



# Addressing the EU's role in the destruction and degradation of natural forests and natural ecosystems

**WWF's asks for new legislation**

**WWF European Policy Office**

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# Executive summary

Over 43 million hectares, an area roughly the size of Morocco, was lost in “deforestation fronts” in the tropics and subtropics between 2004 and 2017, where vast clusters of deforestation hotspots are destroying the important ecosystem services forests provide.<sup>1</sup>

Deforestation and the destruction of natural ecosystems, such as grasslands, savannahs, wetlands or mangroves, put the health of people and planet at risk. Urgent action is needed at all levels to halt this destruction - from policymakers to companies to consumers.

WWF, together with the more than 160 NGOs and 1.1 million citizens mobilised through the #Together4Forests campaign<sup>2</sup>, sent a powerful message in 2020 through the European Commission’s public consultation on new legislation to tackle EU-driven deforestation: The EU must stop being part of the problem, and become part of the solution.

The European Commission foresees for 2021 the presentation of a proposal for new legislation to “*minimise the risk of deforestation and forest degradation associated with products placed on the EU market*”.<sup>3</sup> New legislation to protect the world’s forests is urgently needed. However, this new law also needs to be effective in ensuring commodities and products placed on the EU market are not linked to the destruction of forests and other natural ecosystems.

This paper lays out the WWF view towards elements of an EU legislation in form of a regulation<sup>4</sup> addressing the conversion and degradation of natural forests and natural ecosystems, as well as related human rights violations. These main asks include:

## **1. Products and commodities placed on the EU market are sustainable instead of only being “legal” according to the country of origin.**

Commodities and products placed on the EU market should be sustainable: They should not be linked to the destruction or degradation of natural forests and/or natural ecosystems, whether illegal or legal. They should not be placed on the EU market if there is a non-negligible risk that they are produced in breach of the country of origin law and unless they meet human rights related and environmental sustainability criteria laid down in EU legislation.

## **2. The scope of EU legislation includes the conversion and degradation of natural ecosystems alongside the deforestation and degradation of natural forests.**

The EU needs to take responsibility to address not only the conversion or degradation of natural forests but also other natural ecosystems, including savannahs, wetlands, grasslands or mangroves, for products destined for the European market. Should the scope of the law be limited to natural forests and leave out other natural ecosystems, it would ignore the already existing huge pressures on other ecosystems. There would also be a risk of unsustainable agriculture being shifted from forests towards other vulnerable ecosystems.

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<sup>1</sup>[https://wwfint.awsassets.panda.org/downloads/deforestation\\_fronts\\_drivers\\_and\\_responses\\_in\\_a\\_changing\\_world\\_full\\_report\\_1.pdf](https://wwfint.awsassets.panda.org/downloads/deforestation_fronts_drivers_and_responses_in_a_changing_world_full_report_1.pdf)

<sup>2</sup> <https://together4forests.eu/>

<sup>3</sup> [https://eur-lex.europa.eu/resource.html?uri=cellar%3A91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0001.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar%3A91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0001.02/DOC_2&format=PDF)

<sup>4</sup> A regulation is a term for EU legislation that must be applied in its entirety across the EU.

**3. Based on objective and scientific criteria, the new legislation covers commodities and products at risk of being linked to conversion or degradation of natural forests and ecosystems.**

The inclusion of a commodity into new legislation should be based on objective and scientific criteria, using existing credible facts and evidence in order to identify the commodities which risk being linked to deforestation, forest degradation, ecosystem conversion and ecosystem degradation, as well as those at risk to be linked to human rights violations at the global and/or EU level. In the first instance, new legislation should focus on agricultural commodities and derived products.

**4. No violation of human rights is linked to the harvest or production of commodities placed on the EU market.**

Commodities and products placed on the EU Market should be harvested or produced whilst respecting human rights, particularly the land use and tenure rights of indigenous peoples and local communities. Free, prior and informed consent (FPIC) should be obtained in advance.

**5. Mandatory requirements are introduced for businesses and the finance sector to ensure due diligence, traceability of commodities and supply chain transparency.**

Operators, defined as those first placing a product or commodity on the EU market, should assess and minimise the risk of their products and commodities being linked to the conversion or degradation of forests and other ecosystems or related human rights violations to a negligible level (due diligence). Traders, defined as those buying a commodity or a product already placed on the EU market, should ensure traceability and transparency of commodities and products along the supply chain, providing the relevant documentation. Traceability and transparency requirements should also apply to operators.

Financial organisations operating in the EU and providing finance, investment, insurance or other services to operators, should be required to carry out due diligence, identifying, preventing and mitigating negative environmental and human rights impacts.

**6. Clear definitions are provided for relevant terms and concepts used in the legislation.**

New legislation should provide clarity on terms and concepts that are essential for the application of legislation, including on what constitutes a natural forest or a natural ecosystem, deforestation, degradation and conversion. WWF recommends using the principles and definitions of the [Accountability Framework Initiative](#) (AFI) as a basis. The AFI definitions should be complemented by elements of other initiatives such as the High Carbon Stock (HCS) and the High Conservation Value (HCV) approach, where compatible and applicable.

