



4th March 2021

IMPACT ASSESSMENT UPDATE AS PRESENTED AT MULTI-STAKEHOLDER PLATFORM ON PROTECTING AND RESTORING THE WORLD'S FORESTS

FEEDBACK FROM RAINFOREST ALLIANCE

We would firstly like to reiterate that we welcome the European Commission's plans to take responsibility for deforestation, ecosystem conversion and degradation and associated forest conflicts and human rights abuses resulting from EU consumption and trade.

We also applaud the Commission for having established the Multi-stakeholder Platform on Protecting and Restoring the World's Forests, an important platform for sharing knowledge and providing input to this policy process.

Below please find our feedback on the key topics as requested.

RESPONDING TO SPECIFIC INPUT REQUESTED BY THE COMMISSION

We will begin by sharing our feedback on the specific questions raised during the presentation of Mr. Torres, namely:

On the issue of forest degradation

Forest degradation is generally more difficult to define, monitor, report and verify than deforestation. Yet, the impact of forest degradation on greenhouse gas emissions, climate change adaptation, livelihoods and ecosystem preservation means that the issue should not be overlooked by the upcoming EU legislation.

We recommend having a clear definition of "degradation" as well as clarity on how this concept is included within companies' due diligence obligations. In this regard, for the sake of feasibility, we recommend defining thresholds of degradation as the basis to specify permissible vs. impermissible land use scenarios within the due diligence framework.

We encourage the EC to use the definitions of the Accountability Framework initiative (AFI)¹ which address the following points:

- a) a definition of "degradation"
- b) clarity on the level of degradation that is considered severe and sustained enough to constitute deforestation or conversion, thus violating a no-deforestation or no-conversion policy related to soft commodities;
- c) clarity as to what kinds of lands are considered to be already degraded such that they could be made available for commodity production without this violating a no-deforestation or no-conversion policy;
- d) clarity on which kinds of forest management or silviculture are considered "natural forest" vs. "tree plantation" – the latter being considered a production system that would violate a no-deforestation policy if it replaced natural forest.

¹ Please find the Accountability Framework Initiative (AFI) definition of "degradation" on page 3: <https://accountability-framework.org/wp-content/uploads/2019/07/Definitions.pdf>



On the issue of leakages

There is no such thing as a perfect, leakage-proof policy, and therefore we must accept that even the most robust policy may be threatened by leakages. This is particularly true when trying to regulate complex supply chains. We see the risk of leakages in terms of:

- (1) commodities – producers continue to convert land for commodities not covered by this law.
- (2) type of natural ecosystem – an exclusive focus on forests can shift conversion pressure to other natural ecosystems that are also high in biodiversity and carbon, such as natural savannahs, grasslands, peatlands and wetlands.
- (3) internal market discrepancies – if the EU law is not enforced with the same level of rigor in every member state, companies may try to import commodities into the EU market via member states where enforcement is weaker.
- (4) shift to other markets – companies may move their operations in order not to have to comply with tighter EU regulations.

We believe some specific steps the Commission can take to address the specific types of leakages mentioned above, include:

- (1) Regarding commodities,
 - a. opt for an iterative and incremental approach – whichever commodities the Commission decides will be encapsulated in this new regulation can be revisited after a number of years and based on the most recent scientific data.
 - b. contribute to the efforts of creating a sturdy broad HRDD legislation at the EU level – while it is positive that this initiative exists to target specifically those products that can be linked to deforestation, it is crucial that DG ENV is able to provide input and strengthen the broader efforts conducted by DG JUST, aiming at a wide scope of companies and products and putting in place a mandatory due diligence system that is sufficiently robust to cover other products that, while not covered by the scope of the DG ENV law, can also be associated with deforestation and forest degradation.
- (2) Regarding type of natural ecosystem, we recommend that the scope of the law be widened to address the conversion of all natural ecosystems, not only natural forests². This is crucial considering that many non-forested natural ecosystems and mosaic ecosystems, such as savannahs and wetlands, contain high biodiversity values and large stocks of carbon in vegetation and soils.
- (3) Regarding internal market discrepancies, we must remember that impact of any policy is deeply connected to how well it can be enforced. In the context of the EU, which is made up of different sovereign states, it is important to ensure that implementation and enforcement within the EU is as harmonized as possible, with no significant discrepancies among member states. Whether we are talking about national monitoring organizations or a unique European centralized organization to support the implementation of this legislation, sufficient resources – budget, capacity, training – must be given in order to minimize discrepancies and avoid that some EU states

