



GREENPEACE EU POLICY BRIEFING

# A new EU regulation to protect the world's forests and ecosystems

**GREENPEACE**

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The EU must pass a new law to tackle the destruction of forests and nature, and the violation of human rights, driven by European consumption. This destruction is worsening the climate, biodiversity and health crises. This briefing outlines what effective and implementable legislation should look like.

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# 1. Introduction

Despite government promises and corporate pledges to halt deforestation, the world continues to lose priceless natural habitats. Between 1990 and 2016, 1.3 million square kilometres of forest was lost. This is the equivalent of a football field every 4.5 seconds. This destruction is further accelerating biodiversity loss and climate change, and is often associated with human rights violations against Indigenous Peoples and local communities.

Agricultural expansion is responsible for 80% of global deforestation, and the EU's consumption, trade and investments account for a disproportionate share of this. The EU's consumption of commodities such as soy (mostly used to feed farm animals), palm oil, beef, rubber and cocoa, as well as industrial logging and other extractive industries, are particularly to blame. European hunger for these commodities leads to forests and many other natural ecosystems such as wetlands, peatlands, savannahs, shrublands and grasslands being converted or degraded.

The ongoing health crisis has also highlighted the undeniable links between planetary health and human health. When we pressure the planet by destroying forests and other ecosystems to produce more and more animal feed, meat and other commodities, together with industrial animal farming we are creating a 'perfect storm' for diseases similar to the COVID-19 to emerge and spread.

Even though 400 companies promised in 2010 that they would end their contribution to deforestation by 2020, none of them have met that goal. Rather, at least 50 million hectares of forest – an area the size of Spain – have likely been destroyed for global commodity production since those promises were first made.

It has become clear that relying only on corporate, voluntary or market-based initiatives won't put an end to the destruction driven by our consumption. New and more comprehensive action is needed by the EU and national governments.

The European Commission recognised the large forest footprint of EU consumption already in its 2013 study. After many years of waiting, the Commission finally published its 'communication' in 2019, promising measures to tackle the issue. The communication was warmly welcomed both by national ministers as well as by the European Parliament. The von der Leyen Commission made action against deforestation a central piece of the European Green Deal, and the EU's 2030 Biodiversity and Farm to Fork

strategies, in which it committed to put forward a “legislative proposal and other measures to avoid or minimise the placing of products associated with deforestation or forest degradation on the EU market”.

Given the climate and biodiversity crisis we are facing, it is high time for the Commission to table concrete proposals to go up a gear in the fight against forest and ecosystem destruction and for the protection of human rights.



*A network of access roads on former orang-utan habitat, Borneo - © Ulet Ifansasti / Greenpeace*

## 2. A new EU regulation on forest-and-ecosystem-risk commodities

Greenpeace is calling on the EU to legislate on the placing on the internal market of commodities whose extraction, harvesting or production has, or risks having, a detrimental impact on forests, other ecosystems and related human rights. For this purpose, the EU should adopt a regulation on the placing on the market of **“forest-and-ecosystem-risk commodities”** (FERCs).<sup>1</sup>

To be sold on the EU market, these commodities must comply with **clearly defined environmental and social sustainability criteria**, ensuring that:

- I. The land from which FERCs originate does not result from the conversion or the degradation of natural forests or other natural land-based ecosystems (e.g. mangrove forest systems, peatlands and savannas, such as the Brazilian Cerrado);
- II. The harvesting, production or extraction of FERCs respects indigenous communities and tenure rights as protected by international obligations and customary international law, is consistent with the free prior and informed consent principle (FPIC) and has not resulted in the displacement of indigenous and local communities.

The regulation would establish obligations on:

- I. **operators**, defined as any natural or legal person placing FERCs, or products derived from or containing FERCs, on the EU internal market for the first time;
- II. **traders**, defined as any natural or legal person who, in the course of a commercial activity, sells or buys FERCs and related products already on the EU internal market.

To comply with the proposed regulation, operators would be under the obligation to carry out **due diligence** procedures and, together with traders, ensure **transparency** of their supply chains and **traceability** of the goods they place on the market.

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<sup>1</sup> As explained in section 2, below, the regulation should also apply to all products derived from or containing FERCs.

## Box 1. Beyond forests

It is essential that the regulation goes beyond protecting 'just' forests, but also encompasses the protection of natural ecosystems and of human rights.

