BRIEFING

EU Legislation in Progress

European Parliament

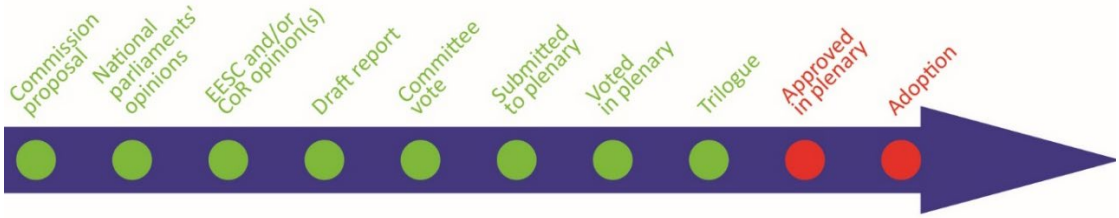
Towards deforestation-free commodities and products in the EU

OVERVIEW

On 17 November 2021, the European Commission tabled a legislative proposal aimed at curbing deforestation and forest degradation driven by the expansion of agricultural land used to produce specific commodities, namely cattle, cocoa, coffee, palm oil, soya and wood. Following up on a 2020 European Parliament resolution, which called for regulatory action to tackle EU-driven global deforestation, the proposal would impose due diligence obligations on operators placing these commodities and some derived products on the EU market, or exporting them from the EU. Member States would be responsible for enforcement, and for setting penalties in case of non-compliance. To facilitate due diligence and control, a benchmarking system would identify countries as presenting a low, standard or high risk of producing non-compliant commodities or products. Obligations for operators and national authorities would vary according to the level of risk assigned to the country of production.

The Council adopted its general approach on 28 June 2022 and the Parliament adopted its position on 13 September 2022. The co-legislators reached a provisional agreement on 6 December 2022, which substantially amends the original Commission proposal, notably in terms of scope. The agreed text was endorsed by Coreper on 21 December 2022, and by Parliament's Committee on the Environment, Public Health and Food Safety on 16 January 2023. It now awaits formal adoption by the Council and the Parliament. The vote in plenary is scheduled during the April 2023 session.

Proposal for a regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010		
Committee responsible:	Environment, Public Health and Food Safety (ENVI)	COM(2021) 706 17.11.2021
Rapporteur:	Christophe Hansen (EPP, Luxembourg)	2021/0366(COD)
Shadow rapporteurs:	Delara Burkhardt (S&D, Germany) Nicolae Ștefănuță (Renew, Romania) Marie Toussaint (Greens/EFA, France) Anna Zalewska (ECR, Poland) Kateřina Konečná (The Left, Czechia)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
Next steps expected:	Final first-reading vote	



EPRS | European Parliamentary Research Service
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Members' Research Service
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Introduction

Forests cover 31 % of the globe's land surface, and host most of Earth's terrestrial biodiversity, including 80 % of amphibian, 75 % of bird, and 68 % of mammal species. As carbon sinks, they play an essential role in climate change mitigation. In its latest forest review, the United Nations (UN) Food and Agriculture Organization (FAO) estimated the total carbon stock in forests at 662 billion tonnes in 2020. According to FAO data, the world lost around 178 million hectares of forest cover over the past three decades, an area triple the size of France. The deforestation problem is particularly acute in tropical and sub-tropical regions, notably in the three major forest basins of the Amazon (South America), Congo (central Africa) and south-east Asia. Deforestation is primarily caused by agricultural expansion for the production of several key commodities, with soya, beef and palm oil responsible for about 80 % of tropical deforestation worldwide. EU consumption plays a significant part in global deforestation linked to international trade.[1]

The EU has committed to protecting the world's forests under several international agreements and initiatives. These include the UN sustainable development goal 15, the New York Declaration on Forests, the UN Convention on Biological Diversity and the Paris Agreement on climate change, and most recently, the Glasgow leaders' declaration on forests and land use.

The European Commission's legislative proposal of 17 November 2021 aims to curb deforestation and forest degradation driven by EU consumption and production of specific agricultural commodities and derived products, thereby reducing the EU contribution to greenhouse gas emissions and global biodiversity loss. The proposal was announced in the Commission's 2019 communication on 'Stepping up EU action to protect and restore the world's forests', and then in the European Green Deal, the EU biodiversity strategy for 2030 and the farm to fork strategy.