**7. The legislation is stringently implemented and enforced across the EU Member States, with effective, proportionate and dissuasive sanctions.**

Clear requirements and measures for implementation and enforcement should be provided by the EU legislation. Harmonised implementation and enforcement by national governments, especially with regard to penalties and sanctions will be necessary to make the new law effective.

**8. Complementary additional measures are introduced to address the destruction and degradation of natural forests and other natural ecosystems.**

Legislation at the European level should be complemented by other targeted and inclusive measures to reduce pressures on natural forests and other natural ecosystems but also to address human rights issues. There should also be cooperation with producer countries to support the development and implementation of solutions including all stakeholders e.g. for land-use planning or support for smallholders, but also actions within the EU such as addressing healthy and sustainable diets, will help to facilitate the transition towards more sustainable food and farming systems.

# Background

Forests cover 31% of the land area on earth. Approximately half the forest area is relatively intact, and more than one-third is primary forest<sup>5</sup>. Forests, but also other ecosystems are important for protecting biodiversity, fighting climate change and keeping us healthy. Around 820 million people live in tropical forests and savannahs in developing countries<sup>6</sup>, relying on their resources for livelihoods and shelter.

Deforestation, especially in tropical regions, is the second-largest source of anthropogenic greenhouse gas emissions<sup>7</sup> worldwide and drives huge biodiversity losses.<sup>8</sup> 29–39% of deforestation-related carbon emissions in the period 2010-2014 were driven by international trade in agricultural commodities, depending on the trade model<sup>9</sup>. Commercial agriculture is the most prevalent deforestation and conversion driver, accounting for 40% of deforestation.<sup>10</sup>

The population sizes of mammals, birds, fish, amphibians and reptiles have seen an alarming average drop of 68% since 1970.<sup>11</sup> The current biodiversity crisis is also linked to land use change: about 80% of all already threatened terrestrial bird and mammal species are endangered by agriculturally driven habitat loss.<sup>12</sup>

A recent report by WWF shows the interlinkages between biodiversity loss and the rise of pandemics<sup>13</sup>. In combination with the illegal or uncontrolled trade of wild species and the unhygienic conditions under which wild and domestic species are mixed and marketed, it is deforestation and degradation of natural habitats that can release 'new' zoonotic diseases. Deforestation and ecosystem conversion change the dynamics between virus-vector-host animals, bringing diseases in closer contact with humans and livestock in the first place. This is also true for viruses that cause zika, chikungunya, dengue and yellow fever.<sup>14</sup> In a study from 2015, land-use change, including deforestation and the modification of natural habitats, are held responsible for nearly half of emerging zoonoses.<sup>15</sup>

Many people are affected by deforestation and related land conflicts. 28% of the world's surface, including intact forests and biodiversity hotspots, are currently managed by indigenous peoples. Indigenous communities often have a profound cultural and spiritual relationship with their ancestral forest lands and deep knowledge about

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<sup>5</sup> <http://www.fao.org/state-of-forests/en/>

<sup>6</sup> <http://www.fao.org/3/ca8642en/CA8642EN.pdf>, page 58, based on data from the International Fund for Agricultural Development (IFAD)

<sup>7</sup> <https://www.sciencedirect.com/science/article/pii/S0959378018314365#:~:text=Deforestation%2C%20the%20second%20largest%20source,by%20expanding%20forestry%20and%20agriculture.>

<sup>8</sup> The need to reduce forest loss is underlined in IPBES. 2019. Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science- Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES Secretariat, Bonn, Germany. <https://www.ipbes.net/global-assessment-report-biodiversity-ecosystem-services>

<sup>9</sup> Pendrill, F., Persson, U.M., Godar, J., Kastner, T., Moran, D., Schmidt, S., and Wood, R. 2019. Agricultural and forestry trade drives large share of tropical deforestation emissions. *Global Environmental Change* 56: 1-10

<sup>10</sup> Hosonuma, N., Herold, M., De Sy, V., De Fries, R. S., Brockhaus, M., Verchot, L., Angelsen, A., & Romijn, E. (2012). An assessment of deforestation and forest degradation drivers in developing countries. *Environmental Research Letters*, 7(4). <https://doi.org/10.1088/1748-9326/7/4/044009>

<sup>11</sup> <https://livingplanet.panda.org/en-us/>

<sup>12</sup> Tilman, D., Clark, M., Williams, D.R., Kimmel, K., Polasky, S., Packer, C., 2017. Future threats to biodiversity and pathways to their prevention. *Nature* 546, 73.

