



## Contribution to the EC Public consultation on 'Deforestation and forest degradation – stepping up EU action'

### Environmental Investigation Agency (EIA)

February 2019

#### Summary:

Existing EU and member state guidelines and voluntary industry tools and policies are insufficient to halt deforestation and environmental degradation.

The EU must develop an enforceable action plan, including:

- binding regulation of EU supply chains ensuring all relevant products placed on the EU market meet defined sustainability standards that exclude deforestation, environmental degradation and human rights abuses;
- similar regulation of EU financial products and services industries incorporating these same standards;
- increased coherence and implementation of other EU policies, including climate negotiations, bilateral coordination mechanisms, action to increase EU production and consumption of plant protein, and enforcement of the EUTR;
- encouragement of action in other markets;
- support for producer and trade countries to meet these goals

#### The need for a comprehensive action plan on deforestation

EIA welcomes the EU initiative on stepping up action against deforestation and forest degradation but is concerned that the EC suggests the initiative aims to merely increase “the coherence of existing EU policies and tools”<sup>1</sup>.

Existing measures do not, nor could go far enough.

In light of the severity of deforestation and its effects on societies and biodiversity worldwide the EC must accept that a transformational policy response that legally enforces credible sustainability standards is now required to respond to a “new age of environmental breakdown”<sup>2</sup>.

Forests and biodiverse ecosystems are essential for maintaining water tables, combating climate change and biodiversity loss, and supporting the livelihoods of many hundreds of millions of people. Deforestation and forest degradation are widely linked to poor governance and crime, and the abuse of human rights, notably land rights.

Despite global political pledges to halt deforestation by 2020, including through the New York Declaration on Forests<sup>3</sup> and the UN Sustainable Development Goals<sup>4</sup>, recent years have seen some of the worst forest loss on record<sup>5</sup>. Most recently 77 per cent of forest loss has been attributed to commodities production, including large-scale commercial operations (27%), forestry (26%) and small-scale shifting agriculture (24%)<sup>6</sup>.

A 2013 European Commission study estimated the EU [consumed over a third](#) of all internationally traded crops and livestock produced through deforestation between 1990-2008<sup>7</sup>.

[EIA and other NGOs](#)<sup>8</sup> have been advocating EU action on commodities linked to deforestation, such as [palm oil](#)<sup>9</sup>, soy, beef, cocoa, coffee and others, and similar calls from [companies](#)<sup>10</sup> and EU [member states have reinforced this](#)<sup>11</sup>. France adopted a national strategy on deforestation in 2018 that sets out a clear set of actions – and similar, though stronger actions are required at the EU level.

EIA urges the EU put together an ambitious multi-faceted action plan – including both demand-side and supply-side measures that mainstream sustainability standards into all policy areas, including but not limited to trade, finance, climate, and biodiversity. Simply consolidating existing tools will not suffice.

### **Demand side actions (13b):**

#### **New legislative measures**

EIA is concerned at the EC's suggestion that this will be a "non-legislative initiative", and that the consultation "roadmap" is devoid of any explicit mention of binding regulatory measures.

The EU has already regulated on illegal timber, but currently lacks any provisions to limit the impacts of its consumption of unsustainable (or illegal) commodities more widely - despite the EU being a major global importer and commodity production being the biggest driver of deforestation globally.

In March 2018, the Commission published a [feasibility study](#) on possible actions to combat deforestation<sup>12</sup>. Due diligence regulation was considered to have the highest potential impact on forests from the demand side. Moreover, it was strongly requested by the European Parliament in its [September 2018 resolution on forests](#)<sup>13</sup>.

A recent study concluded that the initial costs to comply with regulations are outweighed by the economic benefits of increased investment in skills, innovation, infrastructure and supply chains, and have a positive impact on job creation and business competitiveness<sup>14</sup>.

EIAs [recent findings](#)<sup>15</sup> demonstrate voluntary corporate 'no deforestation' policies for palm oil – while displaying great promise and some progress - cannot currently be relied on to safeguard forests or prevent human rights abuses.

While some corporate commitments are ambitious, they are not legal requirements in any market, and correspondingly display shortcomings including leakage, selective adoption, limited of transparency and traceability, and perpetuate smallholder marginalisation and the absence of the free, prior informed consent (FPIC) of local and indigenous communities, on who's lands they operate<sup>16</sup>.

A recent review concluded that half of corporate targets are limited to 'net-zero' instead of 'zero-gross' deforestation commitments<sup>17</sup>, providing for reforestation to compensate for natural forest loss and often include future implementation deadlines allowing for pre-emptive clearing.