Existing situation

Several EU policy instruments address, directly and indirectly, deforestation and forest degradation. EU regulatory measures, however, are limited to illegal logging (EU Timber Regulation – EUTR, which is part of the forest law enforcement, governance and trade (FLEGT) action plan, along with the FLEGT Regulation); and biofuels and bioenergy sources (Renewable Energy Directive – RED). The EUTR prohibits the placing of illegally harvested timber and timber products on the EU market, and lays down obligations for operators placing timber on the market for the first time, including exercising due diligence[2] (the FLEGT Regulation focuses on preventing illegally harvested timber from being exported to the EU from producer countries). The EUTR applies to both imported and domestically produced timber and timber products. The RED, currently being reviewed as part of the fit for 55 package, sets sustainability criteria for bioenergy – covering both biofuels for transport, and biomass and biogas for heat and power – that need to be met in order to qualify for financial and regulatory support.

Parliament's starting position

In line with previous resolutions on the European Green Deal, COP15 to the Convention on Biological Diversity, and the EU's role in protecting the world's forests, on 22 October 2020 the European Parliament adopted a legislative-initiative resolution in which it called on the Commission to propose an EU legal framework to halt and reverse EU-driven global deforestation. In the annex to the resolution, the Parliament provided detailed recommendations on the content of the proposal for a regulation that it would like to see tabled.

In particular, the Parliament took the view that the proposed regulation should be based on mandatory requirements for due diligence, reporting, disclosure and third-party involvement for companies placing forest and ecosystem-risk commodities (FERCs) and derived products on the EU market. Penalties should be imposed in the case of non-compliance with the obligations set out, and access to justice and remedy be ensured for victims of the breaches of these obligations.

According to the Parliament, the proposal should guarantee not only the legality but also the sustainability of the harvesting, production, extraction and processing of the commodities in the country of origin. Moreover, it should include the protection of human rights, particularly as regards land tenure, land and labour rights, with a special view to the rights of indigenous peoples and local communities. The proposed regulation should cover high-carbon stock and biodiversity-rich ecosystems other than forests (such as wetlands, peatlands or savannahs), to avoid the problems of conversion and degradation being shifted to these landscapes.

In concrete terms, companies should be allowed to lawfully place FERCs and related products on the EU market only when they are able to demonstrate that, at the very most, there is a negligible risk that these goods:

- originate from land obtained through the conversion of natural forests or other natural ecosystems;
- originate from natural forests and natural ecosystems undergoing degradation; and
- are produced in, or linked to, violation of human rights.[3]

Companies should thus perform due diligence to determine whether their commodities and products comply with these sustainability and human rights criteria. In the Parliament's view, the proposed regulation should cover all commodities most frequently associated with deforestation, degradation of natural forests, and conversion and degradation of natural ecosystems due to human activity, including (at least) palm oil, soya, meat, leather, cocoa, coffee, rubber and maize. The proposal should also cover all intermediate or final products derived from these commodities, and products containing them. Commodities covered by the EUTR should be included in the scope of the proposed regulation within 3 years of its entry into force. To ensure timely reaction to emerging risks of adverse impacts, the Commission should be able to revise and amend the list of commodities through delegated acts.

For the Parliament, the proposed regulation should also apply to all financial institutions authorised to operate in the EU that provide finance, investment, insurance or other services to operators that harvest, extract, produce, process, trade or sell FERCs and their derived products.

Finally, according to the Parliament, the regulation needs to be designed in a way to be compliant with World Trade Organization (WTO) rules, and be accompanied by trade-based partnership agreements with major producer countries of agricultural commodities, in order to tackle supply-side drivers of deforestation.

Council starting position

In its conclusions on the 2019 Commission communication, the Council recognised the significant role of EU agricultural commodities imports, and the importance of enhanced action with a view to ensuring sustainable and deforestation-free value chains. It invited the Commission to assess the feasibility of options such as, but not limited to, application of due diligence; a zero-deforestation standard; deforestation-free public procurement procedures; various types of labelling; voluntary industry commitments; bilateral agreements with producing countries; and awareness-raising among consumers in terms of sustainable and deforestation-free commodities production and consumption. In its November 2021 conclusions on the new EU forest strategy, the Council regretted that the strategy lacks an international dimension aimed at curbing global deforestation.

Preparation of the proposal

The Commission impact assessment (IA) considered five policy options: 1) an improved mandatory due diligence system; 2) a benchmarking system and a list of contravening operators combined with a tiered, improved mandatory due diligence system; 3) mandatory public certification combined with an improved due diligence requirement; 4) mandatory labelling combined with an improved due diligence requirement; 5) a deforestation-free requirement for placing on the EU market

supported by benchmarking and country card systems. Option 2 was the preferred one. All policy options considered built on common elements, namely a deforestation-free definition with which products need to comply; an additional requirement for products to be legal according to the laws of the country of production; and a progressive product scope, regularly reviewed and updated, focusing on commodities with the highest EU-embodied deforestation (i.e. deforestation associated with EU consumption), and related derived products.

