Recommendations for strengthening the European Union’s deforestation-free supply chains proposal

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On 17 November 2021, the European Commission published its Proposal for a Regulation on Deforestation-free Products (hereafter “the Proposal”). This position paper outlines how ISEAL believes this draft legislation should be adjusted to have a deeper impact on preventing deforestation.

ISEAL works with a global network of ambitious sustainability systems and their partners to tackle the world’s most pressing challenges. ISEAL also defines credible practices for sustainability standards and similar systems based on emerging global consensus. ISEAL sees deforestation as one of the most pressing challenges and has been actively following the Proposal’s development to support policy makers and businesses understand how credible sustainability systems can help tackle deforestation. More information about ISEAL can be found in the last section.
SUMMARY

Halting deforestation and restoring degraded forests is critical to overcoming the climate emergency and reversing biodiversity loss. Although the Proposal put forward by the Commission is a necessary piece of legislation, in its current format it runs the risk of achieving the objective of avoiding imported deforestation into the EU, while not necessarily delivering on its goal of reducing global deforestation rates.

ISEAL believes the Proposal can be more impactful if adjusted in six main areas:

1. Being clear that the regulation only prescribes the minimum sustainability requirements that forest-risk commodities must meet in order to be placed on the European market – operators should work to exceed these requirements. Policy makers should help create an enabling environment that incentivises operators to go further, rewarding and supporting producers in using sustainable practices.

2. Stipulating that only robust and verified information should be used to determine that products have been legally produced and are deforestation-free. Currently, the proposal does not distinguish between self-reported and verified information.

3. Specifying the minimum requirements for credible operations to be met by certification and other third party verified schemes if they are used as part of a due diligence risk assessment and risk mitigation procedure. This is necessary to prevent the legislation from encouraging the emergence of low-bar solutions and ensures coherence with existing internationally recognised standards.

4. Requiring that an impact assessment of the regulation on smallholders and vulnerable communities is carried out before regulation is entered into force with results informing essential support measures that can be mandated to secure smallholder access to European markets.

5. Encouraging operators to invest in supply chain compliance by acknowledging that capacity building is also part of an appropriate risk mitigation and management strategy that operators can use to reduce the risk of non-compliance. A provision on responsible disengagement and disclosure should also be included.

6. Stronger emphasis on the need for supply-side and sector-wide partnerships and programmes as part of the smart-mix of interventions to combat global deforestation.
I. The EC proposal on deforestation-free supply chains is an important milestone that provides a welcome mandatory, legal floor

ISEAL welcomes the Commission’s plans to introduce legislation to ensure deforestation-free supply chains. While ISEAL champions the use of voluntary certification systems to build sustainable supply chains, these tools work best when they are complemented by a mandatory legal floor – legislation that defines minimum sustainability expectations for the whole supply chain including traders and end-buyers.

We are also encouraged by the fact that the Proposal put forward by the Commission builds on the learnings and success of the EU Timber Regulation (EUTR) and its due diligence approach. The fact that the proposal goes beyond illegal deforestation and national definitions is especially important at a time when some governments are watering down legislation.

We appreciate that the draft regulation recognises the need for supply chain traceability and the practical role that credible certification can play in supporting companies to meet their due diligence obligations in terms of assessing deforestation risks.

Furthermore, we strongly agree with the assertion made in the regulation that certification cannot absolve operators from their duties and responsibility under the due diligence obligation. At the same time, we believe a strong integration between company policies and third party initiatives, such as certification systems or other similar tools, is key to ensure the effective and impactful implementation of the proposed regulation and to achieve the broader goal of reducing global deforestation rates.

II. Areas for improvement: six ways to strengthen the EC proposal

ISEAL has identified various challenges, risks, and trade-offs, which we believe need to be addressed if we want to see an impactful regulation that ensures EU companies can build on existing best practice and effectively address deforestation at a global level.

Many of these issues are acknowledged by the Commission itself in the Proposal’s explanatory memorandum. We believe the Proposal’s silence on some of these issues and the way it deals with others, is a missed opportunity to have a deeper impact on deforestation. More specifically our concerns include:

a) Lack of incentives for operators to go beyond the minimum requirements before placing forest-risk commodities on the European market.

