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The EU Observatory's role in tackling global deforestation and human rights violations

The case of Brazil

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Summary report from a webinar on 15 December 2021

Introduction

The seminar was opened by **Fern's Nicole Polsterer. She** welcomed participants and explained that the seminar aimed to inform the debate about the draft EU Regulation on deforestation-free products 'Deforestation Regulation'. The seminar looked at Brazil as a case study due to its extensive forest and human rights monitoring systems, high deforestation rates and because it is a key exporter of forest risk commodities (FRC) to the EU, notably beef and soya.

The panel presentations

Karolina Zázvorková, DG Environment - European Commission. Karolina explained the key elements of the draft EU Deforestation Regulation. The key element is that operators will be required to prove, using a due diligence process, that commodities and derived products in scope (cattle, soy, palm oil, coffee, cocoa and wood) are not linked to deforested or degraded land (cut-off date December 2020) and are legally sourced, before putting them on the EU market. She also explained the principles of Article 27 on assessment of countries, which spells out the (six) considerations to benchmark countries into high or low risk. Karolina also highlighted that the current text is a draft as adopted by the Commission in November 2021 and is likely to be amended in the Co-Decision process in which the European Parliament and Council review the proposal. This legislative process is likely to take two years.

Frédéric Achard, Joint Research Centre - European Commission. The EU Observatory on deforestation and forest degradation is aimed to provide open, transparent and free information related to forest loss, degradation and EU trade in relevant commodities and products. It has three main tasks: monitor change in forest cover globally, monitor trade in key commodities and products and a feasibility study on how to link these two tasks. The Observatory will also have a component on European forests, but the presentation focused on the monitoring of tropical forests. The Observatory has produced maps showing deforestation and degradation since 1990 (see here). A technical report on deforestation and forest degradation in the Amazon is available here. In future, the Observatory will be using Sentinel 2 satellite imagery allowing the production of a 10 metre per pixel (10 m) resolution baseline map for end of year 2020, the cut-off date of the Regulation. See example of Sentinel-2 composite image for year 2020 here. Under the Copernicus Programme, the EU is intending to produce operational forest cover maps from 2020 onwards at 10 m resolution (first at pan tropical scale then global). The Forest Observatory will also include datasets for monitoring trade of key commodities between the EU and third countries. All data will be made available on a single web platform.

Saskia Ozinga, consultant, co-founder Fern. A Fern commissioned report documents the existing forest and human rights monitoring systems in Brazil and draws lessons from these for the Deforestation Regulation and the Forest Observatory. The report (short and long version) is available here. It concludes that there are various high quality forest monitoring systems in Brazil that an EU Observatory should integrate/build on. There are also various datasets documenting violations of community tenure rights as well as forced labour although these are less complete and often not geo-referenced. To be able to link supply chains to deforestation and rights abuses, the report recommends inter alia to making disaggregated customs data and tax codes available and demand countries to publish concession maps. She suggested that concession transparency as well as recognising, demarcating and gazetting Indigenous territories should lower a countries' risk in the EU Regulation.

Tasso Azevedo, coordinator of Mapbiomas. Two important issues are the definitions used and how to link deforestation to production areas. Concerning the definition: does 'forest' include savannah/grassland and secondary forests? In Brazil, deforestation in secondary forest is as high as in primary forest and growing fast. Also 40 per cent of the forest area would be excluded if savannahs/grasslands are not included. So how do you link deforestation to production? Analysing the history of land use change and the different stages in commodity production is important to be able to show the links between deforestation and commodity production. Mapbiomas is a network that does that through (a) annual monitoring of land use and land cover and (b) deforestation alerts. The annual monitoring produces maps showing change in land use and land cover since 1985, creating a land use change picture in time and space across Brazil (30 m resolution). The deforestation alert system allows for the creation of reports for every deforestation event since 2019 by cross referencing them with the Register of Rural Properties (CAR registry) and other datasets of e.g. protected areas, Indigenous territories etc. Hence, for every registered property (under the CAR) or every geo-reference you can check whether there is a link with deforestation. So, for Brazil It is perfectly possible today to establish links between deforestation and production area; the missing link is with the supply chain in the EU.

Adriana Ramos, coordinator of Instituto Socioambiental (ISA). Human rights violations should be monitored as well as deforestation. Government support for all types of monitoring is decreasing; hence non-governmental organisation (NGO) monitoring sources becoming even more important. The EU Observatory should therefore include all datasets. It is of great concern that the Brazilian Government is advocating against collective rights – and only accepts Indigenous territories that already have been formalised. Collective rights

are enshrined in the Constitution. The Government is now instigating deforestation in Indigenous territories through supporting private interests (through the CAR) over collective lands (outside the CAR). Through changing social and environmental legislation, the Government is making illegal deforestation legal. There is a lot of work to do in the coming two years to ensure the draft EU Regulation will be based on transparent data that reflects the reality on the ground and fully includes human rights violations.

