

Our Response to the EU Regulation on Deforestation-Free Products



INTRODUCTION

The Rainforest Alliance welcomes the European Commission's proposal for an EU regulation on deforestation-free products.¹ This proposal is an ambitious move to ensure the success of zero-deforestation commitments and create a level playing field for companies involved with such commodities. It sends a strong political and market signal in support of achieving deforestation-free supply chains. However, there is still scope to improve the proposal and ensure that it can meet its own objectives. Notably, by aligning its provisions more consistently with existing, widely recognised initiatives, and better addressing the needs of local forest and farming communities in the Global South.

The Rainforest Alliance is an international non-profit organisation with more than 30 years of experience in advancing more sustainable land-use and commodity production in 70 countries, working alongside farmers and forest communities, companies, governments, civil society, and millions of individuals.

This paper outlines our key recommendations to EU decision-makers, including guidance on how to strengthen

the proposal, and improve partnerships and cooperation mechanisms with producing countries, as part of the “[smart mix](#)” of measures needed to efficiently tackle the drivers of global deforestation.

KEY RECOMMENDATIONS

- Assess and monitor the impacts of the regulation on smallholders, Indigenous peoples, and local communities
- Expand the scope of the regulation to include the rights of Indigenous peoples and local communities, and to tackle conversion of natural ecosystems
- Clarify and improve [definitions](#) in line with the Accountability Framework Initiative (AFI)
- Ensure meaningful engagement with stakeholders, and lasting relationships with suppliers, as part of the due diligence obligation
- Enable sector-specific guidance to operationalise the due diligence obligation

¹ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX-%3A52021PC0706>

- Prevent leakage through a uniform due diligence obligation
- Define precise criteria for country/region risk assessments and ensure a transparent process
- Leverage the country/region risk assessments to develop common roadmaps with producing countries and incentivize jurisdictional approaches
- Reinforce the provisions on access to justice and ensure a transparent information system
- Develop a consistent action plan to support and partner with producing countries

ASSESSING AND MONITORING THE IMPACTS OF THE REGULATION ON SMALLHOLDERS, INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

The impact assessment conducted prior to the legislative proposal provided very limited information on potential positive and negative impacts of the regulation in producing countries, particularly with regard to the most vulnerable supply chain actors, such as smallholders, Indigenous peoples, and local communities. Article 32.2(b) of the proposal states that the general review, taking place no later than five years after the regulation comes into force, should evaluate “the impact of the Regulation on farmers, in particular smallholders, Indigenous peoples and local communities and the possible need for additional support for the transition to sustainable supply chains.” This is too late to anticipate potential challenges and secure early, adequate technical and financial support for capacity building. Considering the implications of the new regulation for producers in developing countries, an ex-ante impact assessment (prior to the regulation coming into force) should be conducted to complement the general impact assessment and propose options to mitigate potential harmful impacts. The impacts on smallholders, Indigenous peoples and local communities should also be thoroughly monitored on a regular basis and included in the Commission’s general reviews and reporting, as laid out in Article 32.

DELIVERING ON THE OBJECTIVES OF THE REGULATION

Scope and Definitions

Expanding the Scope to Address the Conversion of Natural Ecosystems

To maximise potential positive impacts, the Rainforest Alliance supports the inclusion of other natural ecosystems besides forests (as defined in Article 2) in the scope of the regulation. This would help prevent negative ripple effects, such as shifting agricultural land conversion to other natural ecosystems like savannahs, grasslands, peatlands, and wetlands. These different ecosystems are not only crucial for climate mitigation and adaptation, biodiversity conservation, and local communities’ subsistence, but are also

often interconnected at the landscape level.

