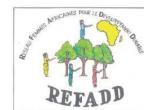


PROTECTING AND RESTORING THE WORLD'S FORESTS

Civil society recommendations for fair and inclusive partnerships between the European Union and forested developing countries

December 2022



Introduction

We are a network of forests and rights advocates from West and Central Africa, and Southeast Asia who work to improve forest governance in our countries. We come from regions that are experiencing deforestation due to commercial agriculture, illegal logging, mining, and infrastructure development. The root causes for this environmental and social catastrophe lie in poor governance and the limited recognition of forest peoples' rights and aspirations.

In September 2022, we met with Belgian, French, German and UK decision-makers, as well as representatives from the European Commission and the European Parliament.

We welcomed the European Union's (EU) efforts to end deforestation and its continued support in the fight against illegal logging through the [Voluntary Partnership Agreements](#) (VPAs), part of the Forest Law Enforcement Governance and Trade (FLEGT) Action Plan. The proposed EU Regulation on Deforestation-Free Products is a major step forward in ensuring that the EU minimises its global deforestation footprint. EU officials stressed that - along with the [EU Green Deal](#) - these efforts illustrate the EU's ambition for the climate and for biodiversity.

We demanded that the EU's recent proposal for a [Regulation on Deforestation-Free Products](#), enhances and gives stronger recognition to the [Voluntary Partnership Agreements](#) (VPAs), part of the existing Forest Law Enforcement, Governance and Trade (FLEGT). We also discussed civil society concerns and priorities for improving forest governance, and ensuring that human and tenure rights are upheld and respected when forest ecosystems are protected.

EU policies have multifaceted implications for forested developing countries. They can contribute to a positive socioecological and economic change if the right steps are taken in consultation with all concerned stakeholders, particularly non-state actors, such as the forest communities and vulnerable groups. Therefore, we urge the EU to clarify its vision for the future of forests and for implementing and developing VPAs, in light of its proposed Regulation on Deforestation-Free Products. We request that it adopts a constructive and inclusive dialogue with our countries and non-state actors, building on the positive and transformative approach VPAs spearheaded.

The statement summarises our views and recommendations for ensuring that EU forest action has a positive impact in Europe and globally.

Views and recommendations from the Congo Basin

Strengths of the EU Regulation on Deforestation-Free Products

Civil society organisations (CSOs) representatives from the Congo Basin welcome the EU regulatory approach against deforestation and the integration of sustainability criteria alongside legality elements.

The fact that the proposed Regulation contains more precise implementation requirements than the EU Timber Regulation is also an important step forward.

The partial recognition of FLEGT licenses to determine the legality of imported timber on the EU market is an important signal that the EU will honour existing VPA commitments.

Moreover, the Regulation rightly proposes considering countries' efforts to put in place relevant policies and tools to combat deforestation and improve governance.

Critical gaps in Regulation on Deforestation-Free Products

We are concerned by the lack of consultation with stakeholders in VPA countries on the EU Regulation, including in the process of defining what constitutes deforestation and forest degradation, and on determining countries' risk rating. Our assessment is that overall, national governments are very far from understanding policy processes that have been taking place in Europe.

The proposed definition of "deforestation" does not consider regional differences and specificities. VPA countries have defined deforestation in their national legislation, very often aligning it with international and regional definitions.

The new requirements for timber traded into the EU will clearly impact timber coming from VPA countries, since FLEGT licenses will no longer get a 'green lane' as they need to fulfill the zero-deforestation requirement and possibly additional legality requirements. However, the text does not

provide any guidance for VPA countries to transition from a licensing system that focuses on legality, to one that embeds a deforestation/degradation free requirement. This could render the FLEGT licensing 'obsolete' and disincentivise governments to pursue governance reforms.

By taking a blanket approach, the EU Regulation on Deforestation-Free Products overlooks our countries' development needs and objectives, and the links between corruption and deforestation. Moreover, it does not address the need for forest communities to be able to get benefits and revenues from their forests. Therefore, it misses the opportunity to provide incentives for preventing deforestation and restoration and may divert risk to less-demanding markets.

Recommendations

» The EU must continue to invest in VPAs

The proposed Regulation should incentivise and support all countries to reach the FLEGT licensing stage within a reasonable timeframe and help them to assess their compliance with the new deforestation/forest degradation criteria, including addressing any gaps through support to VPAs 2.0.

It is crucial that the new Regulation is fair on countries and operators who have tried to make their timber supply chains legal and deforestation/degradation free.

» The EU must encourage dialogue and effective cooperation on deforestation

The Regulation on Deforestation-Free Products must include formal mechanisms connected to its obligations, beyond capacity building. These agreements should support policies and programmes that champion inclusive rights-based forest governance. The EU's proposed Forest Partnerships for instance - if developed in an inclusive manner - could provide an adequate cooperation framework to tackle deforestation and other threats to forests and forest peoples.

