



# Building on the GBF towards more ambitious global environmental commitments

The EU as a diplomatic leader in biodiversity negotiations

Notwithstanding its ambitious commitments to be climate-neutral by 2050, the EU has largely contributed to historic greenhouse gas emissions and to global biodiversity loss. It therefore has a responsibility to act, by preserving biodiversity within its own borders and by showing leadership for ambitious biodiversity protection in multilateral agreements.

This brief calls for the EU to leverage the momentum created by the Post-2020 Global Biodiversity Framework (GBF) to advance an ambitious global agenda for biodiversity in other fora such as the upcoming Intergovernmental Conference for a High Seas Treaty and its various trade negotiations at bilateral or multilateral levels.

**Publication date:**

February 2023

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The adoption of the Post-2020 Global Biodiversity Framework<sup>1</sup> and its targets at COP15 of the Convention on Biological Diversity (CBD) in Montreal have been hailed as historic and holding promises of a “new era for biodiversity”<sup>2</sup>.

It is now crucial for parties to the CBD to adopt concrete action plans reflecting the level of ambition of the agreement as it includes targets, objectives and an implementation mechanism that could be the key to halting biodiversity loss according to a [recent analysis by IEEP](#). These future implementation strategies will be critical notably to ensure that the GBF targets are achieved.

Even though it is still early to grasp all of its outcomes and ramifications, COP15 and the last-minute adoption of the GBF teach us important lessons. Governments have shown their willingness to put the same efforts into protecting the world's biodiversity as they do into reducing greenhouse gas (GHG) emissions. COP15 also confirmed that the EU can play a key, and even a deal-breaker role in global environmental negotiations.

The GBF targets will have far reaching consequences as they cover sectors that were absent from the previous Aichi framework, and notably integrate trade considerations for the first time. Target 5 recognises that trade is a driver of biodiversity loss, but also opens the conversation that it can also have a positive impact on biodiversity and ensure its sustainable use. Target 18 covers subsidies harmful to biodiversity and includes clear reduction objectives which is a world first and goes way beyond current international or multilateral conversations on the matter in other fora such as the World Trade Organisation (WTO).

The EU must play a leading role in the negotiation of ambitious environmental and trade agreements at all levels. In this brief, we explore how the ambitions of the GBF targets could be translated in EU diplomatic actions at various levels, from trade negotiations to the 5<sup>th</sup> Intergovernmental Conference for a High Seas treaty starting on 20<sup>th</sup> February 2023 until March 3<sup>rd</sup>.

## **Stepping up to address the climate and biodiversity crisis.**

As in most global environmental talks, COP15 negotiations were marked by North-South divisions and the burdensome legacy of the principle of common but differentiated responsibilities. While the principle was pushed by developing countries and appeared in brackets in draft versions, it did not make it into the final text. It remains however an overarching principle enshrined in Principle 7 of the Rio Declaration on Environment and Development<sup>3</sup> and although it is not mentioned explicitly in the CBD and GBF, the targets on the transfer of financial resources and capacity building and technology transfer (targets 19 and 20) reflect the idea that developing countries owe financial and technical assistance to less developed countries.

As a historical emitter of GHGs, the EU has a responsibility for the current state of the environment and biodiversity globally. Climate change is a direct driver of biodiversity loss and is exacerbating the impacts of other pressures such as extreme weather events<sup>4</sup>. On the one hand, the EU28 have contributed to 22% of global emissions, while Oceania, Africa and Latin America have contributed 7% altogether<sup>5</sup>. On the other hand, 18% of species have been lost since 1970 in Europe, compared to 55%, 66% and 94% in Oceania, Africa, and Latin America respectively<sup>6</sup>. European consumption alone was found responsible for 10% of global deforestation between 1990 and 2008<sup>7</sup>.

The EU showed some willingness to rise to this responsibility from 2019 with the adoption of the European Green Deal and its implementation through a series of plans and legislative proposals including quantified targets to address climate change, pollution, biodiversity loss, etc. The EU also attempted to show leadership by reflecting the ambition of its domestic measures in global climate discussions and negotiations. The adoption of the GBF is a clear example of how the EU's domestic ambition proved valuable in negotiating an ambitious text at the global level. Just a few days before the COP started in Montreal, a political agreement was reached between the EU Parliament and the Council on the EU regulation on

deforestation-free supply chains which aims to minimise the placement of goods sold on the EU market contributing to global deforestation. Through its ambition to address a significant share of EU-induced deforestation, eventually reducing GHG emissions and limiting the loss of biodiversity in the future, this agreement was a key negotiating point at COP15. In MEP Delara Burkhardt's words, it contributed to the EU's stance as a "credible leader" at COP15<sup>8</sup>.