This expanded scope is needed to truly fulfill the objectives of the regulation as laid out in Article 1—in particular to reduce the EU’s contribution to greenhouse gas emissions and global biodiversity loss. It would also take into account the global climate, biodiversity and UN Sustainable Development Goals supported by most countries around the world, as well as company commitments and existing initiatives and standards, which already go beyond forests. The proposal could therefore build on these existing initiatives and commitments to define a broader and more coherent scope. This should be done as soon as possible as there is no valid reason to wait until the official “first review” of the regulation (as proposed in Article 32), which is scheduled to take place within two years of the regulation coming into force.

Including International Law and Standards on Indigenous Peoples’ and Local Communities’ Rights

The regulation should explicitly require companies to ensure commodities have been produced in accordance with customary tenure rights and the Free, Prior and Informed Consent (FPIC) of Indigenous peoples and local communities (IPLCs), in line with the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP), the [Convention on Biological Diversity](#) and the [International Labour Organization Convention 169](#). Deforestation and human rights violations are [highly correlated](#), and IPLCs have a [recognised role](#) in preserving the lands they own and/or manage. Integrating the rights of IPLCs in the due diligence obligation for companies is therefore instrumental to tackle one of the root causes of deforestation. The obligation to be compliant with local laws, as laid out in Article 3, is not a sufficient guarantee to ensure that the commodities placed on the EU market have been produced and harvested in accordance with IPLCs’ rights. Indeed, the proposal only includes a limited scope of laws, rather than encompassing all relevant rules applicable to the production of the given products, including rules which are not part of legislative frameworks—e.g., case law and customary laws, as well as ratified treaties and conventions. Furthermore, local laws can be either piecemeal, poorly enforced and/or weakened—hence not guaranteeing the respect of the rights of IPLCs.

Expanding the Scope to Rubber

In the [feasibility study](#) on options to step up EU action against deforestation (2018), rubber had been highlighted as one of the seven key commodities for the EU to consider. However, it was not included in the scope of commodities of the proposed regulation. This is a missed opportunity: The EU is the second biggest global importer of rubber, and sustained international demand for natural rubber is driving the expansion of rubber plantations, [with harmful impacts on tropical forests](#). There are also more than 6 million smallholders who produce 85 percent of the world’s natural rubber—most of them living in poverty—while rubber plantations have been connected to human rights violations. This sector would therefore benefit from the application of enhanced sustainability criteria from the EU, which has the leverage to do so. It would also support existing commitments and initiatives from major companies of the sector, e.g. as part of the [Global Platform for Sustainable](#)



Timber plantations in Brazil. Photo courtesy of Imafiora

[Natural Rubber](#) (GPSNR). Therefore, the Rainforest Alliance recommends including this commodity in Annex 1 before the adoption of the regulation, and not waiting for the reviews planned several years after its entry into force.

Including the Conversion of Natural Forests to Tree Plantations in the Definition of “Deforestation”

Conversion of natural forests to timber plantations is excluded from the proposed definition of “deforestation,” which is limited to the conversion of forest “to agricultural use” (which does not include forestry). While the proposal addresses timber plantations via the concept of “forest degradation,” this approach focuses on the manner of harvesting without sufficiently addressing the (potentially more severe) impacts of land-use change. Conversion of natural forests to timber plantations is typically associated with severe loss of biodiversity—and of carbon stocks as well. Such conversion should be defined and regulated as deforestation. Incorporating the [definitional framework of the AFI](#) (which is also anchored in the FAO “forest” definition) would enable the regulation to define the conversion from natural forest to timber plantation as deforestation.

With regard to timber harvesting, the definitions of “forest degradation” and “sustainable harvesting operations” are insufficiently precise and are likely to be difficult—if not impossible—to implement and monitor in an objective or consistent manner in practice. Enforcement is also likely to be difficult or impossible due to the inability to definitively demonstrate compliance or non-compliance relative to these definitions.

