



OPINION

European Economic and Social Committee

Minimising the risk of deforestation and forest degradation associated with products placed on the EU market

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
[COM(2021) 706 final - 2021/0366(COD)]

NAT/832

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Section responsible	Section for Agriculture, Rural Development and the Environment
Adopted in section	09/02/2022
Adopted at plenary	23/02/2022
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Outcome of vote (for/against/abstentions)	225/3/2

1. **Conclusions and recommendations**

- 1.1 The European Economic and Social Committee welcomes the Commission's proposal for a regulation. The Commission's legislative initiative is timely and highly relevant.
- 1.2 While understanding that the European Commission seeks to strike a balance between ease of implementation and efficiency, the Committee finds that the scope of the regulation should be broadened:
 - The regulation should not only cover deforestation and forest degradation. Products and commodities, the production of which has led to the destruction of other high-value conservation ecosystems such as savannahs, wetlands, peatlands, mangroves or riparian buffers, should also be covered by a prohibition that prevents them from being placed on the European market.
 - Important forest risk commodities such as maize, sugar and rubber should be included in the scope of the regulation as of its entry into force. Further, the list of derived products should be broadened, and the regulation should cover products from animals fed with forest risk commodities to avoid leakage and unfair competition.
 - The regulation must address other very important social and environmental issues associated with the production of the products covered, in addition to deforestation and forest degradation. This is all the more important for human rights issues, fair treatment of workers and workers' rights issues. Demanding legality only in the producing country, as stipulated in the proposal, is not sufficient for the exact same reasons that it is not sufficient for avoiding deforestation.
- 1.3 The efficiency and effectiveness of the proposed legislation depends on the priority it is given in Member States and on the operational capacity of competent authorities in each Member State. High priority must be given to making sure that all Member States carry out an efficient and effective control, that the necessary funds are dedicated to the initiative, and that systems are in place in all Member States before the entry into force of the regulation.
- 1.4 In the case of many commodities, Europe is far from the largest buyer. For these commodities the effect on deforestation of isolated European demand-side measures could be limited. Political cooperation and alignment on demand-side initiatives with other major importing countries should be a top priority.
- 1.5 Meeting European demands for documentation will be challenging for producer countries and regions, not least for farmers and smallholders. The EESC considers that the cost of the proposed regulation should not be transferred to small-scale farmers who are barely earning a living income.

Europe must engage with producer countries and offer its assistance and cooperation in the implementation of measures necessary to meet European requirements. The Commission should recognise the potential role of smallholders including women as agents of change, and should

ensure the effective, free, meaningful, and informed participation of smallholders. Producers in poor countries should be given enough time to adapt.

The role of certification and the impact of the proposed regulation on farmers, including smallholders and local communities, must be assessed ex-ante and the conclusions from these assessments must be integrated in the regulation before its entry into force.

- 1.6 Penalties should be dissuasive. At the same time, penalties and zero-tolerance should not lead to risk avoidance. If buyers for the European market avoid areas with non-negligible deforestation risk altogether, then farmers and smallholders in remote areas risk being left behind. Furthermore, Europe risks losing its opportunity to assist in the transformation towards more sustainable production patterns in the areas where it matters the most.
- 1.7 Europe has a structural protein deficiency, which is currently covered by imported protein-rich feed, some of this coming from deforestation risk regions.

Europe must increase its degree of self-sufficiency in plant protein. The European Union should also develop a dedicated strategy – linked to Horizon Europe and the EU innovation fund – for developing scaling up production of and making marketable new protein sources. This could include environmentally friendly biorefining of perennial grasses and large-scale production of proteins by methane-fed micro-algae.

- 1.8 SME exemptions and simplified due diligence under the country benchmarking system should not create loopholes that could render the regulation ineffective. At the same time, the regulation should not create unnecessary administrative burdens and costs. The Commission should carefully evaluate whether provisions for geo-localisation down to individual plots in low-risk countries and certain evidential requirements are proportional or necessary.
- 1.9 The EESC considers that social partners and civil society should play a tangible role in monitoring the effectiveness of reducing deforestation. The European Economic and Social Committee and the European Committee of the Regions –should become members of the EU Commission multi-stakeholder platform. The platform should be given a central role in overseeing the implementation of the legislation. Support using satellite data should be provided for stakeholders of the platform and ownership of data should be taken into account. A common approach needs to be taken by Member States to identify the health and state of forests.
- 1.10 The regulation must be consistent with the agreements that the EU has with its trading partners. Being both the major importer and the biggest exporter, the EU has a keen interest in maintaining a well-functioning, fair and sustainable international trade system.