In April 2022, EPRS issued an initial appraisal of this IA. The appraisal is positive about the problem definition, the number of options considered, the data used, and the reports from stakeholder consultations. It identifies, however, a number of shortcomings. In particular, it considers that the extent to which producers within the EU and exports from the EU are covered by the options considered, and the impacts for operators sourcing relevant commodities domestically, are unclear. It is also not clear whether the operators' liability is covered by the options considered. Moreover, the appraisal notes that the IA only briefly addresses the potential challenges SMEs will face, although acknowledging that they might be disproportionately affected. It does not assess the impact on consumer prices or competitiveness.

In parallel to the IA, both the EUTR and the FLEGT Regulation were subject to a fitness check, which showed that the two regulations' general objectives have not yet been fully met. In particular, it found that the due diligence scheme set up under the EUTR would need to be improved. The main instrument for making the FLEGT operational – the voluntary partnership agreements (VPAs) – has not delivered.

The Commission's work built on three reports: an impact assessment on demand-side measures to address deforestation; a support study for a fitness check of the EUTR and the FLEGT Regulation; and a study on certification and verification schemes in the forest sector and for wood-based products.

Several consultation tools were used, including the feedback received on the inception impact assessment, online public consultation and targeted stakeholder consultations. The public consultation received nearly 1.2 million responses, showing strong public support for EU action on deforestation. Most of the responses were submitted through a campaign by a group of non-governmental organisations (NGOs). In the 1 150 replies that were not part of the campaign, support was stronger for legally binding options (especially for a deforestation-free requirement or standard) than for voluntary measures, which were considered less effective. The majority of qualified stakeholders (business associations and NGOs) supported a mandatory due diligence regime, with the preferred details of the system varying from one respondent to another.

The changes the proposal would bring

The proposal for a regulation would integrate and improve the framework set up by the EUTR, which would be repealed. The proposal moves beyond the current legality-based system to target all deforestation and forest degradation driven by agricultural expansion to produce specific commodities, irrespective of whether they originate in third countries or in the EU.

The Commission expects that the proposed regulation would help save at least 71 920 hectares of forest from EU-driven deforestation and forest degradation annually, starting in 2030. This would allow 32 million tonnes of carbon dioxide (CO_2) to be saved annually, leading to economic savings of at least €3.2 billion a year.[4]

The focus of the proposed regulation is on forests (see text box), meaning that other natural ecosystems, which the Parliament asked to take into consideration, are currently not covered. However, a first review of the new regulation, to be conducted within 2 years after its entry into force, would assess the need for, and feasibility of, expanding the scope beyond forests.

Definitions proposed in the draft regulation

Forest: 'land spanning more than 0.5 hectares with trees higher than 5 metres and a canopy cover of more than 10 %, or trees able to reach those thresholds *in situ*, excluding agricultural plantations and land that is predominantly under agricultural or urban land use'. The proposed definition slightly differs from the FAO approach, recognising some tree plantations (i.e. rubber-wood, cork oak and Christmas trees) as forests.

Deforestation: 'the conversion of forest to agricultural use, whether human-induced or not'.

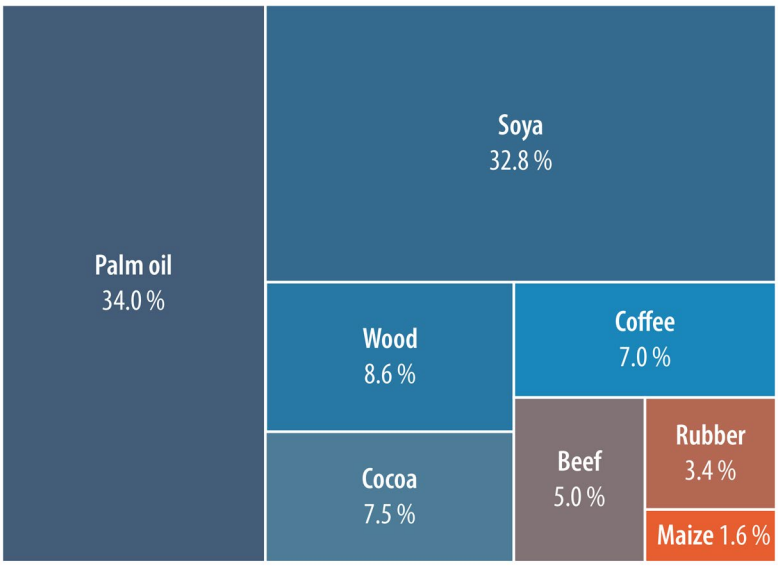
Forest degradation: 'harvesting operations that are not sustainable and cause a reduction or loss of the biological or economic productivity and complexity of forest ecosystems, resulting in the long-term reduction of the overall supply of benefits from forest, which includes wood, biodiversity and other products or services'. As there is no internationally agreed definition of forest degradation, the one proposed by the Commission is based on descriptions sourced in FAO reports, including the State of the World's Forests 2020.