The impact of the production of commodities like beef, soy and palm oil goes far beyond deforestation. It also contributes to the destruction of other important natural ecosystems and often involves the violation of the rights of local communities and Indigenous Peoples. The EU must take a comprehensive approach to tackling the negative social and environmental impacts of European consumption, beyond just the impact on forests, for several reasons:

- Land ecosystems (e.g. peatlands, grasslands, wetlands and mangroves) are as important as forests in terms of biodiversity and resilience against climate change, therefore deserving of protection.<sup>2</sup>
- Without adequate ecosystem protection, EU measures to protect the world's forests might simply result in the problem of conversion and degradation leaking into other ecosystems.
- Indigenous and local knowledge plays an important role in the conservation of biodiversity.<sup>3</sup> Forest and ecosystem preservation is inextricably linked with the protection of the many communities and indigenous peoples whose rights are often breached to feed European consumption.

<sup>2</sup> European Commission, "EU Biodiversity Strategy for 2030 - Bringing nature back into our lives", COM (2020) 380 final, point 2.1.

<sup>3</sup> European Commission, "Stepping up EU Action to Protect and Restore the World's Forests", COM (2019) 352, section I.

### 3. Commodities and products covered by the regulation

The regulation should apply to all forest-and-ecosystem-risk commodities (**FERCs**) identified on the basis of an objective, impartial and non-discriminatory assessment, as well as to all **products** derived from or containing these commodities.<sup>4</sup>

The assessment should consider whether:

- I. the extraction, harvesting or production of a specific commodity, at global level, results in the conversion or degradation of natural forests, in the conversion or degradation of other natural ecosystems or in human rights violations;
- II. independent of the impact at global level, a commodity has an identifiable weight in the total amount of forest and ecosystem destruction embodied in the EU's consumption.

The legislator should establish the initial list of commodities to which the regulation would apply, including, at the minimum, the following commodities that are already known to meet the above criteria (see Box 2. for more details):

- Soy
- Beef, including leather
- Palm oil
- Cocoa
- Coffee
- Nuts
- Rubber
- Timber
- Maize

However, a further assessment would be necessary to ensure that the scope of the regulation is as comprehensive as possible, considering for example the detrimental impact of shrimp farming on mangroves and of sugar cane on grasslands.

The regulation should therefore include the possibility to add other commodities at a later stage, if evidence emerges of their detrimen-

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<sup>4</sup> The environmental and social impact of FERCs is independent of the form (raw or processed) in which these are placed on the internal market, so an exclusion of products derived from FERCs would amount to an unjustified discrimination and would have a negative impact on the effectiveness of the regulation, seen that it could be circumvented by placing on the market products instead of commodities.

tal impacts on the environment and human rights, by empowering the Commission to adapt the list of FERCs via the adoption of delegated acts.

Whereas the regulation would provide a list of the commodities included in its scope, the responsibility for identifying products derived from FERCs as a raw material, or containing them as a component, would be incumbent on operators. Indeed, maintaining a full list of all possible products derived from FERCs would be an impracticable task for the legislator or for the Commission, bearing in mind that the same industrial product (e.g. shampoo or lasagna) may or may not contain FERCs (such as, for example, palm oil or beef).

## Box 2. Commodities and their impact on forests

**Deforestation:** The estimated surface of deforestation embodied in EU27 net imports of the main crop products, over the period between 1990-2008.

Commodity	EU embodied deforestation*
Soybeans and derived products	4.4
Livestock (including leather)	1.15
Palm oil and derived products	0.9
Cocoa and coffee	0.9
Nuts	0.3
Rubber	0.2
Wood products (e.g. wood chips, pulp and paper)**	0.2
<b>Total</b>	<b>8.05</b>

\*EU embodied deforestation (Mha, 1990-2008)

\*\*The figures on wood products reflect only the impact of logging that precede conversion into agricultural land.

