

A broad EU deforestation approach can help protect climate and biodiversity

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KEY MESSAGES:

EU action to reduce deforestation and other habitat loss is more likely to be effective and feasible if:

1. Legislation is extended to include not just deforestation and forest degradation, but also the conversion of other ecologically important ecosystems, including savannahs and wetlands. A failure to do this risks large-scale displacement of impacts to non-forest biomes.
2. There is broad commodity and actor coverage, going beyond first importers of key forest risk commodities to include legislation that imposes similar obligations and liabilities on companies working across the supply chain, as well as financial institutions that invest in or lend to these companies. A failure to do this will undermine both the feasibility and acceptability of any interventions.
3. Legislation encompasses both legal and illegal natural habitat conversion, aiming to promote sustainability in a broad sense. A focus only on illegality is insufficient, complex to assess given lack of data on compliance, and creates incentives to weaken legal protection in producer countries.
4. Legislation draws upon existing knowledge and experience of what works, and reflects an understanding of how change will be delivered. This includes policy mixing – employing both sticks and carrots – and actively engaging with producers, traders and manufacturers in key supply chains and regions. Sequencing policies in a tiered approach and gradually expanding scope over time will help prioritise the companies and commodities most exposed to deforestation risks in their supply chains.

Through its imports of agricultural and forestry commodities, the European Union (EU) is contributing to the expansion of cropland, pastures and tree plantations at the expense of tropical forests and other environmentally important ecosystems. Second only to China, the deforestation associated with EU imports of tropical forest risk commodities – such as palm oil from Southeast

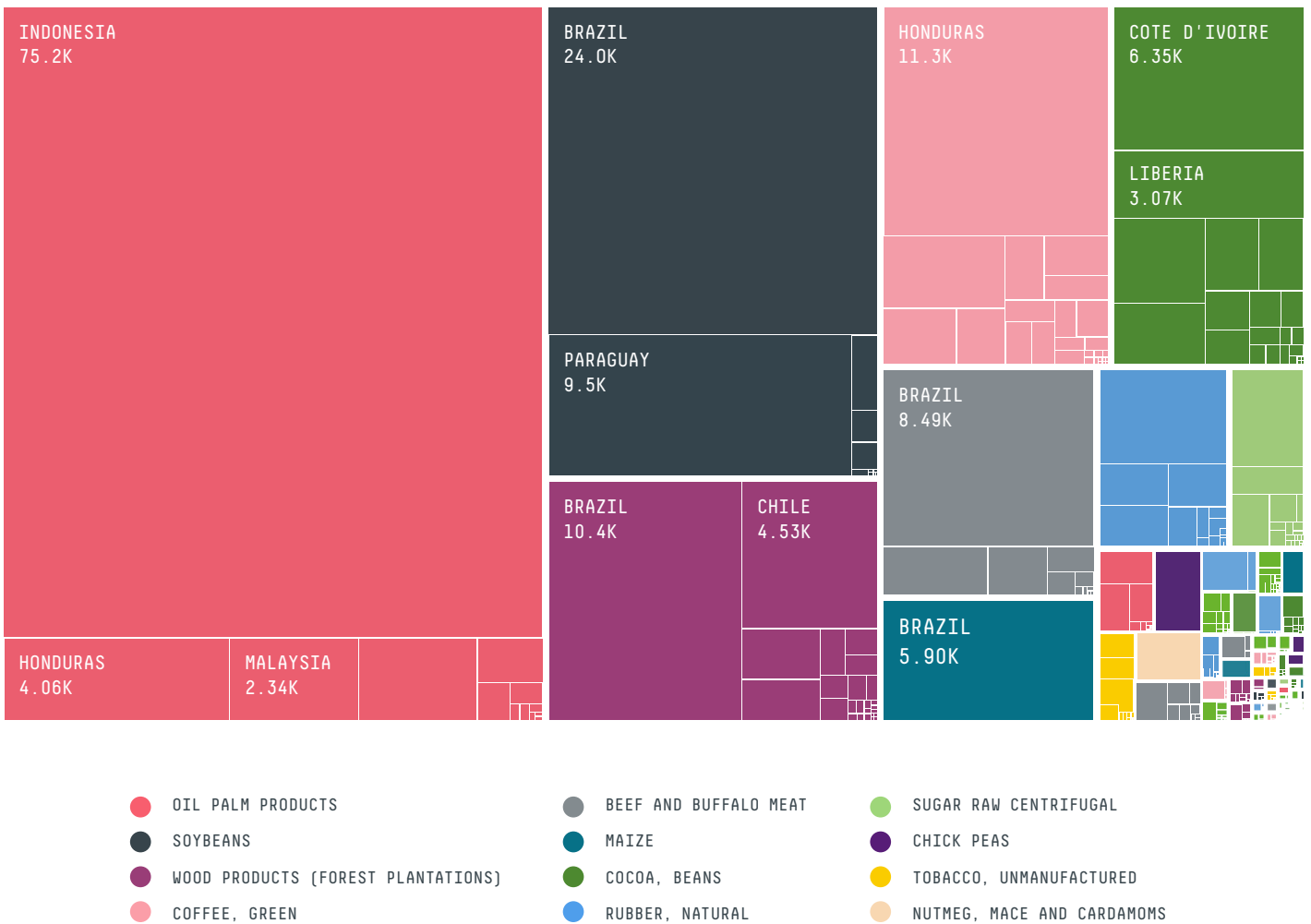
Asia or soybeans from Latin America – amounted to over 200,000 hectares in the period 2015–2017 (see [Trase Yearbook 2020](#)). That the EU is now taking steps to enact legislation to address its contribution to natural habitat loss is welcome, and urgently needed if the Union is to meet internationally agreed targets to halt deforestation and its associated impacts on climate and biodiversity.