Expanding the Application of the Forest Degradation Definition to Non-Timber Forest Products

The definition of “deforestation-free” provided in Article 2 (8) of the proposal states that “the wood has been harvested from the forest without inducing forest degradation after December 31, 2020.” However, this restricts the application of the definition of “forest degradation” to wood products only, while in reality other products, such

as non-timber forest products and plantations under tree cover (e.g., shade-grown coffee), can also be linked to forest degradation. This is particularly relevant as the definition of forests excludes plantations under tree cover as they fall within the definition of “agricultural plantations.” With current proposed definitions, plantations under tree cover are not subject to the deforestation-free requirement, while they may cause forest degradation.

Expanding the application of the forest degradation definition to non-timber forest products is also important as the regulation is to be regularly reviewed to include new commodities and products in its scope.

Due Diligence Obligation

Enabling Continuous Improvement of Traders Which are SMEs

Under Article 6 on the “Obligations of traders,” the proposal distinguishes between large traders and “traders which are SMEs” and recognizes that while the latter may not have the capacity to fulfill the whole due diligence obligation, they should not be permanently exempt. Since, compared with bigger companies, most SMEs have less capacity to put due diligence systems in place, the risks in their supply chains are often poorly or un-addressed, which could constitute a loophole. It also increases the potential risk that shell companies are established as SME traders to evade the due diligence requirements.

SMEs should be incentivised to build their capacity and invest in due diligence systems, in order to comply with the whole due diligence obligation of the regulation, including mitigation measures. For this purpose, the lighter due diligence obligation provided in Article 6 for SMEs operating as traders should be time-bound and include a phase-in process to ensure that this specific regime is reviewed within a defined timeframe—e.g., at the occasion of the general review as planned in Article 32 of the proposal—and gradually reinforced to encourage continuous improvement.

Ensuring Meaningful Engagement with Stakeholders as Part of the Due Diligence Obligation

Meaningful engagement with relevant stakeholders—in particular with impacted or potentially impacted stakeholders and rightsholders—is crucial to inform the due diligence process, in line with internationally recognised due diligence guidance such as the [OECD due diligence guidance for responsible business conduct](#). The regulation should explicitly mention in Article 8 that all stages of the due diligence must be informed by meaningful engagement with stakeholders. Relevant delegated acts and guidance should further detail how meaningful engagement with stakeholders should be conducted throughout the supply chains, with particular attention to Indigenous Peoples and local communities, smallholders, and women, building on existing best practices and guidance.

Specific Considerations on Smallholders, Indigenous Peoples and Local Communities with Regards to Information Requirements

The requirement to provide geo-location coordinates of all plots of land where the relevant commodities and products were produced, as specified in Article 9.1(d), can be challenging information to provide for smallholders, Indigenous peoples and local communities (e.g., community forest organisations or Indigenous peoples' organisations that collectively manage forests)—with the risk of them losing access to the EU market if they are unable to do so. It will be crucial to combine this ambitious traceability requirement with technical and financial support to build the capacity of smallholders and producer organisations to collect and manage the required data. This should be reflected in Article 28 on partnerships and cooperation mechanisms with third countries.

Primary processors and first intermediary traders should be held responsible for providing this information in cas-

es where smallholders do not have the capacity to do it themselves. This would be in line with principle 5.2 of the AFI's [guidance](#) on "Smallholder inclusion in ethical supply chains," according to which: *"Primary processors and first intermediary traders know the origin of raw materials to the level of the farm, estate, plantation, ranch, or forest management unit. For smallholders, origin is known at least to the level of the farmer group [...]."*

The regulation should stipulate that delegated acts and further guidance will detail how the geo-location requirement applies to smallholders, Indigenous peoples and local communities. It should take into consideration the specificities of relevant sectors, and existing best practices, including options that can support a just transition for smallholders. Delegated acts and further guidance should also elaborate on the ability of smallholders to retain ownership of their proprietary information, and their right to exercise control over how their data is stored and used by supply chain partners should be secured. Ensuring the farmers and/or cooperatives own the data would in particular help reduce the duplication of efforts, as farmers are often requested to provide data for multiple trade partners and different systems.

