



global witness

Public Consultation on Stepping up EU Action against Deforestation and Forest Degradation

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The need for urgent action

Global Witness welcomes the consultation on an EU initiative on “Deforestation and forest degradation – stepping up EU action”. Along with other NGOs¹ we have been advocating for the EU to step up action in this area for several years. However, we are concerned that the long-awaited communication may not include the measures needed avert the alarming loss of climate-critical tropical forests as the roadmap appeared to rule out new legislation and was limited to setting out a “*framework for existing policies and tools*”. We encourage the European Commission to set out bold and ambitious plans to tackle the challenge of deforestation and forest degradation and commit to introducing binding legislation.

The European Commission’s own study found that the EU imported over a third of all deforestation embodied in crop and livestock products traded between regions over the period 1990-2008.² Meanwhile, tree cover loss has been rising steadily in the tropics over the past 17 years, with 2017 the second-worst on record for tropical tree cover loss, due in part to clearance for agriculture.³ One study concluded that around half of all tropical deforestation since 2000 has been due to illegal conversion of forests for commercial agriculture, and that in total, approximately half of this land is now producing agricultural goods for export.⁴

The impact of deforestation, forest degradation and grabbing of forested land for commercial agriculture can be devastating for the climate, biodiversity and the communities that reside in the forests and rely on them for their livelihoods, as well as violating their human rights.

Calls for EU action have been mounting. In July 2018, the European Parliament called on the European Commission to introduce a meaningful EU Action Plan on deforestation and forest degradation that includes concrete and coherent regulatory measures.⁵ EU member states participating in the Amsterdam Initiative have also called on the European Commission to adopt an “ambitious Action Plan”⁶, including the French government which emphasised the importance of EU measures in its recent strategy on imported deforestation⁷.

Whilst the EU is demonstrating global leadership on other areas of climate related policy for example through its Sustainable Finance Action Plan, we are well off track from meeting the Sustainable Development Goal to halt deforestation or reduce poverty by 2020.⁸

The EU must therefore take urgent and strong action in the form of an action plan which includes proposals for binding regulation to ensure that companies and investors do not contribute to deforestation or forest degradation.

Demand side actions (13b)

The European Commission’s study on the impact of EU consumption on deforestation and its recent feasibility study⁹ both highlight the responsibility of the EU to take action on this agenda, as a

significant consumer market driving deforestation, forest degradation and land grabbing through consumption of forest risk commodities.

In the absence of legislation, there have been some efforts to tackle this issue through voluntary guidelines and certification schemes. As pointed out by the European Commission's feasibility study voluntary/corporate policies are too limited to tackle the challenge of deforestation and forest degradation - referencing a 2015 analysis of progress among Forest 500 companies which found that *"only 7 % of companies are zero or net-zero deforestation free, and that the majority of companies have made little progress, failing to adopt policies or failing to disclose information"*.¹⁰ The study also highlights the risks of relying on corporate deforestation pledges and the need for jurisdictional approaches.

Similarly, the feasibility study highlights the limitations of certification schemes in particular in relation to monitoring, disclosure and enforcement. By way of example, a recent investigation featured in the Chinese press highlighted the widespread misuse of FSC certificates for exports to the EU.¹¹

It is therefore imperative that the European Commission goes beyond these corporate commitments and introduces legislative measures to tackle the EU's consumption of all forest risk commodities. This should take the form of a mandatory due diligence regime for those placing any agricultural commodities linked to deforestation or forest degradation on the EU market. This should include a requirement on companies to carry out due diligence in order to identify, mitigate and publicly report on the environmental, social and governance risks in their own activities as well as in their supply and investment chains, including risks of deforestation and forest degradation. This should also include a disclosure of the due diligence process, a mapping of risks identified, mitigation measures and mechanisms to address those risks, and a plan for regular evaluation of their effectiveness, as required in the French 'duty of care' law.¹²

These measures should ensure that supply chains linked to the EU market are sustainable, free from deforestation and forest degradation, do not violate local communities' rights and comply with international standards and obligations. They should address the sustainability of the products, as any focus solely on illegally harvested agricultural commodities would fail to tackle much of the world's deforestation and forest degradation. As pointed out in the feasibility study, *"[...] a measure aimed only at guaranteeing the legality of FRCs on the EU market could be seen as backward step"*.¹³

Financial and investment outcomes (13c)

EU based financial investors have been shown to play a key role in funding projects linked to deforestation and forest degradation as well as human rights abuses and land grabs, as highlighted by Global Witness.¹⁴ As identified by the feasibility study, inadequate control of flows of finance and investments from the EU contributes to deforestation by funding activities that drive deforestation.¹⁵ Current voluntary guidelines and commitments are insufficient, as even financiers with policies in place have been shown to retain clients in breach of their own standards.¹⁶ EU based institutional investors can play a powerful role in improving the overseas operations of the companies they invest in by insisting on high environmental, social and governance (ESG) standards, but this is, at best, inconsistently applied.