<sup>13</sup> <https://www.panda.org/?361716&fbclid=IwAR1GBMEUlmKvIkXeAIUdhZkbqX5qpOwpmw4MEnjUFgNnQza7QCwhj6MzVI>

<sup>14</sup> <https://www.sciencedirect.com/science/article/pii/S2352771417300137>

<sup>15</sup> Loh et al. 2015. Targeting Transmission Pathways for Emerging Zoonotic Disease Surveillance and Control. *Vector borne and zoonotic diseases* 15(7):432-43. doi: 10.1089/vbz.2013.1563

biodiversity. The contribution of forests and their biodiversity to people's identity and sense of wellbeing is not properly included in many economic assessments.<sup>16</sup>

Between 2005-2013, a large (26%) and slightly increasing share of deforestation was linked to international demand, most of it being embedded in products and exported to countries that show decreasing deforestation rates or increasing forest cover, particularly in Europe and Asia (China, India, and Russia).<sup>17</sup> CO<sub>2</sub> emissions linked to deforestation account for a sixth of the total carbon footprint of an average EU diet.<sup>18</sup> Apart from carbon emissions, the negative impacts of deforestation on biodiversity or indigenous people also need to be taken into account.

The EU has committed to halt deforestation by 2020 under the Agenda 2030 for Sustainable Development - and we are far from achieving it. The EU market, with its huge demand for forest risk commodities, including soy, palm oil, cocoa, is causing long-term destruction of nature and threatens those that depend on forests for their livelihoods. For example, EU imports of soy are more likely to cause new deforestation (specifically in the Cerrado region in Brazil), compared to Chinese imports which tend to come from regions where deforestation occurred a long time ago<sup>19</sup>. This illustrates that EU action on deforestation will have a significant impact.

In the EU, the discussion about EU action to address deforestation is in full swing. In 2019, the European Commission adopted the [Communication on Stepping up EU Action to Protect and Restore the World's Forests](#), announcing its intention to step up the EU's action against deforestation and forest degradation. The European Commission committed to assessing measures to reduce the footprint of EU consumption on land, including through new legislation and encouraging consumption in the EU of products from deforestation-free supply chains. More recently, the [EU Biodiversity Strategy for 2030](#) and the [Farm to Fork Strategy](#) have confirmed the European Commission's commitment to present in 2021 a legislative proposal and other measures to avoid or minimise the placement of products associated with deforestation or forest degradation on the EU market. Most recently, this commitment was reaffirmed by the President of the European Commission, Ursula von der Leyen, at the [One Planet Summit](#) in January 2021.

The loss of our forests, grasslands, savannahs, wetlands and mangroves affects us all. The introduction of new legislation therefore needs to lead to real change and reduce the EU's contribution to the destruction of nature and the violation of human rights. New legislation would also impact on future trade agreements, setting the legal baseline that any trade agreement would be founded upon. To help achieve a strong, ambitious EU law, WWF puts forward the following asks to ensure that new legislation is fit for purpose and leads to real change<sup>20</sup>.

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<sup>16</sup> <http://www.fao.org/3/ca8642en/CA8642EN.pdf>

<sup>17</sup> Pendrill, F. et al. Deforestation displaced: trade in forest-risk commodities and the prospects for a global forest transition. *Environmental Research Letters* (2019). DOI: 10.1088/1748-9326/ab0d41

<sup>18</sup> IEEP (2019) [EU consumption as a driver of global deforestation](#)

<sup>19</sup> Escobar, Neus, Tizado, E.J., Ermgassen, E., Löfgren, P., Börner, Godar, J. (2020) Spatially-explicit footprints of agricultural commodities: Mapping carbon emissions embodied in Brazil's soy exports. *Global Environmental Change*, 62, 102067.

<sup>20</sup> This document is a live document and will be amended with regard to the development of the political discussions and scientific developments.

# WWF asks for a new, ambitious and strong EU regulation in detail

## 1. Products and commodities placed on the EU market are sustainable instead of only being considered “legal” according to the country of origin.

The harvest or production of commodities and products placed on the EU market should not be linked to the destruction or degradation of natural forests and/or other natural ecosystems, nor to the violation of human rights. Unfortunately, national laws cannot always guarantee this, which is why additional sustainability requirements are needed.

National laws to prevent deforestation and conversion in producer countries can be weak and/or lack the necessary provisions to protect natural forests and ecosystems as well as the people depending on them for their livelihoods. Laws governing other sectors but that affect forests may contradict forest laws, for example in relation to agriculture activities.<sup>21</sup> This creates legal confusion as to whether forest but also other land may be converted for other uses. In high deforestation and conversion areas, conflicts may be extreme and governance low.

Commodities and products placed on the EU market should therefore be sustainable: They should not be linked to deforestation, forest degradation, ecosystem conversion or ecosystem degradation, whether legal or illegal. They should not be placed on the EU market if there are risks that they are produced in breach of the country of origin law and unless they meet social, human rights related and environmental sustainability criteria laid down in the EU regulation.

### Did you know?

Deforestation and land conversion are legally allowed in a number of countries, if the correct authorisations or permits are acquired. Under the Brazilian Forest Code, legal conversion can amount to 88 million hectares<sup>22</sup>, with further devastating impacts on indigenous and other local communities and on wildlife populations.