The legality requirement (Article 9.1(h)) may also be challenging for smallholders, Indigenous peoples, and local communities to fulfill, as they may not be in a position to provide evidence of land access rights or ownership—in particular in countries and regions where land governance is weakly enforced, and where customary rights are not officially recognised. While the EU has contributed towards addressing this challenge with the Forest Law Enforcement, Governance and Trade (FLEGT) action plan, land tenure rights can be challenging to secure for IPLCs and smallholders. The regulation should mention that delegated acts and further guidance must detail how the legality requirement applies to smallholders, Indigenous peoples, and local communities, building on existing best practices.



Reyna Valenzuela sorts xate palm fronds at a community collection center in Guatemala. Photo by Sergio Izquierdo

More Precise Criteria for the Use of Certification for the Risk Assessment and Mitigation

The Rainforest Alliance welcomes the fact that certification and third party-verified schemes are included in Article 10 of the regulation as supporting tools for the risk assessment and mitigation companies must undertake as part of the due diligence obligation. The use of such schemes should, however, be detailed further—specifying minimum credibility requirements in particular—to avoid the risk of encouraging the development of weak sustainability schemes. These criteria should be based on internationally recognised, normative good practices for credible certification schemes, such as those set out in the [ISEAL's Codes of Good Practice](#). Article 10.2(j) in the proposal could better delineate basic criteria and stipulate that these will be further elaborated in relevant delegated acts and guidance—similar to the [implementing regulation](#) on the detailed rules concerning the due diligence system and the [guidance](#) to implement the EU Timber regulation. Recognising the added-value of robust schemes could help unlock their additional benefits beyond legal requirements—including increased investments in supply chains.

Ensuring Lasting Relationships with Suppliers

As specified in the proposal, mitigation measures are needed when companies find out that products are not compliant with the EU requirements. However, in light of potential dire impacts on local communities and smallholders who may lose a crucial source of income, these measures should be implemented carefully. Indeed, the risk of companies adopting a “cut and run” strategy must be taken into account. Companies should be encouraged to continue sourcing from high-risk regions to truly contribute to tackling deforestation and benefiting local communities. As the proposal already lists mitigation measures in Article 10.6 (a) and (b), it should also explicitly mention that disengagement must be a measure of last resort, duly justified and supported by evidence that all other means were exhausted or that mitigation is not possible—in line with internationally recognised due diligence guidance such as the [OECD due diligence guidance for responsible business conduct](#).



A cut log marked with tracking codes at a sawmill in Indonesia. Photo by Christian Sloth

Where disengagement cannot be avoided, companies should disclose as part of their reporting obligation (as set in Article 11.2) the number of instances where they have decided to disengage with suppliers and/or supply chains, the reason for this disengagement, and the location of these suppliers—without disclosing the identity of those suppliers, except where the company deems it acceptable to do so in accordance with applicable laws.

Relevant delegated acts and guidance should further detail mitigation measures—particularly in regard to smallholders (e.g., laying out options in case of non-compliant members of farmer groups)—and outline a clear hierarchy of these measures.

Enabling Specific Guidance

While the proposal refers to delegated acts to make the due diligence obligation more precise, it should also provide the possibility to develop additional guidance—in particular, sector-specific guidance—as very different commodities and products are included in the scope of the proposal. Additional guidance should consider scenarios that operators may face in the implementation of the due diligence obligation and related options, including scenarios regarding the application of information requirements to smallholders, Indigenous Peoples and local communities, and mitigation measures.

Assessment of Countries

The Rainforest Alliance welcomes the country benchmarking system presented in Article 27 of the proposal. It can be a key instrument to support companies in their risk assessments and to engage with producing countries. It should, however, be more clearly detailed in the regulation and be used as an instrument to develop joint roadmaps with producing countries.