The European Commission should commit to making full use of the current opportunities presented by the EU Sustainable Finance Action Plan and associated legislative proposals to tackle deforestation and forest degradation. The proposals for regulations on the establishment of a framework to facilitate sustainable investment and on disclosures relating to sustainable

investments and sustainability risks¹⁷ could play a crucial role by ensuring that so-called ‘sustainable activity’ in forests is correctly classified so that it is not associated with deforestation and forest degradation and that investors must disclose how they invest in such projects.

Global Witness supports the recommendation in the feasibility study that EU investments should undergo ‘deforestation proofing’¹⁸ through mandatory due diligence to identify and mitigate the risk of deforestation and forest degradation. This should be addressed through the Investor Disclosure Regulation which is entering the final stages of deliberations by the European Parliament and Council.¹⁹ Investors should be required to have in place ESG due diligence processes and disclose both the details of their due diligence policy, which includes details of the risk and the impact based due diligence they have undertaken. The due diligence carried out by investors should follow a standard format across the sector to facilitate scrutiny, based on the OECD 2017 guidance for institutional investors which requires investors to identify and mitigate ESG risks and impact, taking action through investee company engagement.²⁰ This would ensure that investors best assess both potential financial detriment to the performance of their investments, as well as the impact that their investments may have on communities and the environment. The definition of sustainability risk also needs to be broadened to include financial and non-financial risks, such as risk of deforestation or forest degradation.²¹

Within the taxonomy which seeks to define what is a sustainable investment, there should be proper implementation of the no harm clause with tight technical screening criteria to ensure that no economic activity deemed sustainable can risk causing deforestation or forest degradation.

The scope of the Sustainable Finance Action Plan should be extended to cover all investors including banks, asset managers, investment funds, insurers and pension funds.

It is important that companies are also required to disclose all the relevant information needed to enable investors to fulfil their new obligations. This will also require the legislative framework for company reporting (Non-Financial Reporting Directive²²) to be strengthened to require further ESG disclosures from corporates.

The EU should also adopt a specific rule that EU funds must not be used to fund industrial activity or infrastructure in intact forests, as recommended in the European Parliament report.²³ Funds that are used in or around forests should apply strict sustainability criteria, involve appropriate safeguards and due diligence to ensure that they do not contribute to forest degradation or deforestation.

Transparency

Global Witness believes that corporate transparency is essential to facilitate the scrutiny and accountability of companies and institutional investors. In the course of our investigations into companies and investors linked to corruption, conflict and deforestation and forest degradation, we often come across the use of opaque entities, such as shell companies, based in secrecy jurisdictions. As well as requiring ESG disclosures from corporates through the Non-Financial Reporting Directive, the EU should fully implement the 5th Anti Money Laundering Directive to ensure that all EU companies disclose their real owners and push for a global standard on beneficial ownership disclosure, including by the EU and UK’s overseas territories and crown dependencies.

Timber

The initiative should commit to renewed efforts to tackling illegal logging which is a driver of forest degradation and deforestation – including through taking forward the lessons from the FLEGT evaluation²⁴ and publishing the subsequent workplan. This should include: better enforcement of

the EU Timber Regulation²⁵; strengthened dialogue with key consumer and processing countries like China and Vietnam; prioritisation of measures to tackle corruption²⁶ and conflict timber²⁷. The links between illegal logging and conversion of forest for agriculture should also be addressed through this initiative.

Impact on local communities

Any assessment of environmental and social impact and risk, relating to forest risk commodities and investments should be inclusive and involve meaningful participation of civil society groups in producer countries. Activities must guarantee the respect of Free, Prior and Informed Consent as well as the respect of the UN Declaration on the Rights of Indigenous People and be in line with the UN Committee on Food Security's voluntary guidelines on responsible land tenure²⁸. There should also be particular vigilance to ensure that activities do not encroach on the establishment of community forests or involve dispossession of land and violations of communities' customary tenure rights.