## 2. The scope of EU legislation includes the conversion and degradation of natural ecosystems alongside deforestation and the degradation of natural forests.

EU consumption is directly linked to the destruction and degradation of both natural forests and other natural ecosystems, including savannahs, wetlands, grasslands and mangroves. The EU needs to take responsibility to address its footprint. The same globally traded commodities can be linked to the destruction of both. For instance, the expansion of cattle pastures and soy fields is replacing Brazilian rainforests and savannahs alike. Should the scope of the law be limited to natural forests and leave out other natural ecosystems, it would ignore the already existing huge pressures on these ecosystems.

<sup>21</sup> <http://www.fao.org/3/a-i5588e.pdf>, p 37

<sup>22</sup> <https://science.sciencemag.org/content/344/6182/363>

The value of these ecosystems is often underestimated: Tropical grasslands can harbour biodiversity levels as high as rainforests<sup>23</sup> and their conversion often draws less attention than deforestation. Moreover, the destruction of natural forests and ecosystems cannot be “offset” through reforestation or restoration elsewhere.

### **In focus: The EU and Brazilian soy**

Recent figures show that the EU’s consumption of Brazilian soy increased by 65% between January and October 2020, compared to the year before.<sup>24</sup> In terms of deforestation and carbon footprint in Brazil, the origin of soy determines the impact of deforestation and ecosystem conversion more than the volume of export. Per thousand tonnes of Brazilian soy imported, the EU’s impact is double that of China, and these EU imports are more often sourced from deforestation frontiers in the Amazon forest and the Cerrado grasslands.<sup>25</sup> Deforestation and ecosystem conversion linked to soy exported from municipalities in Brazil’s Cerrado contributes 200 times more to total greenhouse gas emissions than from other municipalities in Brazil. This is because planting soy in the Cerrado region is associated with recent land-use change, whereas imports from southern Brazil are less greenhouse gas-intensive because deforestation occurred there a long time ago.<sup>26</sup>

### **3. Based on objective and scientific criteria, the new legislation covers commodities and products at risk of being linked to conversion or degradation of natural forests and ecosystems.**

The inclusion of a commodity in the new legislation should be based on objective and scientific criteria, using existing credible facts and evidence in order to identify the commodities with the highest risks of deforestation, forest degradation, ecosystem conversion, ecosystem degradation but also related human rights violations at the global and/or EU level. In the first instance, new legislation should focus on agricultural commodities and derived products.

The European Commission-funded [Feasibility study on options to step up EU Action against deforestation](#) argues that principally all commodities with a spatial component (those which take up land to be produced) should be considered. Following this approach, a primary focus should be on agricultural commodities and related products. Legislation should at least cover, but not be limited to, the following commodities and products: palm oil, soy, rubber, beef and leather, maize, cocoa, coffee, poultry, pork, eggs, salmon and dairy. These products should be listed in an annex to the legislation, which should be regularly updated. The annex should focus on listing commodities, as it is considered easier from an administrative point of view, if the companies identify products containing risk commodities and carry out the respective due diligence.

<sup>23</sup> <https://royalsocietypublishing.org/doi/10.1098/rstb.2015.0319>

<sup>24</sup> <https://goodgrowthpartnership.com/wp-content/uploads/CommodityMarketIntelligenceUpdateVIII.pdf>

<sup>25</sup> TRASE yearbook (2020): [The state of forest risk supply chains](#) p.5

<sup>26</sup> <https://www.sciencedirect.com/science/article/pii/S0959378019308623?via%3Dihub> quoted in Mongabay (2020): [China and EU appetite for soy drives Brazilian deforestation , climate change: Study](#)

Though the initial focus should be on agricultural commodities and related products, other commodities and products such as metals from mining should be assessed regarding their impact on nature destruction and human rights violations.

As timber production can lead to forest degradation, the inclusion of timber in new legislation is considered equally important. Legislation concerning illegal timber products already exists on the EU market. [The EU Timber Regulation \(EUTR\)](#) entered into force in 2013, however, it does not cover forest degradation or legal deforestation. It prohibits the placement of illegal timber and related timber products on the EU market and requires companies to carry out due diligence. New legislation addressing deforestation and ecosystem conversion should not weaken the standards laid out in the EUTR, but rather improve and complement the measures on legality by moving towards sustainability whilst at the same time take “lessons learned”, e.g. by addressing the lack of enforcement, incorporating a broad coverage of commodities, including due diligence obligations for the whole supply chain or providing clarity about the declaration of products.