Preventing Leakage Through a Uniform Due Diligence Obligation

The country benchmarking system should not be tied to different levels of due diligence, as the simplified due diligence linked to a low-risk country/region assessment may trigger a leakage effect—with the risk that companies disengage from high and standard risks countries/regions to source products from low-risk countries/regions, and/or “launder” products from high- and standard-risk countries/regions in low-risk countries/regions. The due diligence process is inherently risk based and, accordingly, should be proportionate to the risk exposure of the companies’ supply chains. A single and uniform due diligence obligation applying to all operators, regardless of where they source their products, would be a fairer and more easily implementable option.

Precising the Criteria of the Country/Region Risk Assessment

Considering that sound implementation of the due diligence obligation highly depends on the country benchmarking system in the proposal, the criteria that will be used to do the country/region risk assessment should be much more detailed and precise in the regulation. In the first place, the regulation should make explicit that the cri-



Luis Alfonso Guzman Sanchez, a forestry technician for the Nuevo Becal ejido in Mexico. The community's forestry operations include FSC-certified timber, charcoal, and honey. Photo by Michael Toolan

teria laid out in Article 27.2 are cumulative, not mutually exclusive. It should also specify what data will be used to support the risk assessments—and include independent civil society information to back up satellite data.

Furthermore, to ensure a fair and transparent system, and facilitate acceptance by producing countries, the risk-assessment criteria provided by the regulation should be further detailed; these are crucial elements that cannot be defined in secondary legislation. Notably, these specifications should identify:

- The production trends of relevant commodities and products that will be considered for the risk assessment.
- The elements to be taken into account to assess whether nationally determined contributions (NDCs) contribute to reducing the risk of deforestation and forest degradation in producing countries, beyond the inclusion of the land sector and related inventories—including, but not limited to: review, level of implementation, and specific time-bound targets on forests.
- The elements to be taken into account to assess whether agreements and other instruments concluded between the countries concerned and the EU contribute to reducing the risk of deforestation and forest degradation in producing countries—including, but not limited to: type of agreement and instruments, level of implementation, specific time-bound targets on forests, and related enforcement mechanisms.
- The types of national or subnational laws to be taken into account in the risk assessment.
- The cases in which sub-national risk assessments would be undertaken, as well as specific criteria applicable to jurisdictions.

Incentivising Jurisdictional/Landscape Approaches Through Regional Risk Assessments

The Rainforest Alliance welcomes the possibility introduced in the proposal for the Commission to develop sub-national risk assessments, as it allows for the recognition of local political leadership and initiatives, and therefore a more balanced and fair assessment.

Sub-national assessments should take into consideration jurisdictional/landscape approaches, beyond local laws, which indicate political willingness from local authorities and stakeholders to address the drivers of deforestation and forest degradation. Sub-national jurisdictions should be enabled to present evidence of low-risk status to the European Commission—based on the criteria set by the regulation—to generate ownership for local stakeholders to achieve and demonstrate low-risk status.

Leveraging the Country/Region Risk Assessments to Develop Common Roadmaps with Producing Countries

In addition to supporting companies in their due diligence processes and national competent authorities in performing controls, the country benchmarking system should be used as an entry point to reinforce cooperation with producing countries. The European Commission should make use of the country risk assessments to develop joint roadmaps with producing countries—prioritising those assessed as “high-risk”—to sustain long-term dialogue and work jointly on actions to decrease the level of risk.

Ensuring a Transparent Process

Article 27.1 provides that the list of the countries or parts thereof that present a low or high risk shall be published by means of implementing acts. Considering the crucial importance of this process, the Commission should ensure that this list is established in a transparent way, enabling

the participation of civil society organisations that can back up satellite data and other relevant information.

Access to Remedy

Natural and legal persons whose rights were violated as a result of operators' failure to comply with the regulation should be enabled to seek remedy via judicial means. It is crucial to reinforce the accountability of companies to deliver on their due diligence obligation. Provisions on access to justice in Article 30 should be linked to those provided by the proposal for an EU directive on Corporate Sustainability Due Diligence² for consistency but should cover all operators (regardless of their size/turnover) in the scope of the regulation.

