

Summary

- On 13 September the European Parliament released its proposed **new rules to ensure that products sold in the EU do not come from deforested or degraded land**. The Parliament has proposed extending the list of targeted products from the six originally listed by the European Commission (cattle, cocoa, coffee, palm-oil, soya and wood, and derived products such as chocolate and leather) to pig meat, sheep and goat meat, poultry, maize, rubber, charcoal and printed paper products.
- The European Parliament also wants a **broader definition of ‘deforestation’**, more compliance checks on affected products, higher fines for non-complying companies, obligations on the finance sector, an earlier start date, and stronger protection for human rights and indigenous peoples at the frontline of deforestation.
- The proposal will now face complex and potentially **lengthy negotiations** involving EU institutions and member states, before possible approval and implementation. Political resistance to the proposal is expected, and many details (including whether the new rules comply with WTO rules and the extent of compliance checks) are still to be worked out.

Report

On 13 September 2022, the European Parliament adopted its position on **the draft regulation on deforestation-free products**, which the European Commission (the EU’s executive body) had proposed in November last year. The Parliament’s position passed with 453 votes in favour, 57 against and 123 abstentions. The next step is for the two co-legislators – the European Parliament and the Council (i.e. Member States) – along with the European Commission, to commence negotiations (‘trilogues’) and to reach an agreement on the final text of the law. The negotiations are expected to conclude before the end of the year.

European Parliament proposes to broaden the scope of commodities covered

The European Commission’s proposal targeted six commodities associated with tropical deforestation: **cattle, cocoa, coffee, palm-oil, soya and wood, and related products such as leather, chocolate and furniture** (but not dairy products). The European Parliament wants to expand this list to **pig meat, sheep and goat meat, poultry, maize and rubber, as well as charcoal and printed-paper products**. The Parliament also wants the Commission to consider within two years whether to expand the scope further – identifying sugar cane, ethanol and mining products as potential candidates for inclusion. The scope of the list is expected to be the primary subject of debate in the trilogues.

Media reports suggest that the Parliament’s Agriculture Committee decided to include poultry and pig meat, in addition to cattle, in order to avoid “unfair competition” between domestic and third-country farmers. This reflects **the EU’s “mirror clause” approach to food imports**. The Parliament has said that “[meat] imported into the Union should be subject to the same rules as meat produced within the Union. Therefore, meat from swine, poultry, and sheep and goats should be covered by this Regulation to ensure that animals raised outside the Union and then imported have been fed with deforestation-free commodities or products”. The Parliament does not contend that sheep meat is directly involved in deforestation. MEPs reportedly concluded that the inclusion of additional products would “benefit our farmers in the long term, because they will eventually get better prices” for these commodities.

The European Commission has previously **cautioned against extending the scope of the proposed regulation**, particularly for products whose contribution to deforestation was not included in the EU’s earlier impact assessment. This is in order to minimise the risk of any challenge asserting that the measures do not comply with WTO rules.

Other proposed changes

The Parliament has also proposed a number of **other changes**, including requiring customs authorities to annually check 20 percent of products from high-risk countries and five percent from low-risk areas – whereas the Council wants customs authorities to check only five percent of products from high-risk countries, one percent from standard risk countries, and minimal checks from low risk countries.

The Parliament wants companies that breach the new rules to be fined “at least” eight percent of the company’s annual earnings in the EU. In contrast, the Council wants companies’ fines to be a maximum of four percent of their annual EU turnover.

Definitions and application dates

The Parliament and Council will also need to agree on a **definition of ‘deforestation’** – a major issue that will determine the areas covered by the legislation. The Council wants to define deforestation as “the conversion of forest to agricultural use, whether human-induced or not”. The Parliament wants to broaden that definition to include a forest’s conversion to a plantation forest, where trees are planted in a way to maximise the production of wood.

There is a similar difference of views about the **definition of ‘forest degradation’**. The Council wants to limit the definition to the conversion of primary forests into plantation forests, whereas the Parliament wants to include substantial damage done to all kinds of forests.

Although the Commission said the proposed legislation would apply to deforested areas from 31 December 2020, the European Parliament has proposed pushing back the date to 31 December 2019, meaning more products would be affected by EU rules than expected. The Council has sought a cut-off date of 31 December 2021.

Due diligence requirements

In addition, the Parliament:

- Included requirements for companies to verify that goods are produced in respect of international law on human rights and the rights of indigenous peoples.
- Wants to allow indigenous peoples and local communities on the deforestation frontline to bring evidence of non-compliance before European authorities and raise complaints at European courts.
- Wants financial services companies to be required to check that their investment activities do not contribute to deforestation.

Under the proposed regulation, companies sending certain products to the EU market will be obliged to exercise due diligence to demonstrate that their goods do not come from supply chains associated with deforestation. In practice, that means mapping farms with exact GPS coordinates, checking that against evidence of deforestation using satellite images, going on the ground to audit fields, tracing products digitally from farm to factory, and putting in place deforestation risk assessment and mitigation measures. All three EU institutions agree that companies should be compelled to provide the exact location of the plot of land from which they source commodities. Most companies would have twelve months to comply after the legislation enters into force.

Industry has warned that strict traceability requirements to the specific plot of land will be too hard to implement, particularly for small companies and commodities like soy and palm oil. The Parliament has proposed offering some flexibility by accepting polygon mapping of different plots when the exact location is difficult to pinpoint.

The classification of countries into low/standard/high risk

The Parliament introduced a deadline of six months for the Commission to classify countries into three categories (low, standard or high risk of deforestation) once this regulation enters into force, based on a transparent assessment and the information collected by EU importers. Products from low-risk countries will be subject to fewer inspections.

While the Parliament wants a system that clearly states which areas are at the highest risk of deforestation, the Council is likely to be concerned about the reaction of countries that are assessed to be at high risk. A number of countries have already written to the EU expressing concerns about the EU regulation and its proposed benchmarking system.

Reactions and comment

The proposed measures received substantial support from MEPs. Some environmental campaigners have also expressed support for the Parliament's text, but lamented that the regulation did not include all other natural ecosystems beyond forests. The Parliament included bushland, shrubland and other wooded land, but left out savannahs, grasslands and wetlands.

Business groups have been more critical. In a joint statement, the EU grain and oilseed trade and animal feed industry warned the Parliament's text "risks fuelling supply chain shortages and price inflation in the EU". The Confederation of European Forest Owners criticised certain definitions and new geolocation requirements, while other industry bodies have expressed concern about the WTO-compatibility and possible trade distortions of classifying countries into low/standard/high risk, the speed of implementation, and the need to look at alternative solutions. Copa Cogeca said the fight against deforestation "should be done in a way that does not put at risk the competitiveness of the EU agri-food & forest sectors & does not disrupt the supply of commodities nor impact food prices & food security" and expressed particular concern about the inclusion of maize at the present time. The traceability requirement is a key concern in this group.

It is not yet clear how the proposals will fare during the trilogue negotiations between the Parliament, the Council and the Commission. The Parliament's proposed inclusion of additional meat products for 'level playing field' reasons, rather than primarily for global deforestation reasons, is likely to attract particular attention.

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