**Forest degradation:** In addition to the direct impact on deforestation, a scientific study has established that timber harvesting and the extraction of fuelwood cause around 80% of global forest degradation

Sources: [European Commission, Technical Report - 2013 - 063](#), [Hosonuma et al. \(2012\)](#), [Henders et al. \(2015\)](#)



## 4. Sustainability criteria for commodities and products

The regulation should be based on a no-gross-deforestation-or-ecosystem-conversion approach, meaning no deductions for reforestation or other 'offsetting' towards the zero-conversion objective should be allowed. Likewise, the regulation **should not allow** for the use of a **"mass-balance system"**, as currently provided for in the Renewable Energy Directive.<sup>5</sup>

By complying with the appropriate procedures, standards and evidence, operators should ensure that the FERCs (or products) they intend to place on the internal market:

- I. Did not result in, or derive from, land obtained from the conversion of natural forests (i.e. deforestation);
- II. Did not result in, or derive from, land obtained from the conversion of natural ecosystems;
- III. Did not lead to, or were obtained via, the degradation of natural forests;
- IV. Did not lead to, or were obtained via, the degradation of natural ecosystems;
- V. Were not extracted, harvested or produced in violation of the human rights specified under point III below.

To translate these criteria into **clear instructions for operators**, the regulation should include:

- I. A set of definitions for the main terms on which the sustainability criteria are built, i.e. 'forest', 'natural forest', 'deforestation', 'natural ecosystem', 'natural ecosystem conversion' (with reference to the Accountability Framework Initiative) and 'natural forest and natural ecosystem degradation';

<sup>5</sup>Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources, Article 30. The mass-balance system, under this Directive, "allows consignments of raw material or fuels with differing sustainability and greenhouse gas emissions saving characteristics to be mixed for instance in a container, processing or logistical facility, transmission and distribution infrastructure or site". Suppliers need only show that they sell the same volume of RED-compliant feedstock as they produce or buy, allowing for processing changes. This means that supplied batches of material can come from areas deforested after 2008 or otherwise in violation of RED criteria, and then be placed on the EU market. In addition to that, mass balance schemes are extremely vulnerable to fraud since the certification bodies are not doing regular on-the-ground checks of traded volumes.

- II. A mandate, for the European Commission, to adopt implementing acts<sup>6</sup> aiming at **precisely identifying**, on the basis of suitable methodologies, the natural forests and ecosystems that the regulation should, concretely, protect. These acts should include definitions and methods of the High Carbon Stock Approach, to better identify natural forests in the humid tropics<sup>7</sup> and of the High Conservation Value Network, to select relevant ecosystems.
- III. A clear, comprehensive and exhaustive set of **human rights** (and the related international law instruments including customary international law) for which access to and use of land are relevant, with particular emphasis on **tenure rights** and the principle of **free, prior and informed consent (FPIC)** building on international provisions such as United Nations Declaration on the Rights of Indigenous Peoples, the ILO Indigenous and Tribal Peoples Convention, and FAO Voluntary Guidelines on Responsible Governance of Tenure.
  - A. Particular attention needs to be paid to local communities' and Indigenous Peoples' right to free, prior and informed consent (FPIC) about any activity impacting on their property and land tenure rights or use, as operationalised by FAO Free, Prior and Informed Consent (FPIC) Manual.
  - B. With respect to all other internationally recognised human rights, those included in the International Bill of Human Rights and in the International Labour Organisation Declaration on Fundamental Principles and Rights at Work may be included, to the extent that they are affected by harvesting, extraction and production of the covered commodities.
- IV. A **cut-off date**, or **baseline year**, that is a point in time at which the ecological status of a land area should be assessed, and past which deforestation, conversion and/or degradation for the purpose of extraction, harvesting and production of commodities would not be legally admissible for the purpose of accessing the EU internal market.

A non-retroactive identification of deforested areas, i.e. from the entry into force of the regulation, is unlikely to be effective, since it may give rise to a 'deforestation rush' in the period between the

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<sup>6</sup> The approach of using implementing acts to specify definitions of relevant ecosystems has been used in the context of the renewable energy directives. For instance, with regard to the definition of "highly biodiverse grassland", reference can be made to Commission Regulation (EU) No 1307/2014 of 8 December 2014.

<sup>7</sup> The High Carbon Stock Approach is built off the FAO forest definitions to come to a practical and scientific approach for tropical moist biomes.

adoption of the proposal and the entry into force of the final act, which may considerably jeopardise its objective. There is therefore a strong policy rationale for the employment of a retroactive date.

A possible option could be to set 2008 as the cut-off date for the assessment of the environmental impacts, as this is the date adopted in the EU in the context of the Renewable Energy Directive.

In any case, it is important to clarify that the cut-off date or baseline year should not apply to violations of human rights protected by the regulation and would have no effect on claims, existing or to be brought, to redress any of such violations.