**Table 1: Forest risk commodities as listed in the feasibility study on options to step up EU action against deforestation**

Annual Crops	Perennial Crops	Forest based	Livestock	Extractive industries
Maize	Coffee	Timber	Beef	Gold
Sugar (cane)	Coconut	Wood pellets	Leather	Silver
Grain crops	Pineapple	Cellulose	Milk/Dairy products	Diamonds
Soy	Mango	Pulp	All free ranging animal husbandry	Zinc
Rice	Cocoa	Paper		Potassium
Alfalfa	Palm oil	Processed Wood (e.g. MDF)		Rare earth minerals
Cassava	Rubber			Oil
Sugar beet	Tea			Coal
Hay	Cotton			

*NB: Non-exhaustive overview of commodities with a spatial component. Source: [Feasibility study on options to step up EU action against deforestation](#)*

#### **4. No violation of human rights is linked to the harvest or production of commodities placed on the EU market.**

Commodities and products placed on the EU market should not be linked to the violation of human rights, particularly land use and tenure rights of indigenous peoples and local communities. To address this, new legislation should build on international provisions such as the [United Nations Declaration on the Rights of Indigenous Peoples](#), the [International Labour Organization \(ILO\) Indigenous and Tribal Peoples Convention](#), and [FAO Voluntary Guidelines on Responsible Governance of Tenure](#).

Weak land tenure rights result in land contestation that often works against indigenous peoples and local communities, in many cases with severe negative impacts on livelihoods and cultural losses, such



as in cases in East Africa, Indonesia and the Mekong; land conflict has also been triggered by policies favouring land concessions to large-scale agriculture.<sup>27</sup>

Reflecting the [European Parliament's resolution](#) of 22 October 2020, the legislation should respect the protection of the rights of indigenous peoples and local communities to use land and resources, whether those use rights are public, private, communal, collective, indigenous, women's or customary. Commodities covered by the legislation should not be harvested, extracted or produced from the lands of indigenous peoples and local communities, both those lands formally titled and those under customary ownership, without their free, prior and informed consent (FPIC).<sup>28</sup> They should also not have resulted in the displacement of indigenous peoples and local communities.

Free, prior and informed consent should be obtained before land development for or production of agricultural and forest commodities that might pose a risk for natural forests or other natural ecosystems and may affect the rights of local communities and/or indigenous peoples on the lands, forest and resources that they customarily own, live on or use. As reference, the [FAO Free, Prior and Informed Consent \(FPIC\) Manual](#) could be used.

All members of affected indigenous peoples and local communities should have an opportunity to participate in the decision to grant, or not grant, FPIC, including women, the youth, the elderly and other marginalised groups. Local communities and indigenous peoples affected by the production of agricultural and forest commodities should have access to a dispute resolution mechanism.

Provisions to respect other human rights, including those of workers, may also be included as far as they are related to the harvesting, production and placement of commodities that can pose a risk to forest and/or other ecosystems on the EU market. The development of such provisions should be linked to [the\(ILO\) Declaration on Fundamental Principles and Rights at Work](#), the [International Bill of Human Rights](#) but also other relevant provisions such as the [UN Guiding principles on Business and Human rights](#).

The legislation should allow third parties to take action before national courts to claim compensation or other measures to be taken in case of damage.

A cut-off date or base-line year should not apply to violations of human rights included in the regulation, as claims related to human rights violations should not be restricted.

## **5. Mandatory requirements are introduced for businesses and the finance sector to ensure due diligence, traceability of commodities and supply chain transparency.**

Legislation that requires mandatory due diligence is considered to be the best option, combined with an obligation of transparency along the supply chain. Legislation should apply to all companies, no matter their size. Taking into account the provisions proposed by the [European Parliament's resolution](#), elements of due diligence or traceability should be specified as follows:

### **Due diligence**

**Operators** are defined as natural or legal persons first placing a commodity or product on the EU market, e.g. a producer or an importer. The operator should carry out a risk assessment to determine whether the commodity or product derived from or containing such commodities pose a risk to a forest

<sup>27</sup> WWF report: Deforestation fronts: [Drivers and responses in a changing world](#), 2021 quoting: German, L. 2014. Multi-Sited Governance of Large-Scale Land Acquisitions: Mapping and Evaluating the Terrain. *Review of Policy Research* 31(3): 218-252

<sup>28</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0285\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0285_EN.html)

or an ecosystem, or a product made from or containing such a commodity. If a risk is identified, measures should be taken to reduce the risk to a negligible level. The criteria for the risk assessment should be determined in the legislation. A product or commodity should only be placed on the market, if the risk is negligible.

To determine, whether there is an increased risk for a commodity to be linked to the conversion or degradation of natural forests and/or other natural ecosystems, operators should assess and provide necessary information, including the following points:

- place of harvest, extraction or production of commodities, for meat and leather the location of pastures the cattle have been grazing on or the origin of the feed used;
- the present land cover (e.g. forest, wetland, agriculture land) and if applicable, the current ecological status (i.e. natural forest or natural ecosystem or else) of the area and the land cover and ecological status of these areas at the indicated cut-off date;
- land status, evidence of Free Prior Informed Consent (FPIC), if necessary as well as information about land or tenure disputes;

The risk of the supply chain is determined as being negligible if:

- the operator has obtained complete and reliable information on the land areas the commodities and products are sourced from and can provide clear and convincing evidence that the information is correct;
- the operator can demonstrate that there are no risks related to the area of harvest but also that there are no risks the supply chain includes commodities or products that are not in line with the provisions of the law.