Several scientific studies have highlighted that old growth forests on all continents take decades to several centuries to fully recover from degradation and restore the services that they once provided<sup>18</sup>.

Regulation is needed to ensure normalisation of best practices and to create a level playing field, making all actors in the market equally accountable, and to provide a clear regulatory signal for ‘no deforestation’.

### 1. Regulation on sustainability (and legality) in trade

**EIA** urges the Commission to develop **binding regulation** obliging operators in EU regulated product supply chains to transparently implement **mandatory due diligence requirements** ensuring the principles of **no deforestation, no forest degradation, and no human rights abuses** are met in the production of **key agricultural inputs**.

While illegality is a driver of deforestation for commodities production, and commodities produced on illegally deforested land should be covered by EU regulation, a legality approach alone would not be sufficient to stop deforestation as not all deforestation is illegal, and legality is too often contested.

Regulation must require compliance with defined sustainability criteria as well as legality, building on existing best practice in corporate ‘no deforestation’ commitments, such as those outlined in the Accountability Framework Initiative<sup>19</sup>. Also, as required by the French ‘Duty of Care law’<sup>20</sup> there should be a plan for regular evaluation of effectiveness.

Because 2020 is the first deadline in most global and EU political statements of intent on reducing deforestation by either 50% or entirely, it seems sensible to set this as a cut-off date, whereby commodities produced on land deforested after 2020, or where human rights abuses are occurring cannot not be placed on the EU market thereafter.

#### **Regulated Products:**

Any action should be applicable to all commodities that can have an impact on deforestation and forest degradation to create an equal playing field and to ensure that taking action on a subset of commodities does not cause subsequent expansion of another commodity at the expense of forests.

EU regulation should not discriminate, and must apply to **all products that incorporate inputs deemed to be “like” with those crops, livestock or other products identified as key drivers of deforestation**, such as beef, soy, palm oil, cocoa, sugar, rubber, etc.

If beef is classified as “like” with chicken as both are proteins, and if palm oil is classified as “like” with rapeseed as both are oil seed plants generating vegetable oils and fats, then regulation should apply to all products incorporating vegetable oils and fats and plant and animal proteins and fats, and the like inputs in them.

Similarly, regulation should apply to these “like” products regardless of where they are produced **or their end-use** – from biscuits and brisket to biofuels and body cream.

#### **Defined sustainability criteria:**

An EU Due diligence regulations should ensure No deforestation is achieved by requiring regulated inputs (cows, palm oil, rapeseed, etc) are produced on land managed in compliance with standards **equivalent to the outcome of High Carbon Stock Approach (HCSA)**<sup>21</sup>. The HCSA integrates both

High Conservation Value (HCV) and High Carbon Stock (HCS) assessments and the Free, Prior and Informed Consent (FPIC) of local communities and indigenous peoples.

EIA recommends the inclusion of additional explicit sustainability criteria to ensure production practices do not lead to the conversion or degradation of other important natural ecosystems, not just forests, including but not limited to grasslands, shrublands, peatlands, mangroves and wetlands.

**Human rights:** Human rights requirements should be inclusive of workers' rights and the rights of local communities and indigenous peoples, including FPIC over use or sale of land. A number of international texts and guidelines already exist around this including the Voluntary Guidelines on Good Tenure (VGGT) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

**An underlying prohibition:**

Due diligence obligations should be underpinned by a prohibition on placement of products not complying with the sustainability criteria or producer countries laws.

While EIA recommends sustainability standards like the HCSA, and hopes many companies will adopt verification and certification schemes in order to verify compliance with them, the limitations of certification schemes have been widely documented for palm oil, ([EIA 2015<sup>22</sup>](#); [EIA 2018<sup>23</sup>](#); [EIA 2019<sup>24</sup>](#)) timber<sup>25,26</sup>, soy<sup>27</sup> and other commodities.

Certification should not be the arbiter of compliance with EU requirements. Where certified supply chains are found in violation, they should not receive a green lane and should be liable to the same penalties as uncertified inputs.

**Transparency and traceability** need to be part of any regulation as these are fundamental to identifying and managing supply chain risks<sup>28</sup>. EIA therefore also recommends that the EU ensures that all companies in EU supply chains disclose their supply chains.

Shadow companies can be key barrier to identifying who is responsible for deforestation<sup>29</sup>, so EU regulation should help fully implement the 5th EU Anti-Money Laundering Directive by requiring the disclosure of the ultimate ownership of supply chain actors in products linked to deforestation. The EU should further and that promote global regulations on this to be adopted.