Now that the GBF has been adopted, attention will turn to its implementation. It is important that political momentum does not wane, and that parties' national strategies and action plans are scrutinised. In the EU, implementing the Green Deal will be the main vehicle for implementing global targets. For instance, the GBF target to restore 30% of degraded terrestrial and marine ecosystems mirrors the proposal for an EU nature restoration law (NRL), whose overarching objective is to restore 20% of all land and sea in the EU. The text is currently being negotiated in the EU Parliament but if/when adopted, the NRL will provide a binding framework to implement an otherwise voluntary commitment.

The EU can, and should, continue to exercise its responsibility and be a leader in global environmental discussions. Indeed, implementing the GBF should not only be implemented on EU territory, but must also be implemented globally. The '30 by 30' target, for example, will require coordinated and increased efforts from Member States to protect terrestrial and marine ecosystems. To achieve 30% of protection of the oceans, it is essential to protect marine areas beyond national jurisdiction – the objective of the 'BBNJ treaty', which has been negotiated unsuccessfully for the past decade. The last round of talks in the summer of 2022 failed to reach an agreement, again due to a North-South divide. Parties have not been able to agree on the management of marine genetic resources, with the global North (including the EU) reluctant to commit to a financial benefit sharing regime<sup>9</sup>. The EU waited too long to get involved and show a strong stance that could have moved the negotiations forward.

In the aftermath of COP15, the political momentum might spark a renewed interest in adopting the BBNJ treaty, which would in turn contribute to the GBF 30 by 30 target. This is illustrated by the US' recent announcement to join the High Ambition coalition on BBNJ<sup>10</sup>, at a critical time ahead of the next round of negotiations in February 2023. EU Commissioner for the Environment Virginijus Sinkevičius welcomed this new ambition and said that the adoption of a treaty was now a key priority for the EU<sup>11</sup>. The EU is presented with another chance to shine and to show its leadership in the conduct of biodiversity negotiations.

## **Levelling up biodiversity protection in trade agreements.**

Target 5 of the GBF states that parties must "*ensure that the use, harvesting and trade of wild species is sustainable, safe and legal, preventing overexploitation, minimizing impacts on non-target species and ecosystems, and reducing the risk of pathogen spill-over, applying the ecosystem approach, while respecting and protecting customary sustainable use by indigenous peoples and local communities*".

One avenue to initiate the implementation of target 5 could be through trade agreements, i.e., integrating bilateral commitments to tackle the illegal and unsustainable trade of wild and endangered species in EU Free Trade Agreements (FTAs). However, many EU FTAs already contain such provisions on biodiversity, typically linked to the trade partners implementing obligations under the Convention on International Trade in Endangered Species (CITES) and

the CBD, in addition to provisions targeting the sustainable use of marine resources<sup>12</sup> in their Trade and Sustainable Development (TSD) Chapters.

Some trade agreements, such as the EU's agreements with Mexico and the Andean region, do go further and include more explicit commitments for the strengthening of the national institutional capacity for biodiversity conservation, which is likely a more effective and measurable commitment compared to the general commitments to implement the CITES and the CBD. Yet, the framework of environmental provisions in EU FTAs was still perceived as ineffective at delivering tangible outcomes on the implementation of environmental commitments.

Despite recent calls to tackle trade-related sustainability issues, on the biodiversity front, little has improved as the only explicitly mentioned multilateral environmental agreements related to biodiversity dated back from before the 21<sup>st</sup> century. As a result, in June 2022, the European Commission published its new approach to the TSD Chapters<sup>13</sup>, which would aim to address country specific sustainability priorities, among other changes to improve the environmental credentials of its FTAs<sup>14</sup>.

Since the publication of the new TSD Chapter approach, two FTAs have been concluded (EU-New Zealand and EU-Chile). In comparison to FTAs concluded ten years ago, these agreements' TSD Chapters have seen an increase in biodiversity provisions. New additions to the Biodiversity Articles include explicit provisions recognising the knowledge and practices of indigenous and/or local communities in the contribution to the conservation and sustainable use of biological diversity, and cooperation on the access to genetic resources and the fair and equitable sharing of benefits from their utilisation consistent with the objectives of the CBD<sup>15</sup>. Though these new provisions are largely cooperation-based and non-binding, they showcase why it is essential for environmental provisions in FTAs to evolve with our changing environmental needs.