*Aerial view of a large burned area in the city of Candeiras do Jamari in the state of Rondônia, Brazil - © Victor Moriyama / Greenpeace*

## 5. How to comply with the criteria: the due diligence obligation

Operators should establish and provide evidence, through the exercise of due diligence, that the forest-and-ecosystem-risk commodities (FERCs) and derived products that they place on the market are in conformity with the environmental and human rights criteria set out in the regulation, and that the risks of breaching any of these criteria are, at most, negligible.

Risks are negligible when, after having exercised due diligence, but **before** placing FERCs and products derived from them on the market, an operator has reached the conclusion that there are no residual concerns (see Box 3.) on the compatibility of these goods with the requirements set out in the regulation.

### Box 3. When are there no residual concerns?

There are no residual concerns on meeting the requirement of the regulation, for instance, when:

1. The operator has obtained complete and reliable information on the land area from which the commodities and products are sourced and there are no reasonable doubts about the correctness of the information;
2. On the basis of the available information, the operator is able to determine and prove that the commodities and product are compliant with the regulation's sustainability criteria;
3. The operator has control over the supply chain so that they can demonstrate the absence of risks of contamination of compliant commodities and products with other commodities and products from other origins.

The **due diligence** should be based on the following three pillars:

#### **A) Access to information on the origin of the FERCs and products derived from them and on the supply chains**

Operators would need to determine whether the commodities and products in their supply chains comply with the sustainability



criteria of the regulation, by accessing and evaluating information on the precise land area(s) from where these goods originate. In addition to the environmental criteria, access to information should allow the operator to conclude that those using the land to produce FERCs are entitled to do so and that they are not violating, or have violated, any human rights referred to in the regulation.

In particular, operators should be required to have, and make available, information on:

- I. The precise area (or areas) of harvest, extraction or production of the commodities. Concerning cattle, beef and leather, operators should be able to obtain information about the various areas of pasture where cattle have been fed or, where cattle are raised using feed, about the origin of feed used.
- II. The present ecological status of the area of harvest, extraction or production.
- III. The ecological status of the area referred under II, above, at the indicated cut-off date.
- IV. Legal status of land (ownership/title) referred under II, above, and evidence of Free, Prior and Informed Consent (FPIC), where relevant.<sup>8</sup>
- V. The elements of the supply chain of the commodity with the aim of having information about the likelihood of contamination risks 1) with products of unknown origin or 2) originating from deforested areas, 3) from areas in which natural forest, forest and ecosystem conversion and degradation occurred or, 4) produced in violation of the human rights that the regulation aims to protect.
- VI. Where and under which conditions the commodities are transformed or processed.

## **B) Assessments of the risks identified on the basis of access of information**

Following the information gathering exercise described above, operators should be able to identify risks of non-compliance with the regulation. Risks are present, for example:

- I. Where commodities originate from countries or areas where extensive natural forest, forest and natural ecosys-

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<sup>8</sup> For that purpose, operators should undertake a full investigation of both the formal and customary rights of Indigenous Peoples to lands, territories and resources. An impact assessment in line with the [Akwé: Kon guidelines](#) and/or land tenure studies carried with the effective participation of the affected peoples and communities could serve that purpose.

tems are present;

- II. Where commodities originate from countries or areas affected by deforestation, ecosystem conversion and natural forest and ecosystem degradation;
- III. Where reports or other available information points to violations of the right of indigenous peoples to self-determination (including FPIC) and of the rights of local communities (in particular of women and children's rights);
- IV. Where land and tenure rights are defined or otherwise administered in a way that compromises their observance or protection, or contested.
- V. Where actors in the operator's supply chain are not able to guarantee, through specific policies and systems, that the commodities and products they supply are compliant with the regulation's requirements.

When operators detect these kinds of risks in their supply chain, they must assess them and establish whether they are negligible (for instance because they have certainty about the ecological and legal status of the area, and their supply chains have a reliable system of segregation) or whether mitigation measures are necessary to address concerns and bring those risks to a negligible level.

### **C) Risk mitigation measures**

The third and last stage of the due diligence process consists in the implementation of measures to mitigate risks detected in the operator's supply chain. Risks mitigation may entail, for instance:

- I. seeking for **additional information** from the operator's suppliers (e.g. in case of uncertainty on the precise origin of a given commodity),
- II. **demanding verification** by means of independent audit (e.g. in case suppliers cannot directly offer certainty on the compliance of FERCs and products derived from them),
- III. **requiring specific actions** from the suppliers to prevent non-compliant goods from entering the supply chain (e.g. via segregation),
- IV. **excluding from the supply chain** those actors that are unable to demonstrate their trade in FERCs and derived products is compliant with EU law requirements.