Commodities and products covered

The proposed regulation would apply to six commodities: cattle, cocoa, coffee, palm oil, soya and wood (already covered by the EUTR, thus directly included in the scope); these are referred to as 'relevant commodities'. The proposal would also apply to some products that contain, or have been fed or made with, the relevant commodities ('relevant products'). The latter, which have been identified as the commodities' main trading forms, include for instance leather, chocolate and furniture. They are listed in Annex I.

Contrary to what the Parliament had requested, the initial list of commodities does not include maize and rubber. According to the Commission IA, an efficiency analysis, comparing the hectares of deforestation linked to EU consumption with the average value of EU imports for eight commodities, preselected based on literature review, showed that maize and rubber account for the smallest fraction of EU-embodied deforestation (see Figure 1), while their trade volumes are very large.[5] The Commission thus concluded that bringing these two commodities within the scope of the proposal would have resulted in significant burdens, with limited returns in terms of curbing EU-driven deforestation.

Figure 1 – Individual share of EU-embodied deforestation due to selected commodities between 2008 and 2017



Source: EPRS, based on Commission IA, p. 32. Graphic by Samy Chahri.

The review of the regulation (scheduled, as mentioned above, within 2 years after its entry into force) would assess the need to cover further commodities. The list of products in Annex I would undergo review within the same timeframe, and at regular intervals thereafter. Product list updates would be done by delegated acts. This would allow the rules to be adapted to changes in consumption in the EU and global deforestation patterns, and to new knowledge and technological developments.

Prohibition

In order to be allowed on, or exported from, the EU market, commodities and products within the scope of the proposal should be 1) deforestation-free and 2) legal, i.e. produced in accordance with the relevant legislation of the country of production.[6] 'Deforestation-free' means produced on land that has not been subject to deforestation after 31 December 2020; and for wood, having been harvested without inducing forest degradation after 31 December 2020. The proposed cut-off date of 2020[7] is later than that recommended by the Parliament, which wanted to set the date no later than 2015.

Failure to meet either of the two requirements (i.e. deforestation-free and legal) would result in a prohibition on placing the goods on the EU market (or exporting them from the EU). Operators,[8] irrespective of their legal form and size, would need to perform due diligence for all relevant commodities and products, to make sure that 'no or negligible' risk of non-compliance (in other words, no cause for concern) exists prior to their placing on the market or export. Operators would have to submit a due diligence statement (detailed in Annex II), in which they confirm that due diligence was carried out and no or only negligible risk was found – thereby assuming responsibility for compliance. This statement, available to Member States' customs and competent authorities through an information system ('register') set up and maintained by the Commission, would be mandatory for placing relevant commodities and products on the EU market or exporting them.

Due diligence procedure

The due diligence procedure would consist of three steps: 1) information collection; 2) risk assessment; and 3) risk mitigation. Information collected at step 1 would include the geolocation coordinates of all plots of land where production took place, as well as the date or time range of production. This geographical information requirement, which would allow for the use of satellite images and positioning for checking compliance, is one of the main novelties compared with the EUTR. If operators cannot complete the due diligence procedure, or if the due diligence exercise has revealed a non-negligible risk of non-compliance, operators must neither place the relevant commodities and products on the market nor export them.

Operators would have to review, and report publicly on, their due diligence system on an annual basis. All documentation related to due diligence should be kept for at least 5 years. In its impact assessment, the Commission estimated that overall costs of due diligence for companies could total between €158 million and €2.4 billion a year. Depending on the complexity and risk associated with deforestation of the operator's supply chains, setting up the due diligence system would involve one-off payments of between €5 000 and €90 000.

Country benchmarking

To facilitate due diligence and compliance control, the Commission would develop a country benchmarking system. Each country (or parts thereof) would be assigned one of three levels of risk: low, standard and high (standard being the position by default at the regulation's entry into force). Criteria to identify a country as low or high risk would include, inter alia, the rate of deforestation/forest degradation, and the country's initiatives to tackle it, including bilateral agreements with the EU. The Commission would engage with the producer countries concerned by the regulation with a view to developing partnerships and cooperation to address deforestation and forest degradation jointly. The country concerned would be informed, and invited to provide relevant information before the risk category is changed. The country's risk categorisation would be made publicly available through implementing acts, and the list updated as necessary in light of new evidence.

Obligations for operators and authorities would vary according to the country of production's level of risk, with simplified due diligence duties for goods sourced from low-risk countries (i.e. a dispensation for operators to carry out steps 2 and 3 of the due diligence procedure), and enhanced

scrutiny for high-risk areas. As a rule, the annual checks carried out by the national competent authorities would have to cover at least 5 % of the operators placing, making available on, or exporting from, the EU market each of the relevant commodities on their market, as well as 5 % of the quantity of each of these commodities. In contrast, for high-risk countries, at least 15 % of relevant operators and 15 % of relevant commodities would have to be checked.