This briefing examines some of the issues raised in the European Commission’s (EC) [consultation](#) on possible measures to address deforestation and degradation driven by imported products. The consultation – which closes on 10 December 2020 – follows a commitment by the EU to review the potential for demand-side measures in the Communication on Stepping up EU Action to Protect and Restore the World’s Forests.

Drawing on the expertise of researchers and experts from the [Trase](#) initiative and partners this brief provides

inputs on the priorities and scope of potential policy measures. The consultation primarily asks for guidance on two aspects of scope: the range of products to be covered by EU policy to address imported deforestation and forest degradation, and whether legislation should focus on legality or sustainability in a broader sense. However, we argue that in order to be effective there is a need to also consider other aspects of scope, such as which land-use changes, biomes or actors should be covered. We also highlight three key principles for increasing the effectiveness of the EU policy response.

Figure 1. Origin and commodity with relative tropical deforestation associated with imports into the EU28 for 2017 (203,000 ha). Based on [Pendrill et al \(2020\)](#).



BROADEN SCOPE TO INCREASE POLICY IMPACT AND REDUCE THE RISK OF SPILLOVER EFFECTS

Scope should cover both forest and non-forest ecosystems: broadening the scope of policies to focus on ‘natural habitat conversion’ is important to avoid the impacts being displaced elsewhere, e.g. from forest to savannah biomes, and to ensure that any legislation is effective in reducing overall greenhouse gas emissions while also safeguarding biodiversity and other ecosystem services. Natural forests are rightly recognised for their high conservation value due to their critical biological, ecological, social and/or cultural importance, and for the services that they provide, such as carbon storage and sequestration. However, other ecosystems, such as [wetlands](#) and [savannah systems](#), are similarly valuable.

The risks of limiting EU legislation to just deforestation and forest degradation is not only that ecologically important non-forest systems will lack protection, but also that conversion pressures in these places may, in fact, increase as a result of [spillover effects](#). Moreover, legal and practical [definitions of forest vary](#), which creates uncertainty, ambiguity and ultimately sows confusion around the scope of the legislation (see [Accountability Framework Initiative](#)).