The regulation should provide a non-exhaustive list of measures

that operators may take in order to mitigate risks in the supply chain, with a view to providing guidance to operators. However, the following principles should be clearly set out in the law:

- I. It is the operator's responsibility to identify and apply the mitigation measures that are appropriate as a function of the identified and assessed risks;
- II. Mitigation measures are deemed appropriate when, as a result of their implementation, an operator can conclude and demonstrate that all identified risks are reduced to a negligible level, which means that the operator has no residual concern (see Box 3.) over the compliance of FERCs and products derived from them with the applicable legal requirements;
- III. When mitigation measures do not achieve the intended outcome, as set out in point II, above, the operator should not place the FERCs and products derived from them on the internal market.

## 6. Transparency and traceability

In addition to the due diligence obligation, the regulation should require both **operators** and **traders** to ensure the **transparency** of their supply chains and the **traceability** of the FERCs they place on the EU market to allow scrutiny on any point of the supply chain, in particular:

- I. to establish the origin of FERCs,
- II. to identify the operator responsible for their placing on the EU market
- III. to determine their compliance with the regulation's criteria.

**Operators** should disclose information to their buyers, to competent authorities and to the general public and make available periodic reports with information about:

- I. FERCs and derived products placed on the internal market;
- II. Their origin (point(s) of extraction, harvest and production);
- III. Volumes and values placed on the internal market;
- IV. The essential elements of the due diligence system used to address risks of the environmental and human rights impacts that the regulation aims to prevent;
- V. A description of the grounds on which operators have taken a decision to market FERCs and derived products (i.e. the outcome of risk assessment and risk mitigation);
- VI. Reports of independent third-party audits on operators' compliance with the due diligence obligation and the legal requirements for FERCs and derived products.

In order to facilitate the application of the regulation by competent authorities, it is important that the reporting and disclosure obligation is not simply limited to the collection and communication of documents, but that operators are required to provide a detailed analytical report, supported by adequate references to evidence, explaining:

- I. the methodology followed in the due diligence;
- II. how that methodology has led to conclude that only a



negligible level of risk existed that the FERCs and derived products were not being compliant with the regulation.

**Traders** should be subject to a traceability obligation which complements, in the downstream part of the value chain in EU territory, the due diligence obligation for operators. Throughout the supply chain, EU traders should be able to identify:

- I. All operators or, where applicable, traders that have supplied FERCs and derived products;
- II. Where applicable, all traders to whom they have supplied FERCs and derived products.

Traders should therefore keep records so that they are capable of demonstrating all their purchases and sales of commodities and derived products, for example via invoicing, orders and delivery notes, except for sales to final consumers. This information should be retained for a period of at least five years and shall be promptly provided to competent authorities upon their request.



*Documentation of landcover and oil palm plantation development, Papua - © Ulet Ifansasti / Greenpeace*

# 7. Enforcement

The regulation should set out rules and principles for its **enforcement at national level**. To ensure the effectiveness of the regulation, the possibility of public (i.e. by administrative authorities and criminal law prosecutors) and private (i.e. by individuals in civil courts) enforcement actions should be ensured.

## A) Public enforcement

The regulation should require the adoption of **national provisions** to ensure that violations of the due diligence obligation are subject to proportionate, effective and dissuasive penalties. These should include:

- I. Monetary sanctions (also for traders that fail to fulfil their transparency and traceability obligations);
- II. The permanent seizure of commodities and derived products concerned;
- III. The suspension of the authorisation to trade;
- IV. Criminal sanctions against individuals and, where allowed, legal entities, for the case of the most serious offenses;

In addition (and without prejudice) to penalties, the enforcement of the regulation should envisage:

- I. The possibility of adopting measures (including provisional ones) to prevent the further circulation in the internal market of products and commodities not complying with the regulation's requirements;
- II. The possibility to issue orders towards operators to bring their due diligence system, and application thereof, in compliance with the regulation.

For this purpose, the regulation should set out provisions on the **appointment, functions and powers of the member states' authorities** in charge of the enforcement and effective oversight of the EU market for FERCS. The regulation should provide for these authorities to be adequately resourced and staffed to carry out their mandate and to meet strong standards of transparency and independence, vis-à-vis other government departments and the regulated sectors.