**Challenge:** The Proposal’s narrow focus on deforestation and its specific definition of deforestation means that it does not mandate companies to achieve broader, more ambitious sustainability objectives as defined in multi-stakeholder standard-setting processes and existing national partnership agreements for cocoa, palm oil, and soy that have been concluded in recent years. Not only do many of these initiatives require earlier deforestation cut-off dates, they also consider a broader suite of social and rights issues, and often extend to other ecosystems beyond forests. While it is expected that a mandatory regulation sets a minimum bar, it should also be clear that companies’ due diligence processes need to build on and incentivise existing best practice.

**Recommendation:** The proposed legislation can be made more effective if operators are incentivised to use more ambitious and comprehensive sustainability approaches in their due diligence processes, that go beyond the minimum legal requirements set out in the regulation and address a broader suite of social, environmental, and economic issues. This could be done by stressing the importance and centrality of internationally-recognised multi-stakeholder sustainability standards in the development of company due diligence policies, and by ensuring that any supporting measures or policies consistently reward stronger performance.

b) The Proposal does not distinguish between self-reported and verified information.

**Challenge:** Operators following this regulation are only required to collect and organise information and data that fulfill the conditions set out by (article 3 of) the regulation. As such, they may receive self-reported information from within their supply chain and use it to demonstrate that the relevant commodities or products

1. Examples of these sector partnerships include the Amsterdam Declaration Partnership and the German Initiative on Sustainable Cocoa.
are compliant with the regulation without taking any steps to verify the validity of this information. Given the range and complexity of information requirements, the lack of consistent definitions, and the inherent conflict of interests that will emerge for different supply chain operators seeking compliance, we argue that verification processes will be needed. These would ensure companies identify unreliable data and information in advance, allowing them to act and address these before placing products on the EU market.

**Recommendation:** The regulation will be more impactful if it requires that the data (specified in the information requirements) used by the operator to demonstrate that a product is deforestation-free and legally-produced is verified ahead of the product being placed on the EU market.

**c) Absence of minimum credibility requirements for certification or other third party verified schemes that can be used in the due diligence risk assessment procedure**

**Challenge:** The Commission has identified the use of certification as a tool to support the due diligence risk procedure (Article 10, clause 2, j.). ISEAL welcomes this and sees it as a critical element to ensure coherence with current best practices and consistent with a smart-mix policy approach. However, to ensure mandatory due diligence processes effectively leverage third party schemes, certain scheme criteria would need to be considered. The original EU Renewable Energy Directive points to the danger of poorly specified minimum credibility requirements and how this can encourage the emergence and use of low-bar, “greenwashing” schemes. The EUTR implementation experience confirms a more effective approach is possible.

**Recommendation:** The EU needs to delineate the minimum requirements for credible operations to be met by schemes acceptable under Article 10, clause 2(j). Internationally recognised, normative good practices for credible certification schemes such as those set out in ISEAL’s Codes of Good Practice should be referenced here. By better recognising the value that robust certification can add to corporate due diligence implementation, the regulation should amplify the demand for products that comply with credible and transparent certification systems, unlocking the broader and systemic impacts these systems offer.

**d) More focus on risk mitigation measures to limit risk of ‘cut and run’ and leakage**

**Challenge:** The Proposal’s approach to benchmarking countries or regions, in combination with its requirements for traceability to land plot and the lack of clarity on mitigation measures, means implementation is likely to (i) create exclusionary dynamics whereby operators will cut out suppliers and producers at risk for deforestation rather than invest to bring them into compliance, and (ii) establish a segregated market for EU products where producers shift their deforestation impacts to other commodities and markets. Rather than mandating a due diligence process in which EU-based companies will cut off regions, suppliers, or producers, we argue that a more well-rounded due diligence approach should be considered, which establishes as a central responsibility for companies that they should identify and implement substantive mitigation efforts, in particular for high-risk areas. Traceability should be seen as a tool to aid and target mitigation action, instead of a goal in and of itself. There are significant challenges and cost implications for both obtaining site-level data for all producers exporting to the EU and ensuring compliant volumes are segregated along the supply chain. Existing certification schemes can help companies address such challenges, but these can only be overcome over time and through sustained investment at a sector-wide level.