² Please see the Accountability Framework Initiative (AFI) definitions of “no conversion” and “natural ecosystem” on page 7 and 5, respectively: <https://accountability-framework.org/wp-content/uploads/2019/07/Definitions.pdf>



become the gate through which products can enter the EU market with a lower degree of scrutiny.

- (4) Regarding the threat of a shift to other markets, it is known that this is always one of the risks that front-runners take. The European Union, through its different legal, economic and diplomatic tools, and in particular in the context of the Green Deal, is committed to being a front runner in sustainability. This means not only taking the first steps but also inspiring others to join in the efforts to combat issues that are truly global. The EU should aim to set high standards and to engage bilaterally or through international organizations with other (consuming) countries, promoting better practices not only in the EU, but also abroad. Until other countries develop bold approaches in their sustainability commitments and regulations, a risk of market shift will be present, but that should be seen as an acceptable risk.

Traceability & Transparency

Linked to the above point we believe that the design of the EU's due diligence requirement can go a significant way to reducing risk of leakage by addressing key elements including traceability and transparency; expectations for effective supplier engagement, including building and maintaining long-term relationships with suppliers to assess and address risk and impact and expeditiously resolve non-compliances; expectations to address supply chain impacts at the level of suppliers and supply-sheds, not only purchasing verified commodity volumes; and robust monitoring and reporting based on consistent metrics and utilizing common platforms that facilitate data sharing and support sector-level improvement. Our detailed policy recommendations on these dimensions of effective due diligence are elaborated in the Accountability Framework, particularly Core Principles 5, 6, 11, 12, and the associated Operational Guidance.

Traceability is a critical part of implementing deforestation-free and responsible supply chains, including through due diligence and risk-based approaches. Traceability verifies claims about products, helping ensure respect for people and the environment in supply chains. It can also support risk management to target interventions by farmers, farmer groups, companies, community forest enterprises, NGOs and governments, making them much more effective. This knowledge has value for supply chains because it will make their interventions to combat deforestation more effective, allows them to reward good practice by farmers and landowners, and makes it easier to communicate their impacts to stakeholders.

In addition, it gives governments the opportunity to prioritize investments, and to reward company behavior on the EU market with trade benefits. Therefore, structural investment from the EU in monitoring and traceability is essential. We specifically see the need for investment in new technologies such as information systems that can document land use and land use planning. Examples of this are Global Forest Watch, which supports monitoring and transparency; and the Rainforest Alliance First Mile Program, which uses digital tools to collect data to the level of the individual smallholder, which can support improvement and transparency for both the farmer and the rest of the supply chain.

Combined with this, and as part of the smart mix, companies can and should continue to engage with other (voluntary) initiatives, such as for example landscape approaches, which offer a holistic approach to a production area. These efforts will also strengthen their ability to comply with regulation and will contribute to the prevention of leakages.

Due diligence

We are pleased to learn that from the 20 policy options that the Commission was considering, an improved, mandatory due diligence requirement is present in the current shortlist of 5. We



would like to reiterate our support for this option. Due diligence legislation can ensure companies identify, prevent, mitigate, and account for potential negative impacts their business processes may have on people and nature. It fulfills part of a government's responsibility under the UN Guiding Principles for Business and Human Rights (UNGPs), to protect people and nature against adverse impacts from business activities.

Key aspects of due diligence that should be included

We consider due diligence to be an integrated systems-based approach to prevent, identify, mitigate and account for adverse impacts, as elaborated in the OECD Guidance for Responsible Business Conduct. As such, it is essential to include all elements of due diligence, not singling out only a few.