**If the risk is not negligible**, the operator should undertake measures to mitigate the risk, including:

- Requiring additional information from suppliers;
- Verifying compliance with the regulation through independent audits, e.g. if suppliers cannot directly provide certainty;
- Requiring specific action from suppliers to prevent non-compliant commodities and goods from entering the supply chains, e.g. through amendment of contracts but also through providing support to suppliers to change action.

If, after finalisation of the diligence procedure, the operator comes to the conclusion that the risks could not be reduced to a negligible level, the commodity or product cannot be placed on the EU market.

Operators cannot outsource the responsibility to comply with due diligence to third parties. Certification and third party schemes can play a role in helping to fulfil the requirements, e.g. through complementing information about the origin of a product, risk assessment or risk mitigation, the final decision on whether the risk of a commodity or product's risk to be linked to conversion or degradation of natural forests or natural ecosystems as well as human rights violations is negligible lies with the operator or trader as well as all consequences linked to this decision.

### **Traceability**

**Traders** are defined as a legal or natural person that buys or sells commodities or products which have already been placed on the market. They should ensure transparency and traceability of their supply chains for commodities and products that shall be placed on the EU market.

In reference to the [European Parliament report](#), this should include:

- the identification of the operators that supplied the commodities covered by the regulation and/or their derived products;
- where applicable, the identification of the traders to which they supplied the commodities or derived products; and
- ensuring the traceability of their products, in order to be able to identify their origin, when they are placed on the EU Internal Market.

Traders should keep records demonstrating purchases and sales (except to final consumers) for at least 5 years.

Traceability and transparency of supply chains also applies to operators. **Operators** should regularly disclose information, also in the case of changes in the supply chain, including through periodic reports. This includes information about:

- the relevant commodities and derived products placed on the EU market and their origin, as well as their volumes and values;
- the elements of the due diligence system the operator uses, how it is applied for (different) commodities along the supply chain, the application of methods and criteria to assess the likelihood of risks (from an environmental and human rights perspective) and the outcome/conclusions of their risk assessment and risk mitigation.

The information should be reported to the competent authorities. Information should also be provided to their buyers, and as far as applicable, to the general public.

A methodology for due diligence as well as traceability and transparency should be developed by the European Commission, including the views and experience of relevant stakeholders.

**Financial organisations** which are operating in the EU and provide finance, investment, insurance or other services to operators, as defined in the regulation, should be required to carry out due diligence, identifying, preventing and mitigating negative environmental and human rights impacts. Financial institutions should be required to comply with the same rules as their clients, to maintain market coherence, and this is reflected in a wide range of international standards, including UN Guiding Principles and OECD Guidelines for Multinational Enterprises.

To ensure effective action, the legislation should determine binding rules for the finance sector, as investments and finance originating from the EU can be linked to the destruction or degradation of forests and other ecosystems as well as human rights violations.

The European Parliament already clearly expressed its [support](#) for due diligence measures for the finance sector in its resolution of 16 September 2020 on the EU's role in protecting and restoring the world's forests (2019/2156(INI)).

## A tale of two processes

Currently, there are two political processes underway at European level:

The process of DG Environment: [Deforestation and forest degradation – reducing the impact of products placed on the EU market](#), which assesses legislation and other measures aiming to address products placed on the EU market – and ultimately reducing their potential negative impact. The asks in this paper refer to this process. An impact assessment is being carried out and a legislative proposal is expected by the European Commission for Q2 2021.

DG Justice and Consumers has also initiated a process on [sustainable corporate governance](#), which aims to improve the EU regulatory framework: *“Sustainability in corporate governance encompasses encouraging businesses to consider environmental (including climate, biodiversity), social, human and economic impact in their business decisions, and to focus on long-term sustainable value creation rather than short-term financial value.”*

Whilst complementary, these legislative processes are different. The process in DG Justice and Consumers aims to have companies establishing and implementing adequate processes with a view to preventing, mitigating and accounting for human rights, health and environmental impacts in the company’s supply chain, which might also provide the possibility to hold businesses responsible for harm caused through their operations.

The legislative proposal under preparation by DG Environment aims to address a specific problem: The destruction and degradation of forests worldwide driven by the production of commodities and products being placed on the EU market. Rather than setting general rules for companies and standards related to the environment and human rights, this legislation aims to develop specific requirements to ensure that commodities or products on the EU market are free from deforestation. From a WWF perspective, new legislation should not only address the impact on forests but also on other ecosystems, including savannahs, grasslands, wetlands and mangroves.