**Recommendations:** To ensure EU-based companies can tackle deforestation effectively in specific high-risk areas, various amendments could be considered:

- First, the regulation will require a greater focus on what risk mitigation processes are acceptable and desirable. Building on international guidance (Accountability Framework Initiative, OECD-FAO Guidance for Agricultural Supply Chains), the regulation should encourage investment in risk mitigation activities and support suppliers with the implementation of corrective action measures as part of their risk mitigation approach. Here for example, an operator could provide supply chain partners with capacity building or support their access to financing for sustainability improvements. Ensuring adoption of certification schemes in line with the regulation would be another clear mitigation measure, in particular for

2. The EUTR Implementing Regulation adopted in 2012 specified that certification or other third-party verified schemes could be used as part of the required risk assessment procedure provided that they met certain credibility requirements. These requirements were further elaborated in a guidance document published in 2016. The only in-depth study conducted to date of company behaviour in response to the EU timber regulation shows that ninety-five per cent of the 72 operators that were interviewed mentioned using independent third-party certification or verification schemes as part of their risk mitigation measures. As a result, the proportion of certified timber they imported rose markedly from 2012 to 2019 (half the operators interviewed reported 70 per cent or more). The EUTR was not the only reason for this increase but it did play a significant role. See Marigold Norman, How is the European Union Timber Regulation Impacting Industry Due Diligence and Sourcing Practices? (Forest Trends, 2021).
high-risk smallholders. Collaborative landscape and jurisdictional initiatives\(^3\) should also be considered as important mitigation efforts. Where disengagement from an existing supply chain partner is the only way to ensure compliance with the regulation this information should be transparently disclosed.

- Second, intermediate levels of traceability to the region or mill level, linked to the scale of mitigation processes, should be considered as a potential interim solution, with a planned phasing out over time. Sector-wide roadmaps should be developed to tackle these implementation issues given the substantial differences between commodities.

- Third, the inclusion of remediation measures should be considered to restore ecosystems where land conversion has occurred. A pathway for allowing producers to come back into compliance can be used as an incentive for driving restoration efforts in forest frontier areas. This pathway would apply in cases where conversion has happened after the cut-off date.

**e) The risk of smallholder exclusion from the European market**

**Challenge:** A significant proportion of deforestation-risk commodities (in particular cocoa, coffee, and palm oil) imported into Europe is produced by smallholders. These products are covered by the Proposal and many of these producers will face specific adaptation challenges when complying with this new legislation. The Proposal notes this risk and considers the late cut-off date as the main measure to avoid exclusion. However, smallholders will find it difficult to provide the necessary information to be compliant and will require significant support to be able to provide geolocation data and other information. In many countries, land tenure arrangements are unclear and the recognition of customary land rights is weak. This will limit smallholders’ ability to provide evidence of compliance with the Proposal’s legality requirement.

Further consideration also needs to be given to smallholders’ ability to retain ownership of their proprietary information and exercise control over the way in which their data is stored and used by supply chain partners.

Finally, many small-scale producers might not have access to information on the details of the planned legislation and may undertake deforestation that is consistent with their national laws, only to be permanently excluded from European markets (see also the previous point on restoration).

**Recommendations:** To better understand the implications of the legislation for smallholders, the EU Commission should review the regulation and assess its impact on smallholders before it has entered into force. The EU Commission should commit to implementing mitigating measures identified through this impact assessment so as to minimise the negative and unintended consequences on the ability of smallholders to access EU markets.

Companies, governments, and multi-stakeholder initiatives will need to collaborate effectively to enable smallholders to gather the required data, but this will require time and coordination. Given these circumstances, the Proposal should consider a transition period specifically for products sourced from smallholders, as well as remediation pathways as described above.

**f) Policy sequencing and the need to embrace a smart-mix policy approach**

**Challenge:** While the legislative proposal mentions its complementarity with other measures that will be proposed, we are concerned about policy sequencing and timing. The Proposal does place an obligation on the Commission to establish ‘structured dialogues’ and partnerships with producer countries. Such supply-side measures need to be in place before this proposal enters into force, otherwise the legislation may result in producers shifting their deforestation impacts to other commodities and markets. Furthermore, partnerships with local governments are just one element of the smart-mix of policies needed to combat deforestation. The private sector also needs to be encouraged to invest in mitigation activities such as sustainable landscape or jurisdictional initiatives and to cooperate with local stakeholders to ultimately change the risk profile of high-risk areas.