Enforcement and penalties

Member States' authorities would be responsible for enforcing the proposed regulation. Penalties for non-compliance, which should be effective, proportionate and dissuasive, would be laid down at Member State level. They may include fines (up to at least 4 % of the operator's or trader's annual turnover in the EU Member State(s) concerned); confiscation of the relevant commodities and products concerned; confiscation of relevant revenues gained; and temporary exclusion from public procurement processes. The proposed regulation would provide for a complaint mechanism. Third parties would be entitled to submit substantiated concerns of non-compliance to the competent authorities; to be informed of their decision to act or not; and to challenge the decision in court.

Advisory committees

The European Economic and Social Committee (EESC) adopted an opinion on the proposal on 23 February 2022 (rapporteur: Arnold Puech d'Alissac, Employers – Group I, France; co-rapporteur: Florian Marin, Workers – Group II, Romania). The EESC supports broadening the scope of the proposed regulation to cover further ecosystems (such as savannahs, wetlands, peatlands, mangroves and riparian buffers); commodities (specifically maize, sugar and rubber); and derived products (those from animals fed with forest risk commodities, to avoid leakage and unfair competition). For the Committee, the regulation should also incorporate human rights issues, fair treatment of workers and workers' rights issues, as requiring legality only in the producing country is not enough. The EESC warns against transferring the costs of the proposed regulation to small-scale farmers who are barely earning a living income. It therefore asks for an ex-ante assessment of the impact on farmers, including smallholders and local communities, and to integrate the assessment's conclusions in the regulation before its entry into force. The EESC cautions against loopholes that could arise from exemptions for SMEs and simplified due diligence under the country benchmarking system. At the same time, it stresses the need to avoid unnecessary administrative burdens and costs. Pointing out that, for some commodities, Europe is far from being the largest importer, and thus has less leverage to influence the organisation and logistics of supply chains in producer countries, the Committee considers that political cooperation and alignment on demand-side initiatives with other major importing countries should be a top priority.

The European Committee of the Regions decided not to draw up an opinion on the file.

National parliaments

The deadline for national parliaments to submit reasoned opinions on the grounds of subsidiarity was 14 March 2022. The Swedish Parliament issued a reasoned opinion on 2 March 2022, noting that the focus of the proposal as it stands involves detailed regulation of national forestry, which is not compatible with the principle of subsidiarity.

Stakeholder views[9]

On the NGO side, Fern welcomes the strengthening of the enforcement mechanisms compared with the EUTR; the fact that there is 'no green lane' for certification; and that the VPAs would be maintained. It criticises the vague definition of forest degradation; the lack of requirements for the finance and investment sectors; the non-inclusion of rubber and canned meat within the scope of the proposal; and the late cut-off date. Fern is concerned that the proposal is based on compliance with national law rather than respect for international standards on customary tenure rights, and that it does not provide any mechanism for communities whose rights have been violated by

infringements to obtain compensation. Another NGO concern, highlighted for instance by Friends of the Earth, is the focus on forests alone, which would shift the burden of Europe's consumption to other ecosystems, including savannahs, grasslands, wetlands, peatlands and mangroves. In addition, as the World Wildlife Fund (WWF) explains, the fact that companies sourcing from 'low-risk' countries do not need to carry out a risk assessment might lead to market distortion and unfair competition; high-risk products could be shipped via low-risk countries. According to the WWF, the low risk category should be scrapped altogether.

The Fair Trade movement calls for concrete measures to support smallholders in complying with new EU requirements and ensure the costs of adjustment are shared fairly among all supply chain actors. According to Fair Trade, smallholders trapped in contexts forcing them to degrade the environment (such as poor land and forest governance, and lack of access to income, land, information and finance) would need closer attention. Reducing possibilities for sustainable living through restricted EU market access could accelerate the negative cycle of structural poverty and exacerbate levels of forest degradation.

The European farmers' association Copa-Cogeca stresses the need for farmers to have access to alternative solutions, and for an EU plan for protein production to reduce dependence on imports. Copa-Cogeca notes that implementing segregated supply chains without a proper transition could have a significant impact on costs and prices, and on the availability of compliant agricultural commodities for the EU market. The association expresses concern that the proposed benchmarking system would be incompatible with WTO rules, have serious consequences on future trading relationships, and distort competition on both the EU and global markets. By contrast, Eurocommerce (retail and wholesale industry) believes that the country benchmarking would help all in the supply chain in identifying risk areas, and that it would be a major help in setting priorities in the due diligence mechanism and establishing the right policies and tools to target deforestation.