Please see our earlier comments regarding key design features for robust due diligence, which are further elaborated in the Accountability Framework. Based on some of the challenges of implementing deforestation-free supply chains and sourcing areas in the 2010s, we emphasize the importance of collective approaches and not placing undue emphasis on company-by-company audit regimes, which can contribute to fragmentation and inefficiency. Rather, we recommend that the due diligence approach include expectations for commodity buyers to engage with and drive improvement at the level of suppliers (e.g., commodity traders) and sourcing areas (e.g., landscapes and jurisdictions). This approach greatly reduces the risk of leakage and increases the likelihood that due diligence efforts of EU-based businesses will result in the ultimate desired outcome of reduced deforestation in commodity-producing regions.

Finally, we emphasize that due diligence obligations must not place additional assurance burdens on smallholder producers, who already suffer from a disadvantaged position in value chain negotiations and revenue allocation. Rather, due diligence should be a mechanism to help direct greater investment in sustainability to supply chain origins, including smallholders, to support sustainable land use that is free of deforestation.

Aside from these general considerations, we would also like to highlight some specific points:

Scope – social and human rights issues

We were disappointed to learn that the Commission is leaning towards the option of making this due diligence requirement focus only on environmental aspects, leaving behind important social and human rights issues that are deeply linked to commodity supply chains and deforestation. Ecosystem protection is best achieved through a holistic sustainability approach that addresses livelihoods and advances human rights. Local communities must be supported as ecosystem stewards. We believe leaving these aspects behind would mean a missed opportunity to promote true sustainability.

Experience indicates that: a) no-deforestation supply chain approaches that do not respect the rights of indigenous peoples and local communities (IP/LC) may be prone to failure and risk perpetuating human rights violations; and b) participation of IP/LC can be critical to foster long-term protection of forests that are spared from conversion for commodity production.

Given this experience and the EU's commitments on upholding human rights and promoting good tenure governance set out in its human rights action plan and sustainable trade policy, as well as in its policies on indigenous peoples and sustainable development, we urge the EU to include respect for IP/LC rights as an integral part of its proposal.

Specifically, we recommend that the proposal align with Accountability Framework's Core Principles 2 and 7 and its associated guidance on:



- Free, prior and informed consent (FPIC)³
- Respecting the Rights of Indigenous Peoples and Local Communities⁴

Coordination and complementarity with the Sustainable Corporate Governance initiative

The Rainforest Alliance supports any moves made by the European Union to focus on long-term sustainability in supply chains. For this reason, we are pleased that both DG ENV and DG JUST's initiatives are considering the option of introducing mandatory due diligence requirements for companies or products in the EU.

We would like to emphasize that it is crucial that these two initiatives are able to align and build upon each other, rather than compete or create a duplication of efforts. Both should also be aligned with other ongoing efforts from the European Union on sector-specific approaches, as it is the case for cocoa, for example.

At the same time, we would like to express that we see the dangers of overly relying on one another, which is dangerous given that both initiatives are still being shaped and it is not completely clear what each one will cover in the end. Just like we expect the Sustainable Corporate Governance to bring forward mandatory *environmental* and human rights due diligence obligations for European companies, we also expect the increased *social and human rights* due diligence requirement on commodities associated with deforestation that are entering the European. Relying only on the Sustainable Corporate Governance proposal for complying with social and human rights obligations poses a risk that certain companies, products or issues will “fall between the cracks” of both legislations, and will contribute to the existence of the leakages that the Commission is hoping to avoid.

Encouraging the inclusion of smallholders

To reconcile forest protection goals with policy priorities related to poverty alleviation and equitability, EU policy should not unduly burden smallholders. Smallholders play a critical role in commodity production throughout the tropics. Inclusion of these producers in ethical supply chains is essential to support rural livelihoods, increase productivity, and avoid displacement of social and environmental impacts.

Any new due diligence requirement should therefore favor inclusion, engagement through long-term relationships, and support of smallholders toward full compliance. In some cases, this will require commodity buyers to support incentives or enabling conditions for smallholders to sustainably intensify without expanding into natural ecosystems. We strongly encourage the EU to align its approach with the AFI's smallholder-inclusion guidelines⁵, which provide smallholder-specific parameters for traceability, supplier engagement and support, and assessment and retention of non-compliant suppliers.