2. Background

- 2.1 On 17 November 2021 the European Commission published its 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.

- 2.2 The initiative is mentioned in the Commission Communication on stepping up EU Action to Protect and restore the world's forests, published in July 2019. The proposal is part of the European Green Deal, the EU Biodiversity Strategy and the Farm to Fork Strategy. The proposal also reflects some important elements of the European Parliament resolution of 22 October 2020 with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation.
- 2.3 The objective of the regulation is to curb deforestation and forest degradation that is provoked by EU consumption and production. This, in turn, is expected to reduce CHG emissions and global biodiversity loss. The initiative aims to minimise consumption of products coming from supply chains associated with deforestation or forest degradation occurring after 31 December 2020 - and increase EU demand for trade in legal and "deforestation-free" commodities and products.
- 2.4 The proposed regulation sets out the definitions "forest", "deforestation", "planted forest" and "plantation forest", which draw on the FAO definitions of these terms, but with some important changes. The definition of "forest degradation" deviates substantially from the equivalent FAO definition. Relevant commodities and products may be placed or made available on the Union market, or exported only if all the following conditions are met:
- the products or commodities are deforestation-free
 - they have been produced in accordance with the relevant legislation of the country of production; and
 - they are covered by a due diligence statement.
- 2.5 The "relevant" commodities and products – the scope of the regulation – are listed in Article 1: cattle, cocoa, coffee, oil palm, soy and wood. In addition, Annex 1 designates certain "relevant products" that contain, have been fed with, or have been made using the relevant commodities, with reference to the product's HS Code.

The scope of the regulation was decided by assessing which parameters would enable it to most effectively reduce the Union's contribution to commodity - and product - driven deforestation and forest degradation, and the Commission's (lack of) capacity to investigate the potential impact of applying the regulation to all derived products.

The scope of derived products listed in Annex I will be reviewed no later than two years after entry into force of the regulation. The Commission may adopt delegated acts to include additional "relevant products".

- 2.6 Due diligence for operators includes gathering information, documents and data, along with risk assessment measures and risk mitigation measures. The information necessary to fulfil the requirements of the regulation includes supplier information, identification of country of production and geo-localisation coordinates of all plots of land where the relevant commodities and products are produced, as well as date and time range of production. SME traders will be subject to lighter due diligence obligations.

- 2.7 The due diligence system is results-based and contains an obligation for operators to ascertain that there is either no risk or only a "negligible risk" that commodities and products are not legal and/or deforestation-free. If operators fail to fulfil this obligation, they are prohibited from placing the relevant commodities and products on, or exporting them from, the EU market.
- 2.8 The proposed regulation introduces a country benchmarking system that will allow the Commission to categorise countries or sub-national regions according to deforestation patterns linked to the relevant products covered. There will be three categories of risk: – low, standard and high. The obligations for operators and Member States' authorities will vary according to the level of risk of the country or region of production, with "simplified due diligence" for low-risk countries or regions and enhanced scrutiny requirements for the competent authorities with regard to imports from high-risk countries.
- 2.9 The regulation includes obligations for Member States to ensure effective checks of commodities and products through their competent authorities, including establishing a plan taking a risk-based approach. Likewise, the competent authorities have to carry out checks on operators. Member States have to ensure that the competent authorities have adequate powers and resources to carry out its obligations.
- 2.10 The EESC's opinion on the proposal for a regulation aims to provide a civil society perspective on the regulation.

3. General comments

- 3.1 The Committee welcomes the Commission's proposal for a regulation. A major part of global deforestation is associated with expansion of agricultural land and demand for commodities such as beef, wood, palm oil and soy. The EU is a major consumer of these products, some of which are produced unsustainably, causing deforestation. The legislative initiative by the Commission is therefore timely and highly relevant.
- 3.2 The Committee expects an EU regulation to send a strong signal to the market and to provide a strong incentive for supply chains where the EU is a major international buyer to transform and document deforestation free production. Further, common EU rules will make for a level playing field on the EU internal market.
- 3.3 For some commodities, Europe is far from being the largest importer and have less leverage to influence the organisation and logistics of supply chains in producer countries. A clear differentiation should be made between small and big companies in terms of deforestation. The influence of the big companies in the supply chain is huge.