## 6. Clear definitions are provided for relevant terms and concepts used in the legislation.

To ensure an effective and efficient implementation of new legislation but also to be able to provide guidance to business, the legislative proposal should provide clarity on relevant definitions. This should include, but not be limited to, definitions concerning “forest”, “natural forest”, “deforestation”, “forest degradation”, “natural ecosystem”, “ecosystem conversion” and “ecosystem degradation”. In line with the [European Parliament’s resolution](#) of 22 October 2020 with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation (2020/2006(INL)), WWF supports that those definitions should allow for the protection of natural forests and other natural ecosystems, and be consistent with the EU’s international and domestic commitment on forest, biodiversity and climate protection.

Definitions should be developed in a multi-stakeholder process at the EU level by the European Commission and be based on objective and scientific criteria, taking into account relevant sources of international law and international organisations, as well as other initiatives.

WWF recommends using the principles and definitions of the [Accountability Framework Initiative](#) as a basis, especially those determining natural forests, natural ecosystems as well as those on deforestation, conversion or degradation as they provide necessary additions to the relevant FAO definitions and were developed through a multi-stakeholder process. The AFI definitions should be

complemented by elements of other initiatives such as provided by the High Carbon Stock (HCS) and the High Conservation Value (HCV) approach, where compatible and applicable.

It is important that a cut-off date for deforestation, conversion and degradation is included in the legislative proposal by the European Commission. Such a cut-off date should be in the past as a cut-off date in the future could create speculative deforestation and conversion. Also, a number of deadlines for international commitments made by the EU, as under the Sustainable Development Goals of the Agenda 2030 for Sustainable Development, have already passed. WWF welcomes the proposal of the [European Parliament](#) for a cut-off date in 2015 as a good basis for discussion.

### Did you know?

The [Accountability Framework](#) defines conversion as: “Change of a natural ecosystem to another land use or profound change in a natural ecosystem’s species composition, structure or function”. Deforestation is but one form of conversion (conversion of natural forests). Conversion also includes severe enduring degradation.

## 7. The legislation is stringently implemented and enforced across the EU Member States, with effective, proportionate and dissuasive sanctions.

For a legislation to be effective, it needs to be properly implemented across the EU Member States. To achieve this, clear requirements and measures need to be provided by the legislation but also sufficient and harmonised transposition of the EU regulation into national law as well as effective enforcement at national level through the relevant authorities is essential.

National legislation **across all Member States** should therefore include proportionate, effective and dissuasive penalties & sanctions in case of non-compliance with provisions of the legislation, such as:

- Dissuasive monetary sanctions for both operators and traders (e.g. proportionate to the volume and/or value of commodities or products or towards the damage cost and/or cost for restoration);
- The permanent seizure of commodities and derived products covered by the legislation;
- the possibility to suspend the authorisation to trade;
- For both operators and traders, criminal fines for natural persons and criminal or non-criminal fines for legal persons in case of serious breaches of the legislation;
- orders by authorities towards operators to align their due diligence systems with the regulation.

**EU Member States** shall ensure stringent and effective implementation and enforcement of the legislation by ensuring:

- Enforcement Agencies/Competent Authorities have clear competences to carry out checks and to determine remedial action;
- Checks are carried out at national level according to regularly updated inspection plans based on risk assessment of commodities and products. These plans should use the latest available information and set clear targets and timelines for inspection plans based on number of operators, including checks in operator’s premises or field check;
- Clear and thorough protocols are established at national level to determine whether an operator or trader is compliant with the regulation, minimising room for interpretation. The authorities at

national level should be transparent about the outcomes of checks to the public and give businesses a timely reply about the outcomes of their checks;

- Clear standards concerning prosecution of all breaches of the legislation are developed;
- Provision of sufficient resources and staff capacity for the implementation of the regulation, including trainings to allow for regular and frequent checks;
- Regular exchange between different agencies involved in the implementation and enforcement of the regulation at national level (e.g. customs, police, prosecutors);
- All third party evidence should be formally assessed and taken into account by national authorities. A clear procedure should be developed, providing clarity about the format of evidence but also ensuring timely replies to those providing third party evidence that explain the reasoning for accepting or rejecting the evidence provided.

The **European Commission** should be formally assigned to develop implementing and delegated acts to specify the provisions on the legislation as well as providing guidance on the interpretation and application of the main elements of the regulation. This includes the development of a methodology for due diligence and transparency and traceability based on a multi-stakeholder process. The European Commission should furthermore:

- check regularly whether the transposition of legislation into national law and its application, including penalties and sanctions, is aligned with the aims and objectives of the EU regulation;
- establish a “network of competent authorities” to ensure consistent interpretation of the legislation, better exchange of information and better coordination amongst EU Member States as well as enhanced cross-border cooperation;
- develop, together with the EU Member States, criteria and guidance for all EU Member States to specify when an operator or trader should be given a notice of Remedial Action, a penalty or when other sanctions should apply;
- consider the creation of a European Agency committed to ensure independent consistent and high-quality application of the legislation;
- provide training to national agencies and develop a training manual for national enforcement staff involved in the implementation of the law;
- develop guidance, e.g. through delegated acts, that specifies criteria for checks to analyse and evaluate the risk level of products; documentation of due diligence systems in use as well as documentation showing compliance with legislation, complementing the methodology defined in the legislation.