- 2. Increase the coherence and enforcement of existing EU policies and frameworks** including for instance the EUTR, Renewable Energy Directive and Climate strategy.

**Increase and Update public procurement policies:** Further support and uptake of public procurement policies by EU Member States is suggested to be supported through EU policies, but these policies should not be considered to be sufficient to remove the need for the diligence regulation outlined above.

**EU Timber Regulation (EUTR).** The EU FLEGT Action Plan has catalysed global momentum to tackle illegal logging and conflict timber, and enforcement in the EU is increasing slowly ([EIA 2017<sup>30</sup>](#), [EIA 2018<sup>31</sup>](#)). The EC should encourage and/or assist EU Member States to increase budgets and resources for EUTR enforcement.

**International Illegal Timber Legislation:** The EC should maintain its programs to work with other major markets such as China, Vietnam, and India, to prohibit illegal timber imports and mandate better international coordination of enforcement actions.

**Encourage action in other markets:** The EU should leverage its bilateral coordination mechanisms to ensure they work with other major consumer markets, like China, India and the USA, to increase regulatory demand from those countries for sustainable commodities that exclude deforestation, in recognition that halting deforestation is a global goal.

**EU Protein Plan<sup>32</sup>:** Reducing EU dependency on imported plant and meat protein is both strategic and environmentally sound but must similarly comply with provisions of the regulation outlined above, and not discriminate between EU and non-EU produce or products.

### 3. Financing and investment Regulation (13c)

The EU should ensure all financial instruments and investments regulated under EU laws are required to comply with same robust sustainability criteria as required of products trade, and other policy measures above.

[Business and industries<sup>33</sup>](#) have highlighted EU fiscal and environmental policies are ill-aligned and that ambitious and well-designed and properly enforced regulations obliging EU investors to subject funding to sustainability proofing.

EIA recommends robust criteria to ensure financial activities categorised as sustainable do not cause deforestation and forest degradation as part of the **EU Sustainable Finance Action Plan<sup>34</sup>**, notably in its Sustainable Taxonomy and EU Green Bond Standards and EU Ecolabel. As with the sustainability criteria outlined above, this should ensure compliance with the HCSA or its equivalent and international human rights, and not assume reliance on certification schemes.

The scope should be extended to cover all financial products and investments, and companies should be obliged to disclose the relevant information through the strengthening, for example, of the Non-Financial Reporting Directive<sup>35</sup>. Sustainability considerations should also be mainstreamed into other processes like financial advice and credit ratings.

### 4. Free Trade Agreements: (13d)

Trade agreements between the EU and other countries should include strong sustainability standards underpinned by the same sustainability criteria as outlined above that work to halt deforestation and forest degradation. The EU should refrain from signing Free Trade Agreements (FTAs) that remove the legal scope for the EU to exclude unsustainable commodities from the EU market.

## Supply side actions (13a)

### Support to producer countries and smallholders

Producer countries have already enacted measures to tackle deforestation and improve sustainability. For example, both Indonesia and Malaysia recently announced policies to further limit oil palm expansion into forests. However, the UN has found that despite significant increases in environmental laws, the biggest challenge is to fully apply and enforce them<sup>36</sup>.

Support to producer countries' governance reform mechanisms should be targeted to improve implementation and enforcement in key deforestation hotspots, specifically those laws addressing human rights, and legal process. Support should be channelled to government, private sector and civil society and local and indigenous peoples to produce commodities without deforesting.

Smallholders produce a significant proportion of commodities in trade and their exclusion from international markets is a key concern. Further support will be needed to help them meet sustainability requirements to access markets.

## References

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<http://science.sciencemag.org/content/349/6250/814>
- <sup>19</sup> <https://accountability-framework.org/framework/core-principles/#scope>
- <sup>20</sup> <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&dateTexte=20190114>
- <sup>21</sup> <sup>21</sup> The HCSA is being used for palm oil, pulp/paper and rubber, with cocoa in preparation. It is already part of certification schemes, including the Roundtable on Sustainable Palm Oil (RSPO), the [Rainforest Alliance Sustainable Agriculture Standard](#), the additional [Ecosystem Services Certification](#) under the Forest Stewardship Council (FSC), and the [Climate Bond Certified Standard](#) for forestry. Many major companies operating in the EU have already adopted the HCSA, for example: [www.supply-change.org/companies/hcs-management-protection](http://www.supply-change.org/companies/hcs-management-protection) (based on assessments in Spring 2017).
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