COCERAL, FEDIOL and FEFAC, representing the EU grain and oilseed trade and the crushing and animal feed industries, warn that the proposal only focuses on cleaning up domestic supply chains from deforestation, rather than on curbing the issue at origin. The industry associations point out that, if sourcing from high-risk countries gets too difficult, the supply chain would adjust to risk-avoidance, reducing the EU's leverage to positively influence the situation in those countries. Farmers and operators at origin might lose interest in catering to market demands that hold sustainability in high regard. In these industries' views, deforestation can only be tackled in partnership with producing countries.

CEPI, for the European pulp and paper industry, warns against deviations from FAO definitions of deforestation, forest and plantation forest, which would result in misalignment with international agreements and other EU policy areas. CEPI considers that the inclusion of forest degradation in the 'deforestation-free' definition puts a disproportionate burden on wood commodities, while the main drivers of deforestation are agricultural commodities. CEPI also calls for incorporating third-party certification as a valid tool for risk assessment and mitigation. This point of view is shared by the European Timber Trade Federation, which stresses that certification systems, such as the Forest Stewardship Council (FSC®) or the Programme for the Endorsement of Forest Certification (PEFC), are key to successful due diligence, and must be endorsed in the new legislation.

European Forest Owners and Managers ask to remove the definition of 'sustainable harvesting operations', warning that the proposed criteria are overly prescriptive, too vague and open to varying interpretations. In their view, the benchmarking process needs to be based on a transparent checklist, developed jointly by the EU institutions and Member States to ensure that it is implementable and adapted to local conditions. To prevent misuse of the rights of access to justice and entitlement to submit substantiated concerns, they suggest referring to Article 11 of the Aarhus Regulation in which certain limits are included to ensure that submitted concerns are genuine.

For the European Cocoa Association, obligations must reach up and down the entire supply chain, from cocoa bean to end product, and all those directly and indirectly involved. The association notes

that all actors who place products on the EU market or export from it, as well as those who make them available for consumption or use inside the EU market, should be included. Strict obligations for European companies should be accompanied by ambitious and robust cooperation between the EU and cocoa producing countries, including financial and technical support for a government-mandated traceability system in origin countries, with mandatory reporting and better mapping.

The European Coffee Federation points out that traceability at plot level would be an immediate challenge for the sector because information regarding geolocation and contact details might not be available for small plantations. To avoid exclusion of smallholders from the coffee supply chain, it therefore asks for a traceability and monitoring system that is implemented and managed on the ground, covering areas rather than individual plots and complementary to satellite imaging. On the benchmarking system, it stresses the need to assess each targeted commodity within each origin country to ensure fair treatment and recognition of differences between the sectors.

Legislative process

In the Parliament, the Committee on the Environment, Public Health and Food Safety (ENVI), responsible for the file, appointed Christophe Hansen (EPP, Luxembourg) as rapporteur on 15 December 2021. The Committees on International Trade (INTA) and Internal Market and Consumer Protection (IMCO) are associated committees under Rule 57 of the Rules of Procedure.

The ENVI committee adopted its report on 12 July 2022. The report would expand the regulation's scope to cover swine, sheep and goats, poultry, maize and rubber, palm oil-based derivates, charcoal and printed paper products. The need and feasibility to add other commodities and products, specifically sugar cane, ethanol and mining products, would be assessed no later than 2 years after the act's entry into force. The regulation would cover forests 'and other wooded land' (as defined by the FAO). The Commission would be required to present, no later than one year after the regulation's entry into force, an impact assessment, possibly with a legislative proposal, to extend the scope to other natural ecosystems. Along with deforestation and forest degradation, the regulation would also address 'forest conversion'.[10] The regulation would lay down obligations for financial institutions headquartered or operating in the EU, to ensure that their financial services do not support, directly or indirectly, activities leading to deforestation, forest degradation or forest conversion. The concept of 'degradation' would be redefined, and include both illegal exploitation and the use of management practices that result in a substantial or sustained impact on the ecosystem's capacity to support biodiversity or deliver ecosystem services. The cut-off date in the deforestation-free definition would be 31 December 2019. In addition to respecting domestic law, commodities and products within the scope of the proposal would need to be produced in accordance with human rights protected under international law, in particular instruments protecting customary tenure rights and the right to free, prior and informed consent (FPIC).

An obligation would be added for operators to 'engage meaningfully' with vulnerable stakeholders in their supply chain (smallholders, indigenous peoples and local communities); to ensure they receive adequate assistance and fair remuneration so that their commodities and products can comply with the rules (notably regarding geolocation); and to follow through on implementing agreed commitments. Operators would need to report annually on measures taken to ensure that smallholders comply, including through investment and capacity building.

The Commission would be required to publish the country's risk categorisation within 6 months from the regulation's entry into force. Provisions on partnerships and cooperation with third countries to address deforestation and forest degradation would be clarified, and strengthened. The Commission would be required to provide specific administrative and capacity-building support to governments, local governments, civil society organisations and producers in third countries to help them fulfil the administrative requirements of the regulation. To facilitate access to deforestation information and compliance with the regulation, the Commission would have to establish a platform covering forest areas worldwide, using satellite imagery, notably from Copernicus.