Creating a level playing field

If well-designed, a due diligence approach is conducive to creating of a level playing field for companies already taking their responsibility, by raising the minimum standard for all.

³ <https://accountability-framework.org/operational-guidance/free-prior-and-informed-consent/>

⁴ <https://accountability-framework.org/operational-guidance/respecting-the-rights-of-indigenous-peoples-and-local-communities/>

⁵ <https://accountability-framework.org/operational-guidance/smallholder-inclusion-in-ethical-supply-chains/>



Much attention is often given to the potential burden on SMEs. However, it is important to keep in mind that due diligence requirements can be proportional to the size of businesses. If the Commentary to Principle 14 of the UNGPs is followed, the types of policies and processes expected of SMEs will be defined according to their capacity. Moreover, SMEs tend to have fewer suppliers and customer, enabling for deeper and better-quality relationships.

PROVIDING ADDITIONAL INPUT

Additionally, we would like to take this opportunity to comment and make some suggestions relating to the content and format of this process.

On the importance of the smart mix of measures and engagement with producing countries

We would like to have more clarity about the vision of the Commission on how the EU will help producer countries implement and adapt to the new deforestation regulation.

From our experience in certification and landscape projects, we have learned sourcing deforestation-free requires an enabling environment in the country of production. Therefore, we believe that the EU should financially, technically and politically support countries producing forest-risk commodities on sound forest and tenure policies and their enforcement and rights-based processes to work with communities in forested areas. Good forest governance requires local capacity, resources, multi-stakeholder collaboration and effective monitoring tools, which all require investment and expertise.

On the deforestation-free criteria

The definitional framework of the AFi is congruent with other key definitions that the EC has been considering, and is specifically formulated and detailed to apply to the context of commodity production and sourcing decisions. This definitional framework is thus well suited to the EC's proposed policy approach, including due diligence.

Relation to other key definitional frameworks is as follows:

- The AFi definition of "'forest' follows that of FAO. For the purpose of implementing no-deforestation supply chains, the AFi defines the term 'natural forest' to exclude tree plantations. Adoption of the AFi definitions is thus consistent with the option of adopting a modified version of the FAO definition that excludes plantations.
- The High Carbon Stock Approach is identified as being aligned with the AFi definitions of 'deforestation' and 'no deforestation.' (Details in this [AFi Operational Guidance document](#).) This signifies that if the EC were to adopt the AFi definitions, companies could apply the HCSA to assess and demonstrate a no-deforestation approach in the contexts where the HCSA has been tested and validated. However, as the HCSA has not been tested and validated worldwide, we consider the AFi definitions to provide a more appropriate overarching definitional framework for EC policy that can apply across the full range of contexts from which forest-risk commodities are sourced for the EU market.

On the participation of civil society actors (and disclosure of steps taken to ensure it)



As one of the 9 signatories of a letter sent to the Commission on October 19th 2020 on this topic, we would like to reiterate our continued support for the inclusion and meaningful participation of civil society organizations and indigenous peoples' and local communities' representatives from countries that produce forest and ecosystem risk commodities.

We therefore would like to request that the Commission discloses information on the steps it has taken to reach out to these organizations and promote their engagement in its policy processes.

On the timing of the release of the Impact Assessment and Legislative Proposal

While we understand that the Commission has a tight timeline to deliver on this proposal, in the spirit of transparency, we urge you to reconsider your decision and provide stakeholders with the opportunity to review and comment on the Impact Assessment ahead of the finalization of the Legislative Proposal.

On the engagement through the Multi-stakeholder Platform

We would like to also mention that we believe the current set up of the Multi Stakeholder Platform could be improved. In future meetings we would hope to see a more participatory method in selecting the agenda items, and the allocation of more time for discussion among participants. We would also hope the Commission provides a greater level of detail on their work, especially when asking for input. This will ensure that participants are well-informed and able to share higher quality feedback. Finally, we would ask to share requests for input as early as possible, as to enable participants to put together their contributions within a feasible timeframe.