Provisions would also be required on the **coordination between these competent authorities in different member states**, on the relation between these authorities and other enforcement agencies at national level (e.g. customs and public prosecutors) and on the role of the European Commission.

In particular, the Commission should be formally empowered to provide guidance (in the form of communication and notices and, when appropriate, of implementing measures) on the interpretation and application of the main elements of the regulation. The regulation should formally establish a structured “network of competent authorities” to ensure the consistent interpretation of the law throughout the EU, to promote the circulation of information on commodities, products, areas of origin and related environmental and human rights risks and to foster the coordination of the authorities’ enforcement action.

## **B) Private enforcement**

Through a set of **clear, precise and directly applicable rules on the placing on the market of FERCs and products derived from them**, the regulation should provide the basis for private enforcement actions before national civil and criminal courts. In particular, third parties that have suffered damages due to FERCs and products placed on the EU market (e.g. when the extraction of those commodities has happened in violation of land tenure rights) should be able to claim compensation from the responsible operators, or to ask for the annulment of the contracts governing the circulation of those FERCs in the EU.

Private enforcement should also be available to other interested parties, such as environmental and human rights NGOs, or to operators’ competitors, when the violation of the regulations’ provision would amount to unfair competition and distort trade to the detriment of operators complying with the regulation.

## 8. Rules for the financial sector

The regulation should set out **rules to impose a due diligence obligation on financial institutions** that are authorised to operate in the EU, requiring them to identify, prevent, and mitigate environmental, social and human rights impacts. These rules should ensure that the EU finance and banking sectors, including through their business relationships, are not directly linked to nor cause or contribute to deforestation, forest degradation, conversion or degradation of natural ecosystems and human rights violations.

Ensuring that financial sector institutions are bound by the same due diligence principles as their clients or investee companies is key to coherent and unambiguous business practices and legal compliance. It is also vital that these due diligence measures reflect the reality of the activities of financial institutions authorised to operate in the Union, which typically draw on general financial products and services that are not tied to specific activities, and address their impact on forests, ecosystems and the related human rights.

The EU should establish that financial institutions providing financial services to, or facilitating investments in, businesses which have a due diligence obligation described under this regulation are themselves required to undertake adequate due diligence.

Should a financial institution either fail in its duty to conduct due diligence or contribute to harms caused, it should be subject to penalties and exposed to liability.



## 9. Protection of small holders

To achieve the objectives of the regulation, special attention should be paid to the position of small holders and communities whose livelihoods depend on forests and ecosystems and whose rights the FERC regulation aims to protect.

The EU should put in place targeted and inclusive measures, trade and aid partnerships and programmes to support small holders and communities in producing countries, in order to:

- Ensure that their production methods comply with the sustainability criteria set out in the regulation, and that their commodities and products are traceable and their origin transparent;
- Promote, when necessary, the transition towards, and the maintaining of, socially and environmentally sustainable agricultural practices which do not make small holders exclusively dependent on commodity production for export but support a transition focused on agroecology;
- Facilitate and support the inclusion of smallholders and local communities in supply chains leading to the EU internal market by creating conditions and incentives that enable them to comply with the EU regulatory requirements;
- Provide support and incentives to smallholders and communities to conserve their forests and natural ecosystems on their lands that are associated with the production of the commodity.
- Prioritise access of smallholder/farmer products and commodities to promote small-scale alternative business models over large industrial models and support the creation of an enabling environment to set up viable alternative business.

## 10. Relation with other EU legislation in force and in preparation

The new FERC regulation should provide for specific rules, imposing a set of legal requirements (the sustainability criteria) on a well identified list of commodities (FERCs) and derived products when a particular situation (their placing on the market) occurs.

While having a precisely defined scope and objectives, the FERC regulation will have some aspects in common with other EU instruments in force or in the making, such as the [EU Timber Regulation](#), and the sustainable corporate governance initiative focused on human rights and environmental impacts, currently being developed by the Commission's DG Justice. In these two instruments, as in the FERC regulation, due diligence procedures are used (EUTR) or envisaged (sustainable corporate governance) as a method of compliance. However, the presence of a due diligence requirement should not be understood as an indication of overlap between the relevant instruments. On the contrary, it is important to ensure that all these instruments are well coordinated and that their differences in scope and objectives are clear.

