icco.org/faq/57-cocoa-production/123-how-many-smallholders-are-there-worldwide-producing-cocoa-what-proportion-of-cocoa-worldwide-is-produced-by-smallholders.html>

²³ <https://www.cirad.fr/en/news/all-news-items/articles/2019/science/rubber-hevea-genomic-selection>

²⁴ <https://www.ecosystemmarketplace.com/articles/why-are-forests-dying-perhaps-because-we-spend-40-times-as-much-to-destroy-them-as-to-save-them/>

²⁵ https://forest500.org/sites/default/files/forest500_annualreport2019_final_0.pdf

²⁶ https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en

²⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020R0852>

These requirements would not substitute the rules that apply to specific sectors / products, including when the due diligence approach is a commonality. The EU already introduced due diligence regulations for specific sectors, such as the EU Timber regulation²⁸ and the EU Conflict Minerals regulation²⁹, which will apply in complementarity with the future horizontal due diligence obligations.

Considering the current pace and scale of deforestation that is driven by EU consumption, a specific due diligence regulation for forest and ecosystem risk commodities is needed, so that companies are held legally responsible for the relevant products they place on the EU market. Such a legislation has the potential to directly tackle the EU forest footprint, in a reasonable timeframe.

II. Stepping up EU global action for forests

As much as a demand-side legislation is urgently needed and should be prioritised, EU action must include a range of demand-side and supply-side actions, whether through the introduction of new regulatory and non-regulatory measures or fully harnessing existing ones. The five priorities outlined in the 2019 communication should be advanced altogether, as they are essential to ensure the success of action to tackle EU-driven global deforestation. We call on the Commission to reinforce the coordination between its relevant services to make the most of the available instruments and capacities, to swiftly implement these priorities and related key actions, and effectively contribute to halting global deforestation.

Strengthening the cooperation with third countries is particularly essential, and as a global organization, CI recommends specifically to step up the implementation of priorities 2 (partnership with producing countries) and 3 (international cooperation).

1. Addressing the drivers of deforestation in partnership with developing countries

Partnering with producing countries is fundamental to ensure the implementation of EU deforestation-free supply chains – it is critically important to make sure deforestation is tackled in a holistic manner with buy-in from partner governments and civil society in partner countries. With the programming process of the Neighbourhood, Development and International Cooperation Instrument (NDICI) starting and the Commission working towards a new comprehensive strategy with Africa, it is a timely and crucial moment to develop targeted partnerships with developing countries to address the drivers of deforestation.

CI supports the approach proposed by the Directorate-General for International Cooperation and Development (DG DEVCO), to develop Forest Partnerships with willing producing countries, through development and cooperation aid.³⁰ Forest Partnerships should be win-win agreements between partner countries and the EU, seeking to implement inclusive solutions to reconcile different land uses, to reduce deforestation, forest degradation and the conversion of natural ecosystems, with a specific focus on supporting smallholders and strengthening indigenous peoples' and local communities' rights. This integrated approach should address the root causes of deforestation, including poverty, unsustainable agricultural practices, weak forest governance and land tenure issues, and provide tailored incentives for deforestation-free agricultural production, e.g. payments for ecosystem services and carbon pricing mechanisms. Each Forest Partnership should be designed to meet the specificities and needs of the partner countries. It should support partner countries in implementing their national policies and international commitments, especially under the UN conventions on climate change (UNFCCC) and biological diversity (CBD), as well as the Sustainable Development Goals.

²⁸ https://ec.europa.eu/environment/forests/timber_regulation.htm

²⁹ https://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/index_en.htm

³⁰ https://ec.europa.eu/newsroom/devco/item-detail.cfm?item_id=682194&utm_source=devco_newsroom&utm_medium=Website&utm_campaign=devco&utm_content=Towards%20EU%20forest%20partnerships%20pillars%20under%20the%20Green%20Deal%20Alliances&lang=en

2. Embedding deforestation risks in Free Trade Agreements

Free Trade Agreements (FTAs) should be used as one of the available tools to engage with partner countries to address the drivers of deforestation. Negotiators should at a minimum ensure that FTAs do not negatively impact forests and other ecosystems, as well as indigenous peoples' and local communities' rights and livelihoods. A fundamental change in the EU trade policy – including a reform of the Trade and Sustainable Development chapters – is needed to ensure: 1. effective monitoring of the environmental and human rights impacts of the FTAs, before and after they come into force; and 2. proper enforcement of commitments to key international environmental and social standards.

3. Building a “forest diplomacy”

Focusing on ‘cleaning-up’ European supply chains will not be sufficient to halt global deforestation – as multi-national companies may direct compliant products towards the EU market whilst continuing to export products associated with deforestation to other regions. The EU should ensure forests are prioritised in bilateral and multilateral dialogues with other major consuming regions and countries, to encourage the improvement of global supply chains, and work jointly on supporting producing countries to address the drivers of deforestation.

2021 will be an intensive year for multilateral engagement, with among others the UNFCCC COP 26 and the CBD COP 15. These important meetings should be used as opportunities to maintain forest high on the global agenda, and make sure their huge contribution to global climate, biodiversity and sustainable development goals is recognized and operationalized.

Finally, we recommend using all available instruments to enter in formal dialogues with key countries and build a “forest diplomacy”. Vehicles such as the “Green Alliances”, introduced in the Green Deal communication³¹, should be explored to fully embed forests in bilateral diplomatic relations.

³¹ https://ec.europa.eu/info/sites/info/files/european-green-deal-communication_en.pdf



Contact:

Fanny Gauttier

fgauttier@conservation.org