Political cooperation and alignment on deforestation-free demand-side initiatives with other major importing countries should be a major priority. The upcoming COP27 could be an opportunity for entering into a political agreement.

- 3.4 Cooperation with producer countries is even more important, to support them in addressing the root causes of deforestation. Reducing poverty, offering and boosting opportunities to access a

decent and dignified livelihood including quality jobs and investment in the development of rural areas will have a direct impact on deforestation. Reducing deforestation must take into account the cultural importance of the forest especially for the rural and forest communities. With regard to timber extraction, the EU should endeavour to help implement sustainable forest management.

- 3.5 Some deforestation in some countries is caused by farmers and rural communities who rely on using wood for fuel and heating or who are clearing small plots of land for farming and grazing. However, the vast majority of deforestation is caused by the conversion of forests to commercial agriculture operations. The proposed regulation would not apply to instances of local communities clearing forests they own or occupy to support their own livelihoods if it does not result in products grown on that land being placed on the EU market. However, support mechanisms including financial support and cooperation that involve these groups will also be important in further reducing deforestation. The EESC considers that the cost of the present regulation should not be transferred to small-scale farmers – whether their produce is exported or not – who are barely earning a living income.
- 3.6 Eliminating – in particular large-scale practices or the practices of a large number of small and middle-sized operators where the forest is being cut down for commercial agriculture or other industrial purposes (such as mining, natural resource exploitation or related infrastructure) should be a priority. Raising awareness in the EU and in producer countries concerning the role and importance of forests in tackling climate change and carbon sequestration is important: EU financial support should be provided for this. Transfer of best practices, building thematic bridges and one-stop shops on online platforms worldwide are necessary. Education, training and a skilled labour force are crucial for reducing deforestation in long term. Technical support programmes to help increase productivity should be considered as an alternative to taking in more land for agriculture.
- 3.7 The EESC calls for an urgent response mechanism to support people and civil society who are protecting forests inside and outside the EU. Forest and environmental protection, landslides and habitats are high risks for local and indigenous communities, where people are being killed for protecting and defending them, both outside the EU and in some EU Member States.
- 3.8 The vast majority of farmers and smallholders do not engage in illegal practices or deforestation, and a growing number of farmers and smallholders are engaged with local, European and international counterparts in documenting responsible practices under certification schemes or landscape initiatives.

These people should not be left behind. Europe must engage with producer countries and offer its cooperation in the implementation of measures necessary to meet the proposed supply chain traceability requirements and develop national commodity traceability systems where they are currently lacking. Producer countries should be given the time necessary to adapt.

- 3.9 The proposed regulation should not lead only to "greening" EU supply chains while underlying drivers of deforestation go unaddressed. A potential consequence of the proposed legislation is that some European operators may choose to source their products/commodities from "safer"

countries (where possible) to avoid risks of deforestation or illegality. If so, the size of EU trade in forest-risk commodities in particularly risky countries may decrease, potentially reducing the opportunities for the EU to influence forest governance in those countries. Europe should avoid losing its opportunity to assist in the transformation to more sustainable production patterns in the areas where it matters most if buyers for the European market avoid areas with non-negligible deforestation risk altogether.

- 3.10 The obligations under the regulation should further extend to the financial sector. This is in order to ensure that financial services and investments associated with the production, processing, trade or market placement of relevant commodities and products are not linked to deforestation, forest degradation, or the violation of national laws and international human rights standards.
- 3.11 The European Green Deal, the common agricultural policy and the Farm to Fork strategy could cause agricultural production to fall in the EU in the future¹. The greening of Europe, however, should not lead to outsourcing of the environmental impact of production. Europe must invest in agricultural production that can continue at the same rate or increase, while at the same time becoming greener and more sustainable. The non-productive area of CAP 2023 will increase production needs in the world and increase the risk of deforestation.
- 3.12 Europe has a structural protein deficiency which is currently covered by imported protein-rich feed, some of this coming from deforestation risk regions.