**Recommendations:** The Proposal can be further strengthened by making a clear link between due diligence processes and supply-side measures. At the intersection of these, multi-stakeholder certification schemes and other voluntary tools can help producers implement regulatory requirements and broader sustainable practices as part of the EU’s Forest Partnerships. These systems already have well-established relationships with local producers and other supply chain actors, as well as with international organisations, policy makers and NGOs. Certification schemes, beyond implementing production and supply chain standards, can also contribute to partnerships with producing countries by supporting companies to invest in capacity building, for instance.

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3. Landscape approaches are multi-stakeholder collaborations that engage stakeholders within and outside a landscape to align around landscape-level goals and action. Jurisdictional initiatives are a type of landscape approach operating within the administrative boundaries of sub-national or national governments. For further info and resources, visit the [TFA Jurisdictional Approaches Resource Hub](#).
III. About ISEAL and the role voluntary sustainability systems play in preventing deforestation and forest degradation

ISEAL supports ambitious sustainability systems and their partners to tackle the world’s most pressing sustainability challenges. With our growing global network and our focus on credible practices, we drive impact and make markets a force for good. From the climate emergency and biodiversity crisis to human rights and structural poverty, the world needs scalable and effective solutions. Our convening and thought leadership accelerates positive change on these critical challenges, so companies and governments can meet their sustainability commitments and the UN Sustainable Development Goals.

ISEAL influences and shapes multistakeholder sustainability systems by defining credible operating practices based on emerging global consensus. These credible practices cover how sustainability systems approach setting their sustainability objectives and defining their standards, how they assure compliance, manage traceability and claims, and verify their impacts on the ground. ISEAL also facilitates and promotes innovation to strengthen sustainability systems and convenes forums for collaboration, sharing of experience and collective action.

There are several robust voluntary sustainability standards that cover forest-risk commodities – many have significant market share with strong producer and consumer recognition. Examples include those of the Forest Stewardship Council, Roundtable on Sustainable Palm Oil, Rainforest Alliance and Fairtrade International. All these schemes adopt a comprehensive approach to sustainability and cover a full range of social, economic, and environmental issues. This means, for example, they integrate requirements on biodiversity and water conservation alongside requirements on workers’ rights, indigenous peoples’ rights, and land rights, and have pioneered the concepts of living income and shared supply chain responsibility. When it comes to limiting deforestation and ecosystem conversion, they do so based on concepts such as high conservation values and the use of cut-off dates well in the past.

ISEAL believes that credible, voluntary sustainability tools have an important role to play in halting deforestation and forest degradation globally because of their comprehensive and ambitious sustainability approach - this view is confirmed by research into the impact of forest sustainability standards on deforestation and its underlying economic and social drivers.

5. For more information on the market penetration rates of selected voluntary sustainability standards see International Trade Center Standards Map
6. A systematic review of twenty years of forest management certification in the tropics, published in 2020, found that certification created strong incentives for large and small forest owners to protect forest resources. The review concluded that offering continuous technical and financial support to promote long-term certification, particularly among smallholders, could be a good strategy to increase their resilience and help them overcome difficult economic periods. See Francisco Ehrenberg-Azcárate and Marielas Peña-Claros, ‘Twenty years of forest management certification in the tropics: Major trends through time and among continents’ (Forest Policy and Economics 111(3):102050, 2020; DOI: 10.1016/j.forpol.2019.102050)
About ISEAL

ISEAL supports ambitious sustainability systems and their partners to tackle the world’s most pressing challenges. With our growing global network and our focus on credible practices, we drive impact and make markets a force for good.

From the climate emergency and biodiversity crisis to human rights and persistent poverty, the world needs scalable and effective solutions. Our convening power and thought leadership accelerate positive change on these critical challenges, so companies and governments can meet their sustainability commitments and the UN Sustainable Development Goals.

We work by:

• defining credible practice for sustainability systems based on emerging global consensus
• convening forums for collaboration, sharing of experience and collective action
• delivering expertise, advice and training
• facilitating and promoting innovation to strengthen sustainability systems.

Together, we can deliver real and lasting change for the benefit of people and planet. Join us.

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