

Without global commitment and dully verified data, EU Regulation on deforestation and forest degradation set to have a very limited impact

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EUSTAFOR observations on the newly agreed EU deforestation law (1)

The FAO Global Forest Resources Assessment (FRA) 2020 estimated² that 420 million ha of forest was deforested between 1990 and 2020, with the highest net losses in South America and Africa, while Europe and parts of Asia experienced net gains. Furthermore, the newly agreed text for the proposal for a Regulation on deforestation and forest degradation notes that between 1990 and 2008, the Union consumption was responsible for 10% of worldwide deforestation associated with the production of goods or services.

In that regard, the European State Forest Association (EUSTAFOR) welcomes the European Union's effort to take action to minimize global deforestation and forest degradation driven by its own consumption. At the same time, EUSTAFOR believes that, unfortunately, the proposal misses the unique chance to foster scaling up the good land management practices of European countries to a global level. Notably, EUSTAFOR regrets that very little effort was brought by the proposal to promote the European concept of sustainable and multifunctional forestry as a viable solution to maintain and expand forests around the world, while serving the needs of our planet and providing multiple services to society at large.

Does this new regulation properly calibrate the level of ambition and the possibilities for a follow up on world level?

It remains yet to be seen whether the producing countries in which deforestation is still ongoing are willing to comply with the new proposal and will not instead re-direct their products outside the EU markets. Unfortunately, this question was not tackled so far and could turn out to be the key factor preventing the successful implementation.

Furthermore, as noted in the proposal, the new EU legal framework addresses both the legality and whether the production of relevant commodities and products is deforestation-free. Still, up until now, even the legality condition itself could not be fulfilled on the global level. Namely, the 2021 Fitness Check on EUTR and FLEGT³ concludes that while *"it seems that the EUTR is efficient for the majority of MS CAs (for those sharing data with customs) and for larger operators (having the benefit of scale) as well"*, *"it is not possible to conclude that the FLEGT Regulation has had a positive impact on illegal logging in the VPA countries and/or on the level of illegally logged timber entering the EU. Therefore, the FLEGT Regulation cannot be deemed efficient"*.

¹ Any statement in this document is to be considered as a reflection of the best available professional expertise and does not necessarily reflect the political commitments of individual member states.

² <https://www.fao.org/3/cb9360en/online/src/html/deforestation-land-degradation.html>

³ https://environment.ec.europa.eu/system/files/2021-11/SWD_2021_328_1_EN_bilan_qualite_part1_v2.pdf

Hence, it is rather difficult to expect that adding further demands beyond the legality will deliver better results.

Whilst having those general remarks in mind, EUSTAFOR would like to comment on the following aspects of the proposal:

Geolocation may still be a challenging task

EUSTAFOR welcomes the Council and Parliament's improvements to make certain forest-related definitions more precise and in accordance with already agreed international definitions from FAO. This will ease up the implementation, including reporting, since these definitions are already in use in international reporting systems. The one exception from this is the definition of geolocation⁴ that has not been in use so far in forest reporting. EUSTAFOR believes this definition does not leave much space for flexibility to reflect regional and local circumstances around the globe, especially in the overseas territories. Namely, Article 9 (d) requires from operators to provide information on geolocation of all plots of land where the relevant commodities that the relevant product contains, or has been made using, were produced, as well as date or time range of production. EUSTAFOR already pointed out before that in practice it might be quite challenging to manage data collection on geolocation, especially if it is expected to take the GPS coordinates at the spot. Even when the data itself are easily accessible, e.g. through forest management planning, it remains unclear what kind of date or time range would be required since there are many production stages (for example, start date of harvesting operations, finish date of harvesting operations, forwarding date to landings, delivery to the customer, etc.). Unfortunately, even though these issues have been raised, the final agreement did not address them.

Risk assessment is missing precision which may lead to misinterpretations

When it comes to risk assessment requirements (Art 10), the text has remained unspecified, with a lot of room for interpretation, including in which form or from which sources the data will come. Certain provisions require providing information that at the moment is not reported and is, therefore, unknown, such as prevalence of forest degradation. In addition, reference is made to conclusions of the meetings of the Commission's expert groups but without specifying the groups or the way in which the operators should find their way to the relevant data. Such ambiguous approach will undeniably confuse the operators and hamper a successful implementation of the Regulation.

New obligation to perform checks may miss its purpose while increasing unnecessary administrative burden

Another aspect of the proposal that is rather hard to comprehend and see the real added value beyond creating more burdens on the European Union's operator and

⁴ 'geolocation' means the geographical location of a plot of land described by means of latitude and longitude coordinates corresponding to at least one latitude and longitude point and using at least six decimal digits. For relevant commodities other than cattle, for plots of land of more than 4 hectares, the geographical location shall be provided using polygons, meaning sufficient latitude and longitude points to describe the perimeter of each plot of land.

authorities, is that according to Art 14, national authorities are obliged to perform checks in order to establish whether operators and traders comply with obligations under this Regulation, but this is only to be done within their own territories. In fact, the majority of deforestation takes place outside of the European Union's territory, and the primary objective of this Regulation is to reduce deforestation in the producer countries and regions. Therefore, performing checks within the Union seems rather ineffectual, while imposing new administrative burdens. EUSTAFOR strongly believes that, instead, working towards a global political agreement on sustainable management of forests would have given more assurance for success.

Remote sensing should not fully replace checks of the ground due to its limitations in accuracy

The Regulation overly relies on remote sensing potential which is limited. This is especially important in the case of forest degradation for which it is hardly imaginable that it can be detected via such systems. Furthermore, it remains to be seen how the timescale will be handled. Namely, one should cautiously note that it takes several years for a forest stand to regenerate and restore after harvesting which, if looked at immediately after harvesting happens, it might be understood as forest degradation, and in case of clear-cutting systems even as deforestation. Therefore, EUSTAFOR believes that a duly audited implementation of the provisions of national forest legislations embedded in forest management plans, including the obligation to regenerate and restore forest stands after harvesting operations, should be the primary guarantee and proof of sustainability of forest management.

To conclude, even though the political agreement at EU level has already been reached, we hope that the above-mentioned shortcomings will be duly recognized and taken into account in the further setting of the implementation of this Regulation at EU and national level. In that regard, EUSTAFOR considers the inclusion of Member States' experts, forest practitioners and research indispensable in the future work. EU policies should work towards promoting sustainable and multifunctional forest management worldwide and not just create bottlenecks for its implementation.