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Recommendations for a smallholder-inclusive EU Regulation on deforestation-free products

The European Commission's proposed EU Regulation on deforestation-free products is a much welcome step towards higher ambition to tackle global deforestation, and forest degradation and to level the playing field for companies. To be truly effective and achieve its objective, the proposal should ensure a just transition for smallholders towards sustainable, rights based and deforestation-free practices – without lowering the bar of the proposed requirements. This means that smallholders should not bear a disproportionate burden for compliance and/or be pushed out of the market. They should also be paid adequately for their products and supported to meet the EU requirements.

Smallholders (and especially women) are some of the most marginalised actors in global supply chains. They produce a third of the world's food supply¹ and represent an overwhelming share of the producers in sectors included in the scope of the proposal (such as coffee, cocoa and palm oil). They often depend on large operators to buy their product and to decide the price. The future Regulation must therefore ensure that operators do not pass an undue and disproportionate burden to smallholders to fulfil the due diligence requirements.

Smallholders will also need specific support to meet the new EU requirements, as well as structural support so that they lift themselves out of poverty. Smallholders are indeed often forced to secure the short-term subsistence of their families by expanding agricultural land and degrading their direct environment – while suffering directly from the consequences of deforestation. They are therefore an essential part of the solution to effectively halt deforestation and forest degradation.

Following on from our paper "[Including smallholders in EU action to protect and restore the world's forests](#)", we call upon the European Parliament and Council to consider these recommendations:

1. Including international law on tenure rights and the right to Free, Prior and Informed Consent (Article 3)

Indigenous Peoples and local communities have a recognised role in preserving the lands they own and/or manage, and insecure land tenure is a major driver of deforestation and forest degradation. Local laws are not always sufficient to ensure that the commodities placed on the EU market have been produced in accordance with the rights of Indigenous Peoples and local communities. Article 3 should therefore include an explicit reference to international law and standards on tenure rights and the right to Free, Prior and Informed Consent – in line with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on

¹ 84% of the total farms worldwide are smaller than two hectares, while producing roughly 35% of the world's food., "[Which farms feed the world and has farmland become more concentrated?](#)", Sarah K. Lowder et al., World Development, 2021

* with additional input from the IUCN National Committee of the Netherlands

Biological Diversity and the International Labour Organization Convention 169 and the Voluntary Guidelines on Tenure.

2. Spelling out the duty of operators to support the compliance of their suppliers (Article 4)

The Regulation should explicitly mention that it is part of the operators' obligations to undertake reasonable, documented efforts to support their suppliers' compliance, including smallholders, with new EU requirements. This can be done through targeted investments, capacity building on the ground, and pricing mechanisms that would enable a living income for the producers, that covers the costs of sustainable and deforestation-free production.

3. Facilitating the application of the geolocation requirement to smallholders (Article 9)

The Commission's proposed geolocation requirement is a key element to ensure the effectiveness of the Regulation and drive transformation through EU supply chains. However, it will be crucial to combine this ambitious traceability requirement with technical and financial support to build the capacity of smallholder and producer organisations to collect and manage the required data. This should be reflected in Article 28 on cooperation with third countries, and Article 9 should prepare the grounds for specific guidance to facilitate the application of the geolocation requirement in sectors where smallholders represent a significant share of producers. It is also essential to include a specific reference to the rights of producers to retain ownership and control over their proprietary data.²

4. Making the due diligence obligation smallholder-inclusive

a) Integrating meaningful engagement of stakeholders throughout the due diligence obligation (Article 8)

Engagement and participation of relevant stakeholders, in particular with potentially impacted stakeholders and rights holders such as smallholders, Indigenous Peoples and local communities, is a key component of due diligence as recognised in existing international guidelines.³ Such a requirement should therefore be explicitly embedded in the due diligence obligation outlined in the Regulation to ensure a high-quality due diligence process.

b) Preventing abusive disengagement as part of risk mitigation measures (Article 10)

Some safeguards should be included in Article 10 to prevent abusive disengagement with suppliers, as an "easy" mitigation measure and a way to avoid costs. Instead, the Regulation should aim at encouraging long-term relationships with suppliers. This does not go against the prohibition element of the proposal, which applies to products: operators should work with their suppliers to tackle non-compliance. In line with existing standards, such as the Organisation for Economic Cooperation and Development (OECD) due diligence guidance for responsible business conduct, there should be some provisions to ensure disengagement is only undertaken when operators can demonstrate mitigation is not feasible or as a last resort measure after failed attempts of mitigation. Operators should also assess the impacts of a decision to disengage and,

² Failure to secure this right would open the door to a loss of digital identity and increased vertical integration. Ensuring the farmers or cooperatives effectively own the data and systems to manage the latter will also help reduce the burden and risks of inefficiency linked to duplication, as smallholders are often requested to provide data multiple times for several trade partners in different systems.

³ [OECD Due diligence Guidance for responsible business conduct](#) and [UN Guiding Principles on Business and Human Rights](#)

where disengagement cannot be avoided, they should at least disclose as part of their reporting obligation (in Article 11(2)) the number of instances where they have decided to disengage and the reason for disengaging.

5. Assessment of countries and cooperation with third countries (Articles 27 and 28)

Partnerships and cooperation mechanisms with third countries should aim to tackle the root causes of deforestation, including poverty, by addressing the need for a living income for forest-dependent communities. The country benchmarking system should be used as an entry point to develop joint roadmaps with countries identified as high-risk to support continuous improvement towards a lower level of risk, including through partnerships and cooperation mechanisms and potential trade incentives.

Article 28 should refer explicitly to the need to secure sufficient financial resources and specific technical and financial support for compliance with the new EU requirements to ensure a just transition in third countries that may face significant immediate adaptation challenges due to lack of capacity. These support measures should be put in place at early stages, prior to the full implementation of the Regulation, and should be coupled with other measures such as trade incentives, that can foster the transition towards sustainable practices, in line with EU requirements.

6. Securing access to remedy (Article 30)

Natural and legal persons whose rights were violated as a result of operators' failure to comply with the Regulation should be enabled to seek a remedy via judicial means. It is crucial to reinforce the accountability of companies to deliver on their due diligence obligation. Provisions on access to justice in Article 30 should be linked to those provided by the [proposal](#) for an EU Directive on Corporate Sustainability Due Diligence for consistency, but should cover all operators (regardless of their size/turnover) in the scope of the Regulation.

7. Setting a comprehensive monitoring and review plan on smallholders (Article 32)

There should be a review of the impact of the Regulation on smallholders, Indigenous Peoples and local communities to determine if additional support measures are needed. This should take place at an early stage after the entry into force of the Regulation, especially since this aspect was poorly assessed in the Regulation's impact assessment. The first review should take place no later than two years after the entry into force, and subsequent reviews should continue to include the assessment of the impacts on smallholders, Indigenous Peoples and local communities, and detail the measures that have been put in place to support them.

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