A growing world population and an increasing global middle class mean an even higher global demand. Europe must increase not only its degree of self-sufficiency in plant protein and protein for feed but should also invest in technologies that will enable us to produce more protein without taking up more land for production.

The EU should develop a dedicated strategy - possibly linked to Horizon Europe and the EU innovation fund - for scaling up production and making marketable new alternative sources of proteins. This could include biorefining of perennial grasses and large-scale production of proteins by methane-fed micro-algae.

- 3.13 The farming sector in Europe is facing rapidly-rising resource prices, which are likely to lead to higher food prices. This comes on top of the currently high energy prices affecting budgets for European citizens. Care should be taken in the choice of measures and timing of the implementation of the regulation so to give the supply chains time to adapt in order to avoid sharp price increases.
- 3.14 The demand for forest-risk products is expected to increase as the global population and a global middle class grow. Consumers should be informed about the importance of sustainable, healthy, and balanced consumption patterns as indicated in the opinion NAT/755².

¹ <https://publications.jrc.ec.europa.eu/repository/handle/JRC121368>

² EESC own-initiative opinion on Promoting healthy and sustainable diets in the EU, [OJ C 190, 5.6.2019, p. 9](#)

- 3.15 The regulation must be consistent with the agreements that the EU has with its trading partners. Being both the major importer, but also the first exporter, the EU has a keen interest in a well-functioning and fair and sustainable international trade system. For reasons of administrative economy, compliance with the requirements for products covered by the present regulation should be checked when they are introduced into the EU. Once products have been authorised, they should be able to circulate freely in the EU without the need for additional controls.

4. **Specific comments**

- 4.1 Other ecosystems such as savannahs, wetlands, peatlands, mangroves or riparian buffers have high conservation value, and many are at risk of degradation. These high-value conservation areas should be included in the regulation. The EU and the Member States should consider safeguarding primary forests by including them in UNESCO protection.
- 4.2 Certain important forest risk commodities such as maize, sugar and rubber are missing from the scope of the regulation. The list of derived products is limited to just a few, which reduces the impact of the regulation. To ensure its effectiveness, all products related to deforestation, forest degradation and loss of high-value conservation areas must be within the scope of the regulation. A special focus must be placed on rubber, maize, bananas, sugar cane, and all meat from animals fed with soy (such as pork and poultry). The EESC strongly calls for a wood mass inventory at EU level. This issue should be solved in the near future. Key definitions within this regulation (e.g. "deforestation-free" or "forest degradation") should be in line with FAO definitions. Adapted definitions or definitions that are only partly based on FAO definitions just create scope for different interpretations and could therefore lead to legal uncertainty for economic operators.
- 4.3 Enforcement of the regulation will be in the hands of the Member States' competent authorities. The efficiency of the proposed legislation thus depends on the priority it is given and the operational capacity of public authorities in each Member State. Making sure that the necessary funds are dedicated, and systems in place in all Member States must be a high priority. Dedicated investments in IT infrastructure, human resources and increased operational capacity for public authorities in each Member State for effective and adequate monitoring, benchmarks and risk assessment are important. Artificial intelligence should be used in this regard. A transparent monitoring system (including publications of the due diligence reports in a form that does not compromise confidential business information)– should be implemented by the entities to which the regulation applies. The cut-off date must be a date in the past to avoid encouraging further deforestation.
- 4.4 The regulation focuses on deforestation and forest degradation linked to production and consumption in Europe of selected commodities and products. However, it fails to address other very important social and environmental issues associated with the production of the products covered. In particular, the chosen approach to human rights protection relies exclusively on the laws applicable under national legal frameworks. This leaves major gaps in terms of safeguarding the land rights of indigenous peoples and local communities and other international human rights standards.

The Committee encourages the Commission to consider supplementing its proposal with guidelines for undertaking due diligence and risk assessments on supply chains in each commodity sector. The guidelines should include potential sources of information that the relevant responsible operators could consult, such as certification schemes that meet certain minimum standards. The aim should be to establish a coherent scheme for responsible and deforestation-free supply chains, building on some of the important work that have been done in a number of existing certification schemes.