Supply side actions (13a)

Any measures undertaken in producer countries as part of this initiative must guarantee the consultation and participation of civil society organisations to support the development of sustainable and responsible agriculture and forest laws, policies and projects. It is crucial that the EU's action plan promote and respect transparent and inclusive land tenure and land use planning reforms, which prevent dispossession of land and protects community's customary tenure rights. In any interventions in producer countries the EU must prioritise land rights and protecting forest communities' livelihood. This should be based on both OECD-FAO guidelines on responsible agriculture supply chains²⁹ and UN Committee on Food Security's voluntary guidelines on responsible land tenure³⁰.

In some tropical forested countries industries are able to act with impunity to the detriment of forests, in contravention of laws intended to protect the forests and those that reside in them.³¹ To help counter this, supply side measures backed by the EU should promote transparency by making sure that information related to land acquisition, concessions and permits is publicly available in producer countries, including forest/environmental/social impacts assessment and consultation processes. Where there are high levels of corruption in producer countries, support should coordinate with or cover measures to tackle corruption and strengthen law enforcement, for example publishing beneficial ownership information.

Any new initiatives for supply side measures should take into account the lessons learnt from bilateral agreements currently in place in the timber sector (Voluntary Partnership Agreements) under the EU's FLEGT Action Plan. Whilst these lay some of the foundations for improving the legality of the sector and tackling corruption, these have not always been followed through with meaningful reforms and have tended to emphasise technical elements without addressing more fundamental challenges in producer countries. As made clear earlier in this submission, a focus purely on legality would not address the majority of deforestation or forest degradation which may be legal, but unsustainable.

International cooperation/dialogue (13d)

As recommended by the feasibility study and EU member states in the Amsterdam declaration grouping, the EU should show *"a leadership role, mobilising its political and market leverage, and promoting broader international dialogue and cooperation"*.³² The EU should prioritise deforestation

and forest degradation in its dialogue with both producer and consumer countries, such as Brazil, Vietnam and China. It could play a leading role in driving new global momentum to tackle deforestation and forest degradation using 2020 as a key year for pledges to halt deforestation to secure high-level commitments at global level. This should also address the role played by global finance, where the EU could play a leading role due to its recent work on ESG and green finance.

The EU should take action to ensure that commitments on deforestation and forest degradation are not undermined by trade policy and trade deals and consider binding commitments in trade deals to tackle deforestation and forest degradation. This is particularly important where the EU is negotiating bilateral agreements including trade and investment agreements, FLEGT Voluntary Partnership Agreements, Economic Partnership Agreements, with countries where tropical forests are being destroyed or degraded for agricultural commodities being exported to the EU e.g. Indonesia.

Conclusion

In summary, Global Witness recommends that the European Commission address the urgency of increasing deforestation and forest degradation by committing to binding legislation to address the EU's consumption of and investment in forest risk commodities, adopting a mandatory due diligence regime for companies and financial investors, and playing a leadership role to drive global change.

¹ NGO statement, *Tackling deforestation and forest degradation: a case for EU action in 2017*, <https://www.forestpeoples.org/sites/default/files/documents/deforestation-4.pdf>

² European Commission, *The impact of EU consumption on deforestation: Comprehensive analysis of the impact of EU consumption on deforestation*, 2013 pIV
<http://ec.europa.eu/environment/forests/pdf/1.%20Report%20analysis%20of%20impact.pdf>

³ Global Forest Watch, *2017 was the second worst year on record for tropical forest tree cover loss*, 27 June 2018, <https://blog.globalforestwatch.org/data/2017-was-the-second-worst-year-on-record-for-tropical-tree-cover-loss>

⁴ Lawson S, *Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations*, Forest Trends, September 2014.

⁵ European Parliament, *report on transparent and accountable management of natural resources in developing countries: the case of forests* (2018/2003(INI)), July 2018.

