

Climate Observatory's Position Paper on the European Commission's Proposal for a regulation on deforestation-free products

Brazil, March 15th, 2022.

Deforestation and conversion of natural ecosystems must be eradicated if humanity is to stand a chance of stabilizing global warming. In Brazil, home to the world's largest tropical forest area, deforestation rates have grown rapidly since Jair Bolsonaro's election. From 2019 to 2021¹, 34,215 km² of the Amazon have been destroyed, an area larger than Belgium², which represents an increase of 53%, compared to the previous three years (under former presidents Michel Temer and Dilma Rousseff).

Aware of forests' critical and necessary role, 141 heads of state have signed the Glasgow Leaders' Declaration on Forests and Land Use during COP26, in 2021. One of the points in the declaration states that leaders will strive to facilitate trade and development policies that promote sustainable development and do not drive deforestation and land degradation.

Presented on November 17th, the [European Commission's Proposal for a regulation on deforestation-free products](#) represents a first progress towards that goal. The draft text proposes that six commodities - coffee, cocoa, cattle, palm oil, soy, wood, and derived products - will have to go through due diligence before being placed in the EU market. Importers and traders will have to ascertain that the commodities were not produced or grown in a land that suffered deforestation or degradation after December 31st, 2020 and are in accordance with the producing country's laws. It is a necessary and positive proposal. We acknowledge the commission's efforts in leading this initiative. However, it does have some points that need to be addressed or improved, such as the following:

- The proposal has a limited scope of ecosystems since it follows the definition of forests given by FAO (Food and Agriculture Organization of the United Nations) which leaves out natural ecosystems³ such as savannas, like the Brazilian Cerrado, wetlands, like the Pantanal, and native grasslands, like the Pampa. These biomes have suffered from growing deforestation and conversion rates due to the expansion of agribusiness. From August 2020 to July 2021, the Brazilian Cerrado lost 8.531,44 km², the biggest annual conversion rate since 2016⁴. If these other biomes are not included, there is a risk of leakage - they will be further targeted by production, increasing conversion of these natural areas into agriculture. If the FAO definition of forests is the only criterion, in

¹ With Bolsonaro, Amazon has the highest deforestation since 2006, Greenpeace, 18 November 2021: <https://www.greenpeace.org/brasil/blog/com-bolsonaro-amazonia-tem-maior-desmatamento-desde-2006/>

² In 3 years, fines drop 39% and deforestation rises 53%, Fakebook.eco, 19 November 2021: <https://fakebook.eco.br/em-3-anos-multas-caem-39-e-desmatamento-sobe-53/>

³ Carbon-rich ecosystems threatened by EU consumption - new report, WWF, 2022 <https://www.wwf.eu/?uNewsID=5728966>

⁴ Cerrado annual deforestation is the largest since 2016: 8,531.44 km², WWF Brasil, 31 Dezembro 2021: https://www.wwf.org.br/informacoes/noticias_meio_ambiente_e_natureza/?81308/Desmatamento-anual-do-Cerrado-e-o-maior-desde-2016-853144-km/?mju

Brazil alone 75% of the Cerrado, 89% of the Caatinga, 76% of the Pantanal, and 74% of the Pampa would be at risk⁵.

- Despite the wide range of products and their by-products, the regulation should also include current high-volume export items at high risk of deforestation, such as cotton, maize, and canned meat. In 2020, 39.54% of Brazil's beef exports to the EU were processed meats, which includes canned ones⁶.
- We support the European Commission's proposal to require traceability back to origin. Mass balance and other chain of custody approaches are not acceptable in the context of the European proposal because they mix products without proven origin and do not allow for verification of compliance of all materials coming into the supply chain⁷. Likewise, certification must not be used as a replacement for due diligence.
- It is also necessary that the regulation avoid deforestation and conversion leakage within the same farm. To this end, the plot definition for due diligence purposes should consider the property as a whole, not just parcels. On large farms, an owner may maintain a deforestation-free production area for export to Europe and another area for deforestation and conversion⁸.
- We understand that the legislation needs to set a cut-off date well before 2020 to avoid rewarding past deforestation and conversion. No cut-off date should relax previous sectoral rules and agreements in countries, such as the Forest Code and the Soy Moratorium of 2008.
- The analysis of illegality needs to be based on the date of the violation, not the date of import. Thus, if a given clearance was illegal at the time of deforestation or conversion, no measure should be able to legalize the product, such as later legislative changes. In addition, it is important that the analysis of illegality be independent from the norm's cut-off date⁹.
- All risk assessments need to establish robust technical criteria and go beyond analyzing a country's national or jurisdictional legal framework. It also needs to consider its enforcement, including NDC implementation and measures to fight deforestation and conversion, as well as the threats of legislative changes that legalize deforestation and conversion. They also need to explicitly consider international laws and standards on tenure rights, notably of Indigenous Peoples and Local Communities (IPLCs), such as the Convention 169 of the International Labor Organization.
- Equivalent due diligence requirements are also needed for EU-based financial institutions providing financial services to corporate entities or groups doing business in commodities and products covered by the regulation. Currently, there are no similar obligations for investors and banks to prevent and deter investments targeting activities linked to deforestation.