Available to Member State authorities, interested third-country authorities, operators and traders, it would, in particular, include an alert system, based on a monthly monitoring of forest cover change.

The minimum level of annual checks to be carried out by competent authorities would be raised, to cover 10 % of operators, as well as 10 % of the quantity of each of the relevant commodities and products placed on or exported from the market. The percentage could be reduced to 5 % for goods coming from low-risk countries, but would reach 20 % for those originating from high-risk countries.

Penalties for non-compliance would be strengthened and include fines (increased to at least 8 % of the operator's annual turnover); the obligations to restore the environment, and to compensate for the harm to any natural or legal person that the exercise of due diligence would have avoided; and temporary exclusion from access to public funding. In the event of a serious infringement or of repeated infringements, a temporary or permanent prohibition on placing/exporting relevant goods and a prohibition on using the simplified due diligence procedure could be applied. Within 6 months after entry into force, the Commission would adopt delegated acts to harmonise penalties across the EU. A list of non-compliant operators and traders would be made public. The Commission would have to continuously monitor changes in the trade patterns of the products and commodities within the scope of the proposal, to detect any possible circumvention of the regulation's requirements. Interested parties would be able to inform the Commission of any perceived circumvention; the Commission would have to investigate any substantiated claim by such a party.

On 13 September 2022, Parliament's plenary adopted the report by 453 votes to 57 with 123 abstentions, forming Parliament's position for trilogue negotiations with the Council.

The Council adopted its general approach on 28 June 2022. It would maintain the proposed scope, with the list of six commodities and the focus on the forest ecosystem left untouched. The list of derived products in Annex I would be extended to cover palm fatty acid distillate (a by-product of the palm oil refining process) and a number of additional wood-derived products. The definition of 'forest degradation' would be narrowed down to 'structural changes to forest cover, taking the form of the conversion of primary forests into plantation forests or into other wooded land'. A possible extension of that definition would be addressed in the first review of the regulation, to be conducted within 2 years after its entry into force. The cut-off date in the deforestation-free definition would be pushed back to 31 December 2021. The definition of 'relevant legislation of the country of production' would include a reference to 'labour rights and human rights protected under international law, including as set out in the UN Declaration on the Rights of Indigenous Peoples'.

To avoid duplication of due diligence requirements, a new provision would allow an operator further down the supply chain to fulfil its due diligence obligations by making available to the competent authority the reference number of the existing due diligence statements submitted by the operators who exercised that due diligence. The operator would nevertheless need to make sure that the existing due diligence was carried out in accordance with the rules, and that no or only negligible risk was found. The operator would also retain responsibility for ensuring that the relevant products comply with the regulation's requirements.

Thresholds for mandatory annual checks by competent authorities would be lowered. For goods produced in standard risk countries, checks would cover at least 1 % of operators (instead of the proposed 5 %); for those coming from high-risk countries, at least 5 % of operators would have to be checked (instead of the proposed 15 %). Rules for the country benchmarking would be clarified, and it would be specified that the system applies to both EU Member States and third countries. The Commission would be required to engage in a specific dialogue with all countries that are classified as high risk, to help them reduce their level of risk. Such specific dialogue would also take place when a move to the high risk category is considered for a country, with a view to preventing such a change if possible. The country's risk categorisation would be published no later than 18 months from the regulation's entry into force, and the list would be reviewed at least every 2 years. The provisions on access to justice (Article 30) would be deleted. The regulation would apply 18 months from its entry into force (instead of 12 months).

Trilogue negotiations started on 27 September 2022 and the Parliament and Council reached a provisional agreement on 6 December 2022. They agreed to extend the regulation's scope to rubber, charcoal, printed paper products and several palm oil derivatives, as Parliament advocated. Parliament succeeded in ensuring that the Commission would be in a position to adopt delegated acts to amend Annex I with regard to the relevant CN codes of relevant products, instead of via the ordinary legislative procedure as requested by the Council. The potential inclusion of maize and biofuels within the scope, the extension to other natural ecosystems, and the need to impose specific obligations on financial institutions will be assessed in the review scheduled within 2 years after entry into force. The possibility to cover 'other wooded land' beyond forests will be assessed within one year after entry into force.

The co-legislators agreed to set the cut-off date on 31 December 2020, as the Commission proposed. Parliament successfully pushed for a wider definition of 'forest degradation' than the one put forward by the Council, which now covers 'the conversion of primary forests or naturally regenerating forests into plantation forests or into other wooded land and the conversion of primary forests into planted forests'. Under the agreement, compliance of commodities and products with the laws applicable in the country of production concerning the legal status of the area of production is understood to include labour rights, human rights protected under international law and indigenous peoples' right of free, prior and informed consent.