Peter May, consultant and professor at the Federal Rural University of Rio de Janeiro. The draft EU Regulation clearly reflects the large call for action from EU citizens to halt deforestation, but it remains to be seen to what extent such a regulation can be a driving force for the protection of the global commons and the people in it. Including financial incentives – as well as market incentives - might be important as sources of deforestation include fiscal and credit incentives. We clearly still have insufficient knowledge between trade and commodity production and need data to show a clear link between e.g. a soybean from a deforested area to the product on the EU market. For human rights violations, this link is even more difficult. There is still a question of to what extent will the Regulation permit this level of monitoring and to what extent will the Regulation itself be a means to stimulate companies to press for greater control over deforestation? But EU action is welcome in any case as the current Government is dismantling the system of controls and internal regulation, implying serious risks linked with commodity production, and there is also push back from agrobusiness to external regulation. Hence, there is an important role for consumers like the EU. The Observatory could create an environment for collaboration and cooperation between groups monitoring deforestation from the third sector, as well traders and the financial sector.

Discussion

Why does the EU only look at forests and not other ecosystems? Karolina mentions that there is currently more data on forests that can be used for the purposes of developing an implementable legislation. In addition, including other ecosystems at this stage would significantly expand the scope of the proposal and make its implementation difficult. However, the proposal includes a review clause that tasks the Commission to look into the feasibility of including other ecosystems two years after adoption. Karolina also explained that in the current proposal 'forests' are defined using the United Nations Food

and Agricultural Organisation (FAO) definition, including its structural thresholds, which means that forested land within other ecosystems, such as savannahs, including about two thirds of the Cerrado, are also covered. The Observatory presently focuses on tropical moist forests and will include dry forests in the future. Tasso pointed out that in Brazil, deforestation means having 'no bush' and hence would include the Cerrado and it would be problematic if it was not included because of leakage. He also noted that detailed national level data, from public authorities and independent sources such as MapBiomas, available notably for Brazil, South America and Indonesia, should also be considered by the Observatory.

Why use a plot of land rather than a farm as sourcing point and how to prevent laundering? Karolina explains that the plot of land was chosen specifically to prevent laundering as a large farm could declare itself deforestation-free while it could have numerous plots of which only one could be deforestation-free. Tasso points out it would be difficult to prove which specific plot something comes from. He notes that in Brazil the Banco do Brazil (the largest funder in agricultural sector) uses Mapbiomas' alert system before giving a credit. They look at the plot of land for which the farmer asks for the grant. That has to be a polygon (not a point). The aim should be to advance from the plot to the whole property. Because you must have a CAR in Brazil, it is relatively easy to check if there is deforestation in that specific territory.

Will the Regulation require compliance with international human rights standards concerning customary tenure? What does a company need to do to check legality? Karolina explains that legality mentioned in the proposal refers to relevant national laws. If the country is a party to international human rights and other conventions and has ratified these conventions, then they become part of national law and hence need to be adhered to. In that sense, the Regulation covers human rights and notably community tenure violations. The EU also hopes that the requirement for deforestation-free and legally sourced supply chains will motivate operators to source products from land free from human rights abuses as operators will have to check the legality of the land use, which includes international law ratified by the country.

How can the Regulation (and specifically the benchmarking) incentivise countries to tackle deforestation? Karolina mentions that the whole Regulation will hopefully serve as an incentive: For producers to adopt sustainable and deforestation-free production processes; for operators to source from deforestation-free areas and transparent supply chains to keep/gain access to the EU market; and for countries to aspire to a low-risk status under the benchmarking system as it serves as a trade facilitation tool, providing signals to operators and EU Member States as to where the sourcing is low risk. This means that the benchmarking will make it easier for operators to comply with the Regulation and for EU Member States to enforce it.

Should benchmarking would be done for specific commodities? Karolina mentions this is an open issue. As mentioned, the draft Regulation, including benchmarking, is now subject to discussion in the European Parliament and the Council. The first assessment of countries will be launched after the Regulation is adopted. After the assessment is concluded, the list of countries for which the status was changed from "standard" to high risk or low risk, will be published via an implementing act, which requires cooperation with the European Parliament and the Council.

On forest degradation. Tasso points out that for palm oil, cattle and soy, degradation is less of an issue; for wood, where degradation is a key element, the distinction between sustainable and non-sustainable forest management is essential and possible to distinguish through satellite monitoring at least in tropical countries. Monitoring degradation in cocoa and coffee production inside forest areas is difficult through remote sensing.

Should due diligence require an assessment on when rights to land were obtained and when land use was changed? This could make it risky e.g. to deforest under Bolsonaro? Karolina points out that for deforestation, the proposed cut-off date of 2020 was linked to the Sustainable Development Goals (SDGs); Saskia notes that there is no cut-off date for the legality requirement in the Regulation. The due diligence requirement (article 9) includes that the operator must check the rights to the relevant plot of land.

Why is risk mitigation not defined in the Regulation and not linked to capacity building of suppliers? Karolina explains that risk mitigation should happen unless there is no or a negligible risk and risk mitigation is specified in article 10. It also refers to the need to ensure adequate and proportionate policies exist. More details might be specified in a delegated act.

Nicole thanked all participants for their participation and the panel for their presentations, the back-up team for their hard work and the translators for the translation.