- 4.5 No later than five years after the regulation enters into force, the Commission will carry out an assessment of the impact on farmers, in particular smallholders, indigenous peoples and local communities and the possible need for additional support. The proposal also provides for an evaluation of the need and feasibility of additional trade facilitation tools to support the achievement of the objectives of the regulation through recognition of certification schemes.

The Committee finds, however, that the role of certification and the impact on farmers, including smallholders and local communities, are essential to the functioning and impact of the proposed regulation, both intended and unintended. They must be covered by ex-ante assessments and the conclusions stemming from these assessments must be integrated in the regulation before its entry into force.

- 4.6 SME exemptions and simplified due diligence under the country benchmarking system should not create loopholes that could render the regulation ineffective. At the same time, the regulation should not create unnecessary administrative burdens and costs. A public EU Rating Agency³ for human and environmental rights in the business context can help SME's carry out their obligations. The Commission should carefully evaluate whether the proposed provisions for geo-localisation down to individual plots in low-risk countries and evidential requirements are proportional or necessary. Some requirements would not only lead to conflicts in the EU with respect to the subsidiarity principle vis-à-vis the Member States, but above all would also impose a disproportionate burden on small producers, who provide a significant share of supply in the EU. For the sake of transparency, the exact criteria of the classification must be made public. Small forest owners inside and outside the EU have to be supported to improve sustainable forest management, access sustainable finance and offer sustainable forest products.
- 4.7 Articles 22 and 24 include provisions for withdrawal from the market and possible destruction of commodities or products that do not comply with the regulation. This would in most cases be in conflict with other important EU policy principles and goals, including on preventing food waste. The EESC therefore recommends that the Commission reconsiders these provisions to avoid destruction of valuable resources. According to the draft regulation (Article 3) timber from lawful (authorised) clearing of forests for the purpose of creating agricultural land should not be placed on the market. It would be appropriate to clarify that timber from certain authorised forest clearing processes, in which a societal need for the change in land use has been determined, is not automatically covered by the marketing ban. Such provisions should be based upon provisions known from forest legislation of many Member States, where conversion is

³ See point 1.15 in EESC own-initiative opinion on *Binding UN treaty on business and human rights*, [OJ C, C/97, 24.03.2020, p. 9](#).

permitted in exceptional circumstances based upon criteria such as forestation rates, forest management and compensation by new planting.

- 4.8 The EESC considers that a common approach by Member States based on EU guidance concerning financial or non-financial penalties is needed, alongside the criminal penalties for the most serious violation of law. Transparent criteria for determining the penalties must also be established and promoted. In addition to administrative fines and penalties, the regulation should provide that operators can be held liable under national law for non-compliance with the regulation's provisions.
- 4.9 The notion of legality mentioned in the Commission's material is too soft for tackling the human rights situation. The EESC considers that more powerful instruments in this legislation, like civil liability and assurance, are needed. EU imports should include verification criteria regarding working conditions, freedom of association and fair treatment of workers. Workers' rights, health and safety, gender, career predictability, access to a fair pension system and quality jobs for workers in the wood industry and forest communities and indigenous peoples have to be taken into account alongside the sustainable forest management criteria and deforestation. Fair land tenure and access to land should be priorities. Internationally recognised human rights should be part of due diligence procedures, market placement requirements and benchmarking criteria, and forced and child labour should be carefully monitored and eliminated. Article 3(b) should, besides the national legislation, also consider internationally relevant social clauses and human rights criteria based on ILO core conventions, especially C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169) and C184 - Safety and Health in Agriculture Convention, 2001 (No. 184) and other international human rights instruments⁴. This should also be reflected in article 10.2 of the proposal.
- 4.10 The EESC considers that social partners and civil society should play a tangible role in monitoring the effectiveness of reducing deforestation. The European Economic and Social Committee and the European Committee of the Regions should be members of the EU-Commission multi-stakeholder platform, that should be given a central role in overseeing the implementation of the legislation. Support using satellite data should be provided for stakeholders of the platform and ownership of data should be taken into account. A common approach by Member States to identifying the health and state of forests is needed

Brussels, 23 February 2022

Christa SCHWENG

The president of the European Economic and Social Committee

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e.g. Universal Declaration of Human Rights, European Social Charter, Charter of Fundamental Rights of the European Union, Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security