Yet, at this stage trade agreements function mainly as political and economic instruments where environmental provisions act as safeguards to mitigate negative externalities generated from trade liberalisation. No trade agreement exemplifies this description better than the EU-Mercosur FTA which has faced much resistance from civil society and Member States<sup>16</sup>. The agreement would liberalise much of the agricultural sector<sup>17</sup>, leading to an expected increase in demand for beef and soy from the Mercosur region. Without proper environmental safeguards, both in the FTA and in national institutional frameworks, the trade agreement as is risks accelerating deforestation in the Amazon.

Indeed, within the EU's arguably most notorious FTA is embedded the largest risk to global biodiversity to date. To appease the public's criticism of the trade agreement and improve the chances of the FTA being signed and ratified, the EU announced it would not renegotiate the FTA text but instead negotiate an "additional instrument". There is little available information on this additional instrument, however it could involve pre-agreement ratification efforts, a joint declaration, a binding protocol or additional TSD commitments<sup>18</sup>.

The EU's renewed commitment to embed sustainability in future EU trade agreements alongside its assertive stance at multilateral fora (e.g., COP15 and WTO) provides a window of opportunity to strengthen biodiversity commitments in EU FTAs. If the EU's renewed political momentum translates into an adoption of the BBNJ treaty, this would be the first of a new generation of multilateral environmental agreements for biodiversity that could end up

modernising the biodiversity commitments in EU FTAs. Though efforts to adopt and implement commitments on biodiversity should not begin and end with FTAs, trade agreements provisions are one tool in the EU's "soft power" arsenal to spur action on biodiversity conservation and restoration with specific partner countries.

Underpinning trade agreements themselves, there are additional tools that the EU can leverage to tackle the biodiversity crisis. The first are the sustainability impact assessments which aim to assess the economic, labour, human rights, and environmental impacts of the FTA. The environmental assessment sections have been critiqued as to their ability to capture complex environmental impacts of a trade agreement. However, a new methodology was developed to better assess the impact of FTAs on biodiversity and ecosystems<sup>19</sup> and has been deployed in the ex-post assessment of the EU-Andean FTA.

The second tool, parallel to the FTAs, are the "implementation roadmaps" coined in the European Commission's new approach to TSD Chapters. These roadmaps would be negotiated parallel to the TSD Chapters and would include targets and milestones for the delivery of environmental progress. Neither agreement with New Zealand nor Chile were accompanied by a roadmap, yet the roadmaps could serve to integrate internationally recognised targets that are not necessarily part of multilateral environmental agreements, such as targets concluded at COP15. In the context of the EU-Mercosur agreement, where an addendum is being negotiated to address environmental concerns, accompanying this trade agreement with an implementation roadmap could set explicit targets for halting deforestation and land conservation with the resulting benefits for local biodiversity.

Third, the above tools could be complemented by pre-agreement ratification efforts, which would build on the attractiveness of the EU market and incentivise trade partners committing to and ratifying specific multilateral environmental agreements in parallel to the trade negotiation rounds<sup>20</sup>. Unfortunately, the new TSD approach does not cater for such innovative efforts.

Alongside its new domestic objectives, the EU is stepping up its game to enshrine biodiversity commitments in its bilateral trade relations with third countries. These efforts should be supported throughout all trade negotiations processes.

## **The GBF as a constructive approach to harmful subsidies.**

Target 18 of the GBF provides that parties should "*identify by 2025, and eliminate, phase out or reform incentives, including subsidies harmful for biodiversity, in a proportionate, just, fair, effective and equitable way, while substantially and progressively reducing them by at least 500 billion United States dollars per year by 2030, starting with the most harmful incentives, and scale up positive incentives for the conservation and sustainable use of biodiversity.*"

The issue of environmentally harmful subsidies has been a topic of discussion for several decades, but despite numerous calls for action, concrete steps have yet to be taken. At the global level, subsidies are mainly governed by the Agreement on Subsidies and Countervailing Measures (SCM) of the WTO. The focus of the SCM agreement is primarily on the economic aspects of subsidies, such as the extent to which they can harm trade and investment flows, but it does not consider the environmental impacts of these measures. Therefore, such public support measures remain considerable and are often detrimental to biodiversity.

A 2019 OECD report “conservatively estimates these flows at USD 500 billion per year (based on fossil-fuel subsidies and government support to agriculture that is potentially environmentally harmful)”<sup>21</sup>. In other words, the amount in Target 18 of the GBF aims to eliminate or reform virtually all incentives that are harmful to biodiversity, unfortunately there are many hurdles on that road.