Transparency and Accountability

To ensure sound monitoring of the implementation of the regulation and corporate accountability, the provisions on the information system in Article 31 of the proposal should be reinforced, to minimise data anonymisation and specify the type of data that must be made available to the wider public, on the basis of existing recognised disclosure initiatives and frameworks—e.g., the AFI [guidance](#) on reporting, disclosure, and claims. This is essential for civil society organisations—especially in producing countries—to be able to perform on-the-ground checks and operationalise the provisions on substantiated concerns as laid out in Article 29. The reporting obligation for operators should also be further elaborated upon in Article 11.2, to make sure basic elements are included—e.g., specific disclosure on disengagement, including the number of instances where the party has decided to disengage with suppliers and/or supply chains, the reason for this disengagement, and the location of these suppliers—and that these reports are available publicly.

STRENGTHENING COOPERATION AND PARTNERSHIPS WITH PRODUCING COUNTRIES

While Article 28 of the proposal sets a good basis to develop partnerships and cooperation mechanisms with producing countries, the path to achieve this result is still unclear. In general, there has not been a consistent action plan to operationalise Priority 2 of the [communication](#) on stepping up EU action to protect and restore the world's forest (2019). In the light of the proposal of regulation, such consistency is essential, as the EU's legal requirements may pose several challenges for stakeholders in producing countries—in particular smallholders, Indigenous peoples, and local communities.

Moreover, while forest partnerships and other product-specific agreements are very important instruments when working with producing countries to address the drivers of deforestation, they have no specific focus on supporting compliance with the EU requirements—and such instruments may take a long time to be fully functional. For these reasons, substantial resources should be earmarked as early as possible by the European Commission—as part of thematic, regional, and national pro-

grammes—to build the capacity of local stakeholders in regard to the regulation, in particular:

- Informing stakeholders in producing countries on the upcoming EU requirements well before the regulation enters force—particularly relating to the “deforestation-free” definition, the cut-off date, and the information that downstream supply chain actors will require
- Providing technical and financial support to smallholders, Indigenous peoples, and local communities so that they can comply with the information requirements, in particular geo-location information
- Providing technical and financial support to cooperatives and farmer groups to put in place efficient data collection systems and processes
- Developing compensation programmes for smallholders and forest communities that are excluded from the EU market while being in compliance with local laws—e.g., supporting the development of alternative economic activities or restoration activities
- Building on the FLEGT processes and platforms to support the improvement of land tenure and governance
- Developing incentives for producers, including mechanisms to improve the living income of farmers and forest communities
- Supporting jurisdictional / landscape approaches
- Providing incentives for companies to maintain their sourcing from high-risk regions—e.g., through facilitated access to public-private partnerships and co-finance mechanisms

The Rainforest Alliance encourages the Commission to develop a comprehensive action plan to move swiftly on these measures, which can maximise the positive impact of the regulation and increase acceptance by communities in producing countries.

CONCLUSION

The Commission's proposed regulation on deforestation-free products sends a much-needed political and market signal and the Rainforest Alliance applauds its ambition. However, if the proposal is to meet its own objectives, steps must be taken during the ensuing legislative process to strengthen the eventual regulation. The Rainforest Alliance encourages the European Parliament and the Council to consider incorporating the key recommendations within this paper and to put in place all the accompanying measures needed to support the most vulnerable supply chain actors, in particular smallholders in the Global South. The Rainforest Alliance also encourages the Parliament and the Council to help address the root causes of deforestation in third countries, beyond EU supply chains. We will continue supporting the development of an EU regulation that can generate transformation on the ground, and make use of our expertise on sustainable production and supply chains to provide relevant input during the legislative and implementation processes. 🌱

² https://ec.europa.eu/info/sites/default/files/1_1_183885_prop_dir_susta_en.pdf



The Rainforest Alliance is creating a more sustainable world by using social and market forces to protect nature and improve the lives of farmers and forest communities.

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