

EU Regulation on deforestation-free products:

Fern's analysis of the European Parliament's rapporteur's draft position

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The proposed [EU Regulation on deforestation-free products](#) aims to ensure goods cannot be placed on the EU market if they have caused deforestation, forest degradation, or violated producer country laws. The Commission released its law proposal on 17 November 2021, and it is now up to the European Parliament and the Council to agree on their positions.

On 24 March 2022, the EP rapporteur Luxembourgish Member of the European Parliament (MEP), Christophe Hansen of the centre-right European People's Party (EPP), released his [draft report](#). This short document is a follow up of Fern's [rapid assessment](#) of the Commission's proposal.

FERN'S RAPID RESPONSE TO THE EPP POSITION

✓ COMPLIANCE WITH INTERNATIONAL STANDARDS ON LAND RIGHTS

MEP Hansen proposes that companies placing goods on the EU market respect international law and standards on the rights of Indigenous Peoples and Local Communities (IPLC). The rapporteur justifies this proposal by pointing to the evidence that community-owned land has better forest protection. He also suggests stronger EU monitoring of tenure rights. This responds in part to calls made in January by a group of IPLC associations from 33 countries, [who wrote](#) to EU decision-makers demanding that the Regulation include respect for their land rights. The language in the Hansen report could still be improved, however, to point more specifically to the rights and international instruments companies must respect.

Another improvement is that MEP Hansen recommends that the Commission examines how land rights can be integrated into the monitoring that will be done by the future EU Observatory. The Observatory's role will be to directly support implementing the regulation, by providing evidence in regard to global deforestation, forest degradation and related trade.

✓ NEW OBJECTIVE: THE REGULATION SHOULD ALSO CONTRIBUTE TO REDUCING GLOBAL DEFORESTATION

Although the Commission's proposed Regulation will help clean up EU supply chains, products which have caused deforestation could still be sold elsewhere. Adding this new objective to the law would help change the philosophy underpinning the Regulation, so that it also contributes to tackling deforestation's root causes in producer countries.

✓ ROADMAPS COULD HELP TACKLE DEFORESTATION'S ROOT CAUSES

The draft report adds more flesh to the Commission's [tepid](#) vision on partnerships. Concretely, the rapporteur suggests developing roadmaps, as part of the partnership, that would clearly state how the root cause of deforestation, particularly regarding national land tenure governance, should be tackled.

— NEW SUPPORT TO SMALLHOLDER SUPPLIERS' COMPLIANCE WITH THE REGULATION

MEP Hansen introduces many new encouraging elements, including proposing that companies placing products on the EU market will be required to demonstrate how they support smallholders to comply with the Regulation. He also demands that the EU Commission provides technical and financial support to smallholders. Some key requests from smallholders are missing though: including that there is no mechanism to seek compensation from companies and guaranteeing a fair price for their product.

— PROPOSAL TO CHANGE COVERED COMMODITIES

In a positive move, based on evidence that rubber is also a key driver of deforestation, MEP Hansen proposes that rubber is also covered by the Regulation. He also includes a few new palm oil-derived products. However, some beef and leather products were taken off: this is a big source of concern for the Brazilian Amazon. There is also a new loophole for EU produced chocolate, while maize is still out of the Regulation's scope.

— STILL NO GREEN LANE FOR CERTIFICATION BUT MOUNTING UNCERTAINTY

MEP Hansen's report maintains that certification cannot be used by companies as a substitute for undertaking due diligence, which is positive. However, contrary to the Commission's proposal, he suggests that this is reviewed in two years and not five. He also asks that the Commission develops criteria for certification and opens the role to specific schemes for timber and biofuels. All of this could pave the way for a bigger role for certification in the coming years.

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✗ EXEMPTION FOR TRADERS

For the Regulation to work, it is key that all actors in the supply chain do due diligence. MEP Hansen proposes that only the operator (the company) first placing the product on the EU market provides information on due diligence. This would effectively let traders off the hook and create an important loophole already witnessed with the EU Timber Regulation (EUTR).

Because border controls are less strict in some Member States than others, companies could simply change the country where they first place their products, targeting less-stringent Member States. This would allow non-compliant products to easily enter the EU market. To avoid this, it is important downstream traders are also bound by the due diligence obligations, so this kind of behaviour is not incentivised.

✗ WEAKENING OF GEOLOCATION AND SECTOR SPECIFIC TRACEABILITY OBLIGATIONS

A traceability requirement based on geolocation coordinates is a key demand of both NGOs and smallholder farmers' organisations, such as the Indonesian Union of Oil Palm Smallholders and a group representing more than 35,000 Ivorian cocoa farmers.

But MEP Hansen's report replaces the Commission's specific requirement of farm level geolocation (via latitude and longitude coordinates) with the more vague "production area". This would create the possibility that non-compliant products enter the supply chain.

Hansen also proposes introducing different traceability obligations per sector, which could risk removing the geolocation obligation for certain sectors, due to intense lobbying from the relevant industry. This is what the soy sector is trying to do.

✗ NO MENTION OF FLEGT'S STATUS

The Commission's proposal expressed a commitment to maintaining the Forest Law Enforcement, Governance and Trade (FLEGT) Regulation and existing Voluntary Partnership Agreements (VPAs). The proposal stipulates that FLEGT licenses will only meet the legality requirement of the new regulation, while they will also have to comply with the Regulation deforestation-free criterion. Companies importing FLEGT-licensed timber would therefore still be required to do due diligence. Civil society stakeholders in VPA countries have warned that changing existing trade agreements unilaterally will undermine decades of efforts to strengthen forest governance and clean up their forest sectors. The promise of a green lane for FLEGT-licensed timber entering the EU market has so far provided a major incentive to keep all national stakeholders around the table.

MEP Hansen's report fails to provide stronger recognition for FLEGT. The norms and processes established in the timber sector, thanks to FLEGT and its VPAs, must be recognised and built upon especially when developing roadmaps for tackling the root causes of deforestation (see above).

The European Parliament's final report should include specific provisions on EU support for VPA countries' timber to meet the new EU requirements.

✗ WEAKENING THE RISK RATING SYSTEMS

The Commission proposed creating a three-tiered deforestation risk rating system (low, medium and high) to assign to producer countries or sub-national regions. This system has a carrot and stick approach: a high-risk rating would create reputational risks for a country and therefore be an incentive to tackle deforestation, while low risk would be a reward. In its proposal, the Commission suggests that operators sourcing from low-risk countries wouldn't have to carry out the due diligence. This risks creating a loophole where products from high-risk countries are "laundered" in low-risk countries.

In his report, MEP Hansen proposes removing the high-risk category and only keeping the two other. Doing this would remove the penalisation element while failing to remove the "laundering" loophole.