Any dialogue and cooperation on deforestation must include civil society and impacted communities. This means ensuring that they have adequate space, capacity, and resources to engage in and influence policy decisions regarding deforestation and forest protection, including through independent forest monitoring.

The EU should resume the 'FLEGT week' as a platform for dialogue, information sharing and learning between VPA countries and different stakeholders.

The EU should facilitate a trilateral dialogue with Congo Basin countries and China on the

implementation of its timber legislation, the EU Regulation and the VPAs. Such a dialogue would enable discussion and action on leakages. The EU should also promote a dialogue with the US and Australia to strengthen linkages between EU regulations and other forest governance and deforestation regimes.

The EU should support multi-stakeholder approaches on other sectoral policies to improve land governance and land-use planning and promote sustainable agricultural practices and commodities.

Views and recommendations from West Africa

Strengths of the EU Regulation on Deforestation-Free Products

West African CSOs welcome the EU Proposed Regulation on Deforestation-Free Products, as it complements VPAs and will ensure that forests are not converted for other commodities.

The implementation of a country level risk rating system, and the due diligence obligation on companies (which include obligating companies to comply the laws of the producing country), are elements that could improve the governance of the land-use sector and promote deforestation-free cocoa production, particularly in Côte d'Ivoire.

Critical gaps in Regulation on Deforestation-Free Products

The Regulation is top down and unilateral, unlike the approach taken by the FLEGT regulation in which the VPA was arrived at through multi-stakeholder deliberative processes. It is important to learn from FLEGT VPAs and Wood Tracking Systems. The Ghana Wood Tracking System for instance, is a traceability system developed for the timber sector. It started as

a technical solution to a problem but was enriched through multi-stakeholder inputs.

The EU should understand that farmers stand to lose if the regulation is enforced in its current form. In West Africa, especially Ghana and Cote d'Ivoire, most smallholders' livelihoods depend on harvesting cocoa. To make any semblance of a living income, smallholders incrementally convert their forested farmland to cocoa farms. However, the new rules will prevent smallholders from converting their forested farmland to cocoa, and they will be denied access to sell their cocoa beans to the lucrative EU market. Smallholders who have converted their forested farmland will have to sell their cocoa to other markets for a lower price. The proposed Regulation suggests that if a forest land already dedicated to agriculture is converted it will be called deforestation.

In West Africa, there are different perspectives on how this will affect smallholders and what should be done to mitigate that impact, based on the amount of forests and the livelihoods of cocoa farmers in each country. In Ghana, there is still a substantial amount of forested farmland owned by small scale cocoa farmers who wish to convert to cocoa to sustain their livelihoods. This new rule, which prevents farmers from converting

forested farmlands to cocoa, will prevent Ghanaian smallholders who need to convert their forested farmlands to cocoa, from being able to sell their cocoa to the EU and therefore prevent them from getting a higher price for their cocoa. Smallholders who convert their forested land will have to sell their cocoa to other markets for a lower price. However, in Côte d'Ivoire most forest land has already been converted and stakeholders wish to prevent all future conversion.

Stakeholders in both countries argue that there are two ways to alleviate the impact on smallholders. First is to allow government representatives, NGOs, and industry from producer countries to work with the EU to define their own limitations based on existing conditions. Second is for the EU to set up a transition support programme as part of the partnerships. This funding should help small-scale producers to better maintain existing farms through investment in agroforestry, organic fertilizers and pesticides, and labour.

While in principle companies are required to ensure compliance with relevant legislation in producer countries, the Regulation does not elaborate on measures that need to be established for monitoring and verifying compliance.

The proposed Regulation is not clear how partnerships and cooperation with the producing countries will be established and maintained. It also falls short of describing how the private sector, communities, and CSOs will be engaged. For instance, communities should have the option to seek justice when they have evidence showing companies have violated their rights.

The Regulation calls for companies to undertake due diligence but does not require them to publish their due diligence reports to enable CSOs to monitor and track their operations, and to enable affected communities to flag irregularities when they occur.

The Regulation does not require companies to publish the names of their financiers and traders. This means that entities providing financial support or backing for deforestation cannot be easily traced, and therefore held liable for it.

Recommendations

» Learning from VPAs

The EU must apply lessons learned from the VPAs in the Regulation and build upon the VPA model to tackle other commodities. This includes embedding measures linked to the VPA accountability and transparency mechanism and maintaining a 'green lane' in the Regulation for FLEGT licensed timber.

The EU must clarify its position on the future of VPAs, and how they will link to other forms of partnership and cooperation.

» Rooting for changes at the national level

There needs to be consensus for all definitions agreed, especially on deforestation and degradation, since there are already definitions agreed through the VPA processes.

There needs to be a dialogue between the EU and producer countries on aspects of the Regulation pertaining to High Carbon Stock and biodiversity rich ecosystems, to ensure harmony with national laws.