⁵ MapBiomass, unpublished data.

⁶ Industrialized meat export data, ABIEC, 2020: <http://abiec.com.br/exportacoes/>

⁷ Our concrete experience in Brazil, as with the Soy Moratorium in the Amazon, demonstrates that transparency and traceability to origin are perfectly possible and affordable, and that they are essential to ensure the elimination of deforestation, conversion, and human rights abuses from commodity supply chains.

⁸ Rajão, R., et al., The rotten apples of Brazil's agribusiness. *Science*, vol. 369, issue 6501, 17 July 2020.

⁹ In other words, an illegal product, such as one coming from Undesignated Public Forests, cannot be allowed on the European market, even if it was produced before December 2020.

In addition, there are procedural concerns. The exclusion of Small and Medium Enterprises (SMEs) from having to publicly report on their due diligence system on an annual basis would exempt a substantial number of enterprises from this obligation¹⁰. Finally, regarding the Forest Observatory, it should harmonize with existing databases and build on monitoring tools in countries already providing the data.

Since the regulation is the first of its kind to be proposed globally, it will serve as an example to similar proposals discussed in other countries. This increases the relevance of the proposal and its need to be ambitious and contemplate all elements necessary to reduce forest degradation and deforestation around the globe.

Sign:

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5 ELEMENTOS INSTITUTO DE EDUCAÇÃO PARA A SUSTENTABILIDADE

APIB - ARTICULAÇÃO DOS POVOS INDÍGENAS DO BRASIL

APREC ECOSISTEMAS COSTEIROS

APREMAVI - ASSOCIAÇÃO DE PRESERVAÇÃO DO MEIO AMBIENTE E DA VIDA

ASSOCIAÇÃO ALTERNATIVA TERRAZUL

CONECTAS DIREITOS HUMANOS

CTI - CENTRO DE TRABALHO INDIGENISTA

FBDS - FUNDAÇÃO BRASILEIRA PARA O DESENVOLVIMENTO SUSTENTÁVEL

GAMBÁ

IDEC - INSTITUTO BRASILEIRO DE DEFESA DO CONSUMIDOR

IDESAM - INSTITUTO DE CONSERVAÇÃO E DESENVOLVIMENTO SUSTENTÁVEL DO AMAZONAS

IEB - INSTITUTO INTERNACIONAL DE EDUCAÇÃO DO BRASIL

IDS - INSTITUTO DEMOCRACIA E SUSTENTABILIDADE

IEMA - INSTITUTO DE ENERGIA E MEIO AMBIENTE

IEPÉ - INSTITUTO DE PESQUISA E FORMAÇÃO INDÍGENA

IMAFLOA - INSTITUTO DE MANEJO E CERTIFICAÇÃO FLORESTAL E AGRÍCOLA

INESC - INSTITUTO DE ESTUDOS SOCIOECONÔMICOS

INSTITUTO ALANA

INSTITUTO ECOAR

INSTITUTO INTERNACIONAL ARAYARA

IPÊ - INSTITUTO DE PESQUISAS ECOLÓGICAS

ISA - INSTITUTO SOCIOAMBIENTAL

ISPN - INSTITUTO SOCIEDADE, POPULAÇÃO E NATUREZA

INSTITUTO PÓLIS

INSTITUTO TALANOA

OBSERVATÓRIO DO CLIMA

PROJETO SAÚDE E ALEGRIA

RCA - REDE DE COOPERAÇÃO AMAZÔNICA

REDE GTA - GRUPO DE TRABALHO AMAZÔNICO

SPVS - SOCIEDADE DE PESQUISA EM VIDA SELVAGEM E EDUCAÇÃO AMBIENTAL

TNC - THE NATURE CONSERVANCY

UMA GOTA NO OCEANO

WWF-BRASIL

¹⁰ SMEs can have a turnover of above 40 million euros, according to the European Union Directive 2013/34/EU, Official Journal of the European Union: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN>