



The new EU deforestation-free legislation under the looking glass

Addressing EU imported deforestation while leaving no one behind

EU institutions reached a political [agreement](#) on 6 December on the much-awaited deforestation-free value chains regulation which aims to minimise the risk of deforestation and forest degradation embedded in products sold in the EU market.

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420 million hectares of forest — an area larger than the EU — have been lost to deforestation between 1990 and 2020, most prominently driven by agricultural expansion and large-scale production of products such as soybeans, palm oil and cattle. Deforestation occurs primarily outside EU borders, yet European consumption was found responsible for 10% of global deforestation between 1990 and 2008. This indirect deforestation remains one of the EU's greatest challenges regarding progress towards achieving the Sustainable Development Goals.

The European Commission [published its proposal](#) on 17 November 2021 under the European Green Deal to address this global challenge and a deal has now been reached with the European Parliament and the Council on the final version of the legislation. It will become mandatory for companies to ensure that goods placed on the EU market have not led to deforestation and forest degradation anywhere in the world after 31 December 2020.

This legislation has the potential to greatly reduce the EU's contribution to climate change and biodiversity loss globally. Yet as in most cases, there are some wins, some losses, some "kicking of the can down the road". Eventually, the ambition of the legislation resides in the details on how to implement it effectively. The specific situation of smallholders is also to be considered as they might be disproportionately impacted by the new requirements introduced with this legislation.

Wins, delays, losses

On the win side, companies will be required to collect precise geographical information on the farmland where the commodities that they source have been grown, and issue a so-called "due diligence" statement that these commodities are compliant with the new EU legislation as well as local deforestation laws when entering the EU market. EU authorities will have the capacity to check this statement through monitoring and verification tools such as geolocation coordinates, satellite monitoring or DNA analysis, and conduct checks to verify where the products come from.

Furthermore, the coverage of the legislation was expanded from the initial proposal to include rubber, charcoal, printed paper products and several palm oil derivatives. These now add to the commodities originally considered: cattle, cocoa, coffee, palm -oil, soya and wood, including products that contain, have been fed with, or have been made using these commodities (such as leather, chocolate and furniture). EU institutions also agreed on the penalties for non-compliance to be proportionate and dissuasive with a maximum amount for a fine set at least 4% of the total annual turnover in the EU of the non-compliant operator or trader.

Most importantly, the European Parliament fought for and partially secured a wider definition of forest degradation that includes the conversion of primary forests or naturally regenerating forests not only into agricultural land but also into plantation or planted forests. This is a step toward closing a major potential loophole on the impact of the legislation.

Yet, EU institutions could not agree on everything and the Commission was tasked to evaluate other crucial aspects to be included in the legislation in the future. These are issues such as the extension of the scope to other wooded land (evaluation no later than one year after the entry into force of the Regulation), other ecosystems with high carbon stocks and high biodiversity value such as savannahs and wetlands (no later than two years), or other commodities such as maize and biodiesel (2 years as well).

On the missed opportunity front, the cut-off date after which products will be considered or not to have contributed to deforestation is set on 31 December 2020. This represents a middle ground between the positions of the Council which proposed a date one year later, and the Parliament which advocated for a date one year earlier to consider the damages made in the amazon region under the Bolsonaro administration in Brazil. Eventually, the date originally proposed by the Commission remained in the final text.

Financial institutions were left out of the legislation for lack of agreement between the European Parliament and the Council on the matter. Instead, the Commission shall assess in two years the need to oblige such EU institutions to only provide financial services to their customers if they assess that there is only a negligible risk that these services lead to deforestation. This is a major missed opportunity to incentivise investors to divert financial flows away for practices that fuel deforestation globally.

The legislation includes the obligation for companies, as additional requirements, to verify compliance with relevant legislations of the country of production that the rights of concerned indigenous people have been respected. However, this carries significant risk that such national laws might be too weak to provide adequate protection, despite the fact that upholding indigenous' rights remains the most concrete solution to stopping deforestation.

The devil is in the monitoring details!

The Commission will classify countries, or part thereof, into low, standard or high risk within 18 months of this Regulation entering into force. In the meantime, all countries and regions will be considered standard risk. This benchmarking system will eventually determine the level of scrutiny for commodities exported from these countries or regions into the EU with proportion of checks on operators of 9% for high risk, 3% for standard risk and 1% for low risk. Nonetheless, there is still a lack of clarity as to the criteria that will be used to determine which category a country or region would fall into, and no doubt, trade partner countries will keep a close eye on the process.