Pricing transparency is crucial to expose what local farmers are receiving compared to what others in the value chain are taking. Higher prices could help farmers reduce the rate of farm expansion.

The EU Regulation should not allow companies to pass the burden to private certification systems. The proposed Regulation is meant to stem the trade in forest risk commodities, so the system supporting it should be a national, public system.

Certification schemes should not be used as a benchmark because they have serious faults (i.e., they do not have legal standing and are voluntary).

The future Regulation also proposes using satellite images to assess whether an agricultural product is linked to deforestation. The aim is for the EU to have unequivocal scientific proof. We call on the EU to also consider that field data collection by

third parties in producer countries is indispensable for corroborating satellite data.

» **Expanding the Regulation's scope**

Mining is a major cause of deforestation in West Africa. Gold (and potentially other minerals) needs to be covered in the Regulation or there will be

major leakage. Rubber should also be included in the list of agro-commodities.

The EU should consider broadening the Regulation to include compliance to international human rights law and treaties that producing countries have signed and ratified.

Views and recommendations from South-East Asia

Strengths of the EU Regulation on Deforestation-Free Products

Southeast Asian CSOs support the EU Regulation as a tool to halt deforestation and produce legal and sustainable commodities in producing countries.

Critical gaps in the EU Regulation on Deforestation-Free Products

This unilateral approach weakens the VPA – and by undermining an existing trade agreement, the EU's reputation as a trust partner will be damaged – in contrast with the ambitious approach that FLEGT-VPA championed over the past decade. This could reduce the EU's ability to champion global action to combat deforestation.

In Vietnam, stakeholders have received little information about the Regulation, and in Indonesia, the government is concerned about the lack of market incentives for FLEGT licensed timber, although the VPA has been found to decrease the amount of illegal logging in Indonesia.

Recommendations

» The EU should build on lessons learnt through VPA processes, particularly regarding multi-stakeholder dialogue/consultation (inclusive of non-state actors), which could usefully be applied to processes to tackle agricultural conversion and

matters relating to Regulation on Deforestation-Free Products. Some of the independent monitoring tools developed under the VPA could also be usefully applied.

The monitoring of timber trade to the EU needs to be defined and strengthened. The EU shall also navigate through ongoing challenges around the negotiation of VPAs, particularly in relation to the different stances taken by sub-national governments.

The deforestation regulation must ensure that existing incentives for establishing a VPA are preserved, and that governance gains are maintained and continued.

The Regulation must include key commodities, such as rubber.

- » The EU must prevent any potential negative impacts on smallholders (e.g., excluding them from the supply chains), by providing them with sufficient incentives and support.
- » The EU must also ensure respect for rights, including land rights, for local communities, ethnic minorities, and Indigenous Peoples in determining legality and deforestation-free indicators.

To ensure transparency and access to justice, the EU must include a role for CSOs in independent monitoring and the complaint mechanism in the Regulation.

Looking ahead

The EU Regulation on Deforestation-Free Products is a game changer in the global forest governance framework. It can have far reaching positive consequences with proper buy-in from forested and producing countries and all stakeholders, particularly non-state actors, smallholders and rural communities who depend on forest resources, and access to land for their livelihoods.

Continued strong cooperation and clear agreements with producers will give the EU the legitimacy to intervene in discussions on national issues. This logic has been part of the VPAs and has been crucial in improving forest governance and inclusive approaches to forestry.

It is important that the EU maintains the ambition to push for change beyond reducing its own impact on forests. Therefore, EU action should not only target products that reach EU borders and related supply

chains but should aim to benefit the whole world with proper and adequate involvement of non-state actors in the processes.

There is a strong call for VPAs to be maintained, and integrated into the emerging deforestation framework, and their key elements (multi-stakeholder process, governance, and licensing) strengthened. However, the regulation can provide an opportunity to explore how VPAs could evolve to better contribute to zero-deforestation efforts, development objectives, and resilient and sustainable societies in VPA countries. This should be in-sync with the implementation of the post 2020 Global Biodiversity Framework, the Paris Agreement climate targets, and the UN Sustainable Development Goals to achieve an equitable, climate and nature resilient future – halting and reversing deforestation, land degradation and the loss of biodiversity by 2030.

Signatories

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| 2. Cercle d'Appui à la Gestion Durable des Forêts (CAGDF), Republic of Congo | 15. Observatoire de la gouvernance forestière (OGF), Democratic Republic of Congo |
| 3. Center for Rural Development in Vietnam | 16. Observatoire de Gestion des Ressources Naturelles et de l'Environnement, Central African Republic |
| 4. Cercle pour la défense de l'environnement (CEDEN), Democratic Republic of Congo | 17. Observatoire Congolais des Droits de l'Homme (OCDH), Republic of Congo |
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