<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2018-0249&format=XML&language=EN>

⁶ *Letter on behalf of the Amsterdam Declaration group*, 1 November 2018

https://mfvm.dk/fileadmin/user_upload/MFVM/Miljoe/Letter_to_European_Commissioners_on_Deforestation.pdf

⁷ MINISTÈRE DE LA TRANSITION ÉCOLOGIQUE ET SOLIDAIRE, *STRATÉGIE NATIONALE DE LUTTE CONTRE LA DÉFORESTATION IMPORTÉE 2018-2030*, 14 November 2018, https://www.ecologique-solidaire.gouv.fr/sites/default/files/2018.11.14_SNDI_0.pdf

⁸ UN, *Sustainable Development Goals*, 15.2 - <https://www.un.org/sustainabledevelopment/biodiversity/> and <https://www.un.org/sustainabledevelopment/poverty/>

⁹ European Commission, *Feasibility study on options to step up EU action against deforestation*, June 2017
http://ec.europa.eu/environment/forests/pdf/feasibility_study_deforestation_kh0418199enn_main_report.pdf

¹⁰ European Commission, *Feasibility study on options to step up EU action against deforestation*, June 2017 p126
http://ec.europa.eu/environment/forests/pdf/feasibility_study_deforestation_kh0418199enn_main_report.pdf

¹¹ Sixth Tone, *How Illegally Harvested Timber Is 'Greenwashed' in China*, 16 January 2019

<http://www.sixthtone.com/news/1003369/how-illegally-harvested-timber-is-greenwashed-in-china>

¹² LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&dateTexte=20190114>

¹³ European Commission, *Feasibility study on options to step up EU action against deforestation*, June 2017, p89

http://ec.europa.eu/environment/forests/pdf/feasibility_study_deforestation_kh0418199enn_main_report.pdf

¹⁴ Global Witness, *Indecent Exposure*, 6 September 2018 <https://www.globalwitness.org/en/campaigns/land-deals/indecent-exposure/>

¹⁵ European Commission, *Feasibility study on options to step up EU action against deforestation*, June 2017 p 43

http://ec.europa.eu/environment/forests/pdf/feasibility_study_deforestation_kh0418199enn_main_report.pdf

¹⁶ Picken et al, *Decoupling international finance from deforestation, and the need for regulation* p124

¹⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018PC0354> and <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018PC0353>

¹⁸ European Commission, *Feasibility study on options to step up EU action against deforestation*, June 2017 p131

http://ec.europa.eu/environment/forests/pdf/feasibility_study_deforestation_kh0418199enn_main_report.pdf

¹⁹ *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018PC0354>

²⁰ OECD *Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises*, 2017 <https://www.oecd.org/corporate/RBC-for-Institutional-Investors.pdf>

²¹ For further information see our briefing: <https://www.globalwitness.org/en/campaigns/land-deals/eu-investor-due-diligence/>

²² *Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>

²³ European Parliament, *report on transparent and accountable management of natural resources in developing countries: the case of forests* (2018/2003(INI)), July 2018. Recommendation 77.

<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2018-0249&format=XML&language=EN>

²⁴ Terea, *Evaluation of the EU FLEGT Action Plan (Forest Law Enforcement Governance and Trade) 2004-2014, April 2016* <https://ec.europa.eu/europeaid/sites/devco/files/report-flegt-evaluation.pdf>

²⁵ Global Witness, Blog: *EU ban on illegal timber: uneven enforcement lets companies off the hook*, June 2018 <https://www.globalwitness.org/en/blog/eu-ban-illegal-timber-uneven-enforcement-lets-companies-hook/>

²⁶ Global Witness & Transparency International, *Tackling Corruption to Protect the World's Forests: How the EU can rise to the challenge*, January 2017 <https://www.globalwitness.org/en/campaigns/forests/tackling-corruption-protect-worlds-forests/#>

²⁷ Global Witness, *The EU's Responsibility to Act on Conflict Timber – a new framework for action*, June 2017. <https://www.globalwitness.org/en/reports/eus-responsibility-act-conflict-timber-new-framework-action/>

²⁸ FAO (2012), *Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security*, Rome. <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

²⁹ OECD/FAO (2016), *OECD-FAO Guidance for Responsible Agricultural Supply Chains*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264251052-en>

³⁰ FAO (2012), *Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security*, Rome. <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

³¹ Global Witness & Transparency International, *Tackling corruption to protect the world's forests - How the EU can rise to the challenge*, January 2017 <https://www.globalwitness.org/en/campaigns/forests/tackling-corruption-protect-worlds-forests/>

³² European Commission, *Feasibility study on options to step up EU action against deforestation*, June 2017 p137

http://ec.europa.eu/environment/forests/pdf/feasibility_study_deforestation_kh0418199enn_main_report.pdf and quoted in letter on behalf of the Amsterdam Declaration group, 1 November 2018

https://mfvm.dk/fileadmin/user_upload/MFVM/Miljoe/Letter_to_European_Commissioners_on_Deforestation.pdf