### **A) The EU Timber Regulation (EUTR)**

Both the FERC regulation and the EUTR would aim to regulate the marketing of timber and timber products in the EU. However, the FERC regulation is intended to address EU-driven deforestation and forest degradation, whereas the EUTR tackles illegal timber harvesting, which is a precursor of forest degradation and deforestation.

Having different focus and objectives, the two instruments pose two distinct obligations on operators: the EUTR requires them to ensure the legality of timber and timber products they place on the internal market, whereas the FERC regulation will ask them to consider the compliance of these goods with a range of sustainability criteria going beyond legality.

For this reason, operators placing timber and timber products on the internal market should be required, and prepared, to comply with both the FERC regulation and the EUTR and to demonstrate both the sustainability and the legality of the goods they market in the EU.

The fact that both instruments will be based on a due diligence obligation will facilitate compliance: indeed, it will be possible for operators already using due diligence systems to ensure the le-

gality of timber and timber products, to further develop these systems in view of meeting the additional sustainability requirements set out in the EU FERC regulation.

## **B) The sustainable corporate governance initiative**

The Commission has recently announced its plans for a new sustainable corporate governance initiative addressing human rights and environmental impacts, which will require mandatory due diligence across supply chains. This initiative, as well as the FERC regulation will have the objective of addressing detrimental impacts of corporate supply chains on the environment and human rights. Both instruments will use due diligence as a method for compliance.

However, beyond these similarities, important differences exist. On the one hand, the sustainable corporate governance initiative should:

- I. Set out mandatory human rights and environmental due diligence requirements, with which all undertakings, either domiciled in the EU or operating in the EU market, would have to comply.
- II. Require that such requirements effectively identify, prevent, mitigate and account for corporate abuse, extending to the undertaking's global operations and the entire global value chain.
- III. Provide for dissuasive sanctions and penalties in case of breach of the due diligence requirements.
- IV. In case of human rights or environmental impacts, provide for civil liability of EU undertakings for harm arising out of human rights or environmental abuse in their global value chains.

Hence, its main focus would be the establishment of an **obligation of means** for the whole corporate sector, setting minimum standards of conduct for businesses operating within or having links with the EU.

On the other hand, the main goal of the FERC regulation would be to foreclose the EU market to commodities and products that drive environmental destruction and human rights violations. In that sense, this instrument would establish an **obligation of result** aimed at ensuring the **compliance with product sustainability standards**.

For this purpose, the FERC regulation would:

- I. Set out specific and concrete sustainability requirements for commodities and products placed on the internal mar-

ket. The **due diligence obligation would be focused on determining compliance with said sustainability requirements;**

- II. Apply only to entities trading in such commodities and products and only to the extent that the goods they trade are effectively marketed in the EU (including when they are placed on the EU market for subsequent export);
- III. Be primarily enforced by competent authorities via administrative oversight and the application of sanctions;
- IV. Criminal and civil proceedings would complement the regulatory action of competent authorities.

Given the differences in scope, function, objective and point of intervention, the two instruments should be complementary and mutually reinforcing: corporate structures based in or linked to the EU should set up the proper due diligence procedure to ensure that in all their activities at global level, they can address their impact on human rights and the environment. However, if they engage in the EU markets of FERCs and products, they should be required to meet the specific sustainability standards that the EU will define for those goals.



# 11. Conclusions

A new regulation on forest and ecosystem risk commodities should be **the European Union's top priority** to tackle the destructive impact of our consumption on the world's ecosystems. Greenpeace calls on the European Commission, Parliament and Council to adopt such a regulation swiftly.

It is also evident, however, that the new legislation needs to be part of a **comprehensive package of measures** to address the drivers of deforestation, forest degradation, and the conversion or degradation of other natural ecosystems, as well as related human rights violations. As earlier outlined by Greenpeace, further measures are needed to advance forest protection and restoration, to overhaul the EU's current Common Agricultural Policy in order to boost the transition of farming towards agroecology, to reduce consumption of meat and dairy products, of various single-use products, as well as of bioenergy, and to strengthen its cooperation with producer countries and major consumer countries.

In the efforts to tackle the climate crisis, to protect nature and human rights, and to avoid outbreaks of new viral infections, the regulation outlined in this briefing is an essential step.

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Deforestation and Fire Monitoring in  
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