#### **Lessons learnt from the EU Timber Regulation (EUTR):**

A WWF review of the [enforcement](#) of the EU Timber Regulation (EUTR), carried out in 16 EU Member States between October 2018 and March 2019 showed that fines and sanctions varied greatly amongst EU Member states, were often only applied in cases of repeated shortcomings and sanctions applied stayed below the maximum limits. Controls and checks also varied greatly both in frequency and format, and clear procedures to follow-up control results were often missing. Sufficient resources were often missing and coordination along the enforcement chain within the country was often not formalized. Substantiated concerns made by third parties were treated differently, depending on the EU Member State and cooperation between Member States left room for improvement.

## 8. Complementary additional measures are introduced to address the destruction and degradation of natural forests and other natural ecosystems.

Legislation at the European level should be complemented by a comprehensive set of measures and initiatives, following the commitments laid out in the EC communication on “Stepping up Action to protect and restore the world’s forests” by adopting and implementing a comprehensive set of measures and initiatives. As an essential and complementary effort, the EU should strengthen cooperation with producers, and other consumer countries to support them in halting deforestation, forest degradation and conversion or degradation of natural ecosystems and human rights violations.

Working in partnership with **producer countries**, the EU should prioritise protection, restoration and sustainable management of forests and other important ecosystems through inclusive governance and human-rights based approaches. Additional measures should include the following:

- Technical and financial support to address land use and tenure rights, improve law enforcement and strengthen the relevant legislative frameworks to protect forests and other ecosystems in producer countries;
- Support advancing and scaling up forest landscape restoration and reforestation, including regional initiatives, that help regain ecological functionality, increase the value of ecosystem services and enhance human wellbeing;
- Provide support to producer countries to enable the participation of all relevant stakeholders in developing and implementing measures to address the destruction and degradation of forests and other ecosystems in their country;
- Scaled-up finance to help developing producer countries to implement sustainable and fair forest-based value chains, promote sustainable biocultural-economies and transition to sustainable agricultural practices and production that are deforestation and conversion-free;
- Support for multi-stakeholder land use planning in producer countries to build broad local buy in for sustainable production systems but also determining ways for alternative livelihoods;
- Technical and financial support for smallholders, indigenous peoples and local communities in to be able to fulfil the criteria set out in the legislation and to facilitate and support their inclusion in EU supply chains and develop incentive mechanisms to maintain and enhance ecosystems and products provided by sustainable forest management and agriculture;
- Assist producer countries in tracking progress in the implementation of policy objectives, including commitments related to deforestation, the forest-related components of Nationally Determined Contributions (NDCs), legal and sustainable commodity production and related trade;
- Continue to promote transparency, inclusiveness and participatory forest governance by stepping up action and increase funding in the EU external budget (NDICI) for civil society actors and smallholder representatives to engage in policy, advocacy and legislative reform processes, independent monitoring, as well as to secure land and resource rights to local and Indigenous communities in forests;
- Ensure Green Alliances facilitate integrated approaches with partner countries; at regional (e.g., COMIFAC, SADC, ASEAN) and national level to develop and implement nature-positive plans of action for food and agriculture, forestry, fisheries, infrastructure and the energy, extractives and manufacturing sectors to transition to sustainable consumption and production and a circular economy operating within planetary boundaries,
- The proposed “Forest Partnerships” in the context of the new Green Alliances should be complementary and supportive of ongoing work in the context of FLEGT Voluntary Partnership

Agreements. They should take a comprehensive approach, tackling threats and key drivers of deforestation and other ecosystem conversion (including grasslands, savannahs, and wetlands), ensuring involvement and respect of local communities and indigenous people's rights.

Furthermore, the **European Union** should look into:

- Solutions to better access information and data about supply chains, legislative frameworks, deforestation and conversion risks (e.g. satellite data about conversion rates) for all actors involved;
- Policy initiatives to lower the excessive production and consumption of animal products in the EU;
- Developing an EU protein transition strategy, addressing firstly the need to diminish the demand, while also making the supply more sustainable;
- Modifying the food environment to facilitate consumer uptake of healthy and sustainable diets to reduce negative impacts on the environment and health;
- Action to drive large-scale restoration of ecosystems in the EU by an ambitious nature restoration law.

### **The EU's commitment to tackle deforestation in a nutshell**

The [European Commission's Communication](#) on Stepping up EU Action to Protect and Restore the World's forests lays out 5 priorities:

1. Reducing the EU consumption footprint and support deforestation-free products
2. Working in partnership with producer countries to reduce pressures on forests and ensure EU development cooperation does not finance deforestation
3. Strengthen international cooperation to halt deforestation and forest degradation, and encourage forest restoration;
4. Redirect finance to support more sustainable land-use practices
5. Better availability and quality of information on forests

Though the European Commission has started the implementation of the communication, the timeframes for the different priorities should be clarified better. A particular focus should be on the cooperation with producer countries.





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