This benchmark system does indeed set the number of checks that will be imposed on commodities and thus improves the likeliness of identifying non-compliant commodities coming from countries/regions most at risks. Yet the Regulation keeps the same set of requirements that operators will have to comply with, irrespective of the provenance of the products. This is a missed opportunity for such extra requirements to be introduced (such as compliance with existing and more stringent certification schemes etc.) thus further preserving the most impacted areas of the world.

That being said, it is also true that the level of requirements (some might say barriers) incorporated in the legislation may eventually impact its future. Trade partners that are likely to be the most impacted (such as Brazil or Indonesia) already expressed their concerns to the European Commission over the summer and may still decide to issue formal complaint(s) to the WTO. DG trade claims that the legislation in its final form is WTO-compatible but this particular aspect was clearly a balancing game in the final text between ambition and capacity to pass the multilateral test. Still, the deforestation-free product legislation might eventually trigger yet another showdown on the legality of EU trade-related autonomous measures on the multilateral stage.

In the end, the effectiveness of the legislation will rest on the capacity for EU authorities to monitor whether the products checked came from a land that can be considered having been deforested as per the definition enshrined in the legislation. The establishment of such a

deforestation-free definition remains a major innovation of the legislation compared to, for instance, the previous EU Timber Regulation. It sets a common requirement for products and commodities, regardless of their country of production. This is aimed at preventing loopholes associated with legal deforestation according to local laws and facilitating the implementation of the legislation via remote monitoring.

This new set of rules provides a good opportunity for the EU to fight its imported deforestation but it will bring some challenges to exporters of selected commodities, particularly those facing the most acute capacity constraints to adapt: SMEs and smallholders/farmers. Yet the legislation also provides momentum to address their specific situation, and ensure that they are adequately supported in the process.

Supportive measures to ensure smallholders are not left behind

These new checks, requirements, and potential penalties will have a distinct impact on SMEs and smallholders exporting to the EU as they face specific challenges on their capacity to adapt. There has been a long debate (to which IEEP [participated](#)) on whether exceptions should be made for SMEs, but in the end, they are covered by the legislation (a conclusion that aligned with our recommendations). Smallholders will eventually have to abide by the same obligations, yet the legislation grants them a longer period to adapt before its entry into force (24 months instead of 18).

Supportive programmes and partnerships with trade partners will now be key to ensure that smallholders are adequately assisted in adapting to the Regulation. IEEP is proposing some concrete recommendations for smallholders to benefit from the Regulation instead of being disproportionately impacted:

1. Provide supporting measures for compliance to prevent companies from shifting their sourcing away from smallholders to large producers because of a potential compliance gap. Such measures could include:
 - A **sufficient timeframe** for smallholders to adapt to the Regulation and to build up the required systems and infrastructure. Some stakeholders question whether 24 months is sufficient to reach smallholders and have them adapt to the Regulation's requirements.
 - Supporting smallholders with **the acquisition of digital equipment, providing technical assistance, and capacity building** to prepare smallholders to comply with geolocation requirements and software.
 - Ensuring **data ownership of the geolocation coordinates** by the smallholders and their producer organisations.
 - Encouraging **group certification** to better reach independent smallholders. Certified smallholders benefit from better supply chain access as well as knowledge sharing within their cooperatives.

2. **Democratising financial support measures** to smallholders, for example, through improved access to financial services, providing more favourable and transparent contract terms, and price stabilisation mechanisms which are paramount to begin providing income stability for smallholders. Financial support must begin to address poverty as a driver of deforestation.
3. **Finally, better involvement of civil society in systematic assessments** of the impact of the Regulation on farmers, including smallholders. The availability of environmental data is typically lagged, and CSOs are well placed to inform national governments and the European Commission on impacts of the Regulation on farmers.

It is important to note that these recommendations are not one size fits all. Smallholders face different realities based on their location, what commodities they produce, and whether they are part of a certification scheme.

The new deforestation-free legislation provides an opportunity to address the EU imported deforestation, but some supporting measures should also be pursued to ensure that no one is left behind.

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