A broad coverage of commodities and actors is needed: we know that most of the risk of tropical deforestation in EU imports is due to a handful of key commodities from a handful of countries (see figure 1). Given this, legislation that highlights the importance of these commodities is a critical step in reducing a significant proportion of EU driven deforestation. However, there is a risk that by strictly limiting the commodities, products and biomes covered by any legislation the problem is masked, in the case of derived products, or shifted, in the case of non-target (e.g. non-forest) biomes and crops, so displacing rather than eliminating the environmental impacts. For this reason, legislation needs to apply to all products potentially linked to natural habitat loss, including processed products that can contain embodied deforestation

(e.g. chicken, leather products and wooden furniture), and that it encompasses any region where natural habitat is converted for commodity production.

Incomplete supply chain coverage has also been identified as a [potential loophole](#) in the EU Timber Regulation, where due diligence requirements only apply to operators first placing timber products on the EU market. To avoid deforestation simply shifting between actors in response to policy, legislation needs to apply to businesses across the supply chain, regardless of size. This also includes extending due diligence legislation to [the investors and financial institutions](#) that help drive (and benefit from) deforestation and other habitat loss by providing capital to supply-chain actors.

Sustainability, not legality, is what matters: limiting measures to products linked to illegal deforestation will not suffice to meet the EU’s objective to reduce its consumption footprint on land and to encourage deforestation-free supply chains. Many vulnerable ecosystems lack sufficient legal protection, or protection is fragile. For example, in Brazil [some 88 million hectares](#) of forest could be legally cleared under current laws and there have been [repeated efforts](#) to weaken Brazil’s Forest Code. Similarly, Indonesia has recently weakened requirements for timber exporters, which also sends signals to producers and markets across the region. A requirement linked to legality could create perverse incentives to further weaken existing laws in producer countries.

Assessing illegality also creates an additional burden for companies beyond identifying deforestation risks, requiring them to understand complex legal frameworks across different countries, regions and commodities. The dearth of available data, lack of transparency and the fact that there are often multiple, overlapping and fuzzy legal requirements mean it is notoriously difficult to assess where deforestation is fully legal and where it is illegal. An [analysis conducted by Trase](#) on illegal deforestation in Mato Grosso, for example, cannot be repeated for other states in Brazil due to a lack of data.

Companies [are asking](#) for a level playing field, with all companies required to meet the same requirements on deforestation-free supply chains. Global Canopy's [Forest 500 assessment](#) found that 151 out of 187 companies operating in the EU had a deforestation policy for sourcing that went beyond legal deforestation, and some companies [have called](#) for proposed due diligence legislation to go beyond illegality. The definitions laid out in the consultation should also consider issues around environmental and social justice, as these are an important part of the principles of sustainability as set out, for example, by the [Accountability Framework Initiative](#).

Dealing with trade-offs and data gaps: while a more comprehensive EU policy is likely to increase effectiveness, both directly and indirectly (by limiting risks for negative spillovers), there are some areas where there may be trade-offs between policy scope, cost, and the availability of data to support implementation of legislation.

Current gaps in supply chain data must not become a barrier to action, or a reason for delay, but rather companies must act on the basis of the best available data, taking a pragmatic approach in identifying key areas of risk.

We suggest that trade-offs between scope and cost are handled, not by limiting the scope, but through a tiered approach where stricter demands apply to those commodities, geographies and companies that are more closely linked to large-scale commodity-driven habitat loss.

PRINCIPLES FOR AN EFFECTIVE EU POLICY RESPONSE TO NATURAL HABITAT LOSS

Effective EU action to reduce the loss of tropical forests and other valuable ecosystems requires policies that are both feasible and impactful. Drawing upon [a recent assessment](#) of EU policy options for addressing imported deforestation, we argue that the following principles are key to achieving this:

Policies and guidance must build on effective theories of change: we already know quite a lot about which policies are effective in stemming deforestation, how and under which conditions, and which are not. Several of the policy proposals listed in the consultation – such as labelling, voluntary due diligence, private certification schemes, or consumer information campaigns – are an important part of the puzzle but, alone, are insufficient to instigate