As Parliament demanded, operators will have to take account, in the risk assessment conducted as part of the due diligence process, of the presence and consultation of indigenous peoples, and of their existing claims regarding the use or ownership of the area used for production. While not an obligation, specific support to help smallholders comply with the rules through capacity building and investment may be considered by operators to be part of risk mitigation. The provision put forward by the Council to avoid duplication of due diligence requirements is taken up in the agreement, with a distinction between operators that are SMEs and those that are not.

Under the deal, annual checks by national authorities must cover 1 % of operators for goods coming from low-risk countries, and 3 % of operators for those originating from standard risk countries. In the case of high-risk countries, controls must cover 9 % of operators, and 9 % of the quantity of each of the relevant commodities and products. For legal persons, the level of fines for non-compliance will be set at least at 4 % of the operator's total annual EU-wide turnover, to be raised where necessary to exceed the potential economic advantage gained. As advocated by Parliament, penalties to be applied in the event of a serious infringement or of repeated infringements include a temporary prohibition on placing/exporting relevant goods, and a prohibition on using the simplified due diligence procedure. The Commission will publish on its website a list of final judgments for infringements against legal persons and the penalties imposed on them. Regarding cooperation with third countries, the Commission will develop an EU strategic framework for engaging with producer countries to address root causes of deforestation and forest degradation. Parliament succeeded in maintaining the article on access to justice in the final text.

The regulation will apply in full 18 months after its entry into force. Microenterprises and small enterprises will have an additional 6 months to comply with the regulation's requirements.

The agreed text was endorsed by Coreper on 21 December 2022, and then by the ENVI committee on 16 January 2023. It now needs to be formally adopted by the Council and the Parliament before publication in the EU Official Journal. The vote in plenary is scheduled on 17 April 2023.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Minimising the risk of deforestation and forest degradation associated with products placed on the EU market and exported from the EU, EPRS, European Parliament, April 2022.

OTHER SOURCES

Deforestation regulation, Legislative Observatory (OEIL), European Parliament.

ENDNOTES

[1] On this, see Commission impact assessment (SWD(2021) 326 final), Part I, pp. 16-18; a 2013 European Commission study on the impact of EU consumption on deforestation; an April 2021 World Wildlife Fund (WWF) report on the continuing impact of EU consumption on nature worldwide; and Bager S. et al., 'Eighty-six EU policy options for reducing imported deforestation', *One Earth*, Volume 4(2), 19 February 2021, pp. 289-306.

[2] The process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impact as an integral part of business decision-making and risk management systems.

[3] I.e. human rights as embedded into national laws or these rights expressed, as a minimum, in the EU Charter of Fundamental Rights or in international agreements. This would include, for instance, the rights of indigenous peoples and local communities, including tenure rights and the procedural right to give or withhold their free prior and informed consent, as set out, for example, by the UN Permanent Forum on Indigenous Issues and UN and regional treaty bodies; the right to water; the right to environmental protection and sustainable development; the right to defend human rights and the environment, free from any form of persecution and harassment; labour rights as enshrined in International Labour Organization (ILO) fundamental conventions; and other internationally recognised human rights related to land use, access or ownership, as well as the human right to a healthy environment.

[4] The baseline is that, without policy intervention, the EU would cause 248 000 ha of deforestation and 110 million metric tons of CO_2 emissions per year by 2030 through the consumption and production of the six commodities within the scope of the proposal.

[5] Around €2.8 billion per year for maize, and €17.6 billion for rubber.

[6] Wood and wood-based products covered by a valid FLEGT licence from an operational licensing scheme should be considered as fulfilling the legality requirement under the proposed regulation. To date, Indonesia is the only country to issue FLEGT licences, which certify the legality of timber exported to the EU.

[7] The setting of the cut-off date is an important element of the definition, as it determines the point in time from which the products issued from newly deforested or degraded land will be penalised by the policy intervention (prohibition). Reasons for setting it in 2020 are outlined in the Commission impact assessment, p. 30.

[8] Defined as any natural or legal person who, in the course of a commercial activity, places relevant commodities and products on the EU market or exports them from the EU market. In cases in which the natural or legal person placing relevant commodities and products on the EU market is established outside the EU, the operator would be the first entity established in the EU who buys or takes possession of them. This means that EU importers would qualify as operators. Traders (i.e. those making commodities and products available on the EU market) that are not SMEs would be subject to the same due diligence obligations as operators. For SME traders, these obligations would be lighter.

[9] This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

[10] The report defines 'ecosystem conversion' as 'the change of a natural ecosystem to another land use or change in a natural ecosystem's species composition, structure or function; this includes severe degradation or the introduction of management practices that result in a substantial and sustained change in the ecosystem's species composition, structure or function'.

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