

***By email only***

**Date:** 10 November 2021

**Subject line:** NGO recommendations on deforestation regulation

**To:**

Executive Vice-President Frans Timmermans and  
Commissioner for Environment, Oceans and Fisheries Virginijus Sinkevičius

**CC:**

Executive Vice-President Valdis Dombrovskis,  
Commissioner for Agriculture Janusz Wojciechowski,  
Commissioner for the Internal Market Thierry Breton

Dear Executive Vice-President Timmermans,  
Dear Commissioner Sinkevičius,

We write to you regarding the forthcoming proposal for EU legislation to regulate the placing on the EU market of commodities and products associated with deforestation and forest degradation.

This new legislation is a unique opportunity for the EU to live up to its environment, climate and biodiversity commitments, including those made last week at COP26. It provides the Commission with a rare opportunity to demonstrate its determination to deliver on those commitments and to tackle the footprint of EU consumption on forests and other precious ecosystems, to address climate change and biodiversity loss, and to improve the protection of Indigenous Peoples and local communities whose livelihood depends on those forests and ecosystems.

We address you now because we are aware of, and concerned about, a number of proposals made during the recent interservice consultation in relation to the issues mentioned below. If accepted, these proposals would result in the weakening of some of the strong and fundamental elements of the forthcoming legislative proposal and would drastically impair its potential to achieve its objectives and fight climate change and biodiversity loss.

The issues to which we refer are the following:

## **1. The role of certification must not limit operators' obligations**

We believe that certification should be at most an auxiliary tool for operators to use in the context of their risk assessment and mitigation exercise. However, it should not absolve operators from their duties and responsibility under the due diligence obligation.

Hence, the new regulation should clearly reflect the principle that certificates "*cannot substitute the operator's responsibility as regards due diligence*" in both its recitals and the prescriptive part.

## **2. The law must impose traceability requirements to determine the exact origin of commodities and products**

The new law must require operators to set up due diligence systems that enable them to adequately trace commodities and products to the point of harvesting and production, and to verify their compliance with the regulation's requirements (e.g. via segregated or identity preserved supply chains). Only traceability to the point of harvesting or production will provide EU consumers with the certainty that products placed on the EU market are not linked to deforestation and forest degradation.

Accordingly, the new law must not allow operators to use mass-balance systems as provided by certification schemes: these systems fail to ensure that commodities and products placed on the EU market are not linked to deforestation or forest degradation and do not require the complete traceability and transparency of supply chains.

Without knowing where their commodities and products come from, operators cannot check whether their commodities or products are linked to land conversion. An array of tools, including satellite imagery, are available to operators to assess the land use change linked to commodities they place on the European market - if they know their origin.

## **3. The new legislation must apply to all companies**

The legislation should apply to all companies that place relevant commodities and products on the internal market, including SMEs. The application of the law should be determined by the scope of commodities and products to which it applies, not the characteristics of the businesses placing them on the market.

Indeed, there can be no doubt that even smaller companies may place on the EU market significant volumes of commodities and that, therefore, exempting them from the regulation would undermine the effectiveness of the law, disrupt the level playing field, and open the door for circumventing practices and market distortions. There is no evidence to suggest that European SMEs would not be capable of setting up and using a due diligence system to assess the goods they sell in the EU. Where necessary, Member States should be encouraged to offer assistance and support to smaller operators. However, exempting SMEs from applying the rules would have no other effect than jeopardising the regulation's aim to reduce the EU's footprint on forests and ecosystems.

## **4. A strong definition of forest degradation is needed**

The Commission must deliver on its promise to address both deforestation and forest degradation. Not only is forest degradation a precursor for deforestation, it also fuels climate change and biodiversity loss as degraded ecosystems lose their capacity to provide

essential services to nature and people, such as carbon storage. Therefore, the new law must aim at preventing degradation linked to EU consumption and do so by including an appropriate and strong definition that recognises the full environmental value of forests and ecosystems and does not focus only on economic output. Such a definition should include both human induced changes as well as degradation by natural causes. We therefore recommend adopting the internationally used and recognized [definition of the Accountability Framework Initiative](#).

Besides lacking effectiveness, a narrow definition would increase the burden on operators and competent authorities because they would not only have to detect forest degradation in the relevant land plots but they would also have to establish the cause, which might prove to be a difficult exercise both for compliance and enforcement.

Some of the undersigned organisations have published and communicated to the relevant services of the Commission [a briefing](#) and letters with additional recommendations on the key elements needed for ambitious and effective legislation. These include, **among others**: i) the protection of ecosystems other than forests and of internationally recognised human rights, ii) the inclusion of provisions on finance, iii) the comprehensive definition of the product scope, and, iv) the need to avoid exemptions to the due diligence for goods originating from supposedly “low risk” countries.

We urge you to ensure that these concerns and recommendations are duly taken into account and reflected in the final legislative proposal.

Kind regards,

On behalf of the following **55+ signatories**:

Agent Green	Envol Vert
B.A.U.M. e.V.	EVA vzw
BirdLife Europe & Central Asia	FERN
BOS+	Focus Association for Sustainable Development
Both ENDS	Forêts et Développement Rural (FODER)
Canopée	Forest Peoples Programme
Client Earth	Forum Ökologie & Papier
CNCD-11.11.11	Friends of the Earth Europe
Conservation International Europe	GYBN Europe
Deutsche Umwelthilfe	Germanwatch
Earthsight	Green Development Advocates (GDA)
EAZA - European Association of Zoos and Aquaria	Global Witness
Ecologistas en Acción	Greenpeace
Ecosia	Jane Goodall Institute
Environmental Investigation Agency	Klimaatcoalitie / Coalition Climat

Legambiente  
 Initiative für ein Lieferkettengesetz Österreich  
 Liga para a Protecção da Natureza (LPN)  
 Lipu  
 Milieudéfense  
 Mighty Earth  
 Mouvement Ecologique  
 Natuurmonumenten  
 Natuurpunt  
 Nyt Europa  
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