Identification of harmful incentives is the first challenge: subsidies are commonly defined by their source (a government entity) and the fact that they confer a benefit,<sup>22</sup> but they take various forms. Defining subsidies and government incentives in international law is a complex task due to their multifaceted nature and the diverse interpretations that exist in different countries.<sup>23</sup> The elimination or reform of such incentives is no less challenging, given their profound effect on a wide range of areas, including economic development, social welfare or food and energy security. This highlights the need for a comprehensive approach to regulating these measures.

Current EU free trade agreements (FTAs) typically have limited provisions on subsidies. In addition to compatibility clauses referring to the WTO and SCM Agreement, most trade deals contain provisions aimed at limiting the use of subsidies and ensuring that trade is conducted on a level playing field, but they remain silent on environmental aspects. An exception is found in Art. 16.4 of the EU-NZ FTA: “Each Party shall refrain from granting or maintaining harmful fisheries subsidies.” However, this article is of limited value in that it essentially refers to pre-existing obligations (UN SDGs, WTO Agreement on Fisheries Subsidies). Generally speaking, major issues around subsidies are less about fisheries (estimated USD 9 billion) than about agriculture (USD 600 billion) and fossil fuels (USD 600 billion).<sup>24</sup>

The European Union has an opportunity to leverage the political momentum following the COP15 in Montreal and incorporate some references to Target 18 into future FTAs. Although it may not result in the inclusion of mandatory provisions regarding the environmental impact of subsidies and incentives, any reference to the GBF and Target 18 specifically would still be considered a significant step forward in promoting responsible and sustainable trade practices.

Efforts can also be done at the multilateral level. 50 WTO members including the EU, UK, Japan, Korea, Canada, NZ and Australia a launched new initiative in November 2020 to complement the work of the WTO Committee on Trade and Environment and establish structured discussions on trade and environmental sustainability<sup>25</sup>. They were crucially joined by other members including the US and China in November 2021 to a total of 74 countries now representing around 85% of world trade. These “non-negotiations” cover issues such as removing barriers to international trade in environmental goods and services, plastic pollution but also include a dedicated working group on phasing out inefficient fossil fuel subsidies.

The discussions within this working group include common ways to measure subsidies, along with the methodologies that currently exist for assessing how these subsidies affect the environment. These efforts aim to address gaps in data which make all efforts to phase out environmentally harmful subsidies all the more difficult. They also look at how research on such subsidies can be translated into policy, building from the examples of fishing subsidies following the recent adoption of the Agreement on Fisheries Subsidies at the WTO’s Twelfth Ministerial Conference (MC12) in June 2022<sup>26</sup>.

Current discussions are geared toward proposing concrete recommendations for adoption at MC13 in February 2024. These could include intermediate objectives such as mapping exercises, or endeavours to strengthen data measurement and monitoring but much remains to be done and the EU, as always, has a crucial role to play in these discussions and align these “WTO compatible” considerations with the ambition set forth in the GBF target 18.

## **Ride the GBF momentum through the high seas and toward new shores.**

Europe was the first continent to announce a bold commitment to climate-neutrality by mid-century but so far tended to focus on its own domestic performance, including from a biodiversity perspective. This was a result of the difficulties of measuring and internalising how the EU’s policies impact the ability of other countries to achieve their own sustainable development. The existing literature however suggests that the EU still generates sizeable negative spillovers outside the region with serious environmental consequences globally. The latest issue of the European Sustainable Development Report 2022 signals for instance that “further effort is needed to align Europe’s domestic transformations with its external relationships and cooperative endeavours”<sup>27</sup>.

The GBF is a case in point on the capacity of the EU to act as a breaking point and advance an ambitious agenda for sustainability globally. The agreement brings momentum to other crucial processes for biodiversity worldwide such as the 5th Intergovernmental Conference starting on February 20<sup>th</sup> to advance toward the conclusion of a binding multilateral Environmental High Seas Treaty. This momentum should also support the negotiation of an ambitious “additional instrument” to the EU-Mercosur FTA aiming at addressing sustainability and deforestation matters in the South American region, one of the world most important area when it comes to biodiversity.

The European Union and its Member States have a key role to play in ensuring that these processes, with such high stakes for global biodiversity, are successfully concluded before the momentum is lost and this window of opportunity closes. The EU should also leverage all the tools at its disposal, including the attractiveness of the single market for its trade partners, to ensure that ambitious biodiversity provisions are embedded in all international negotiations (or even discussions) to which it is a party. It is time now for the EU to step up its game and reflect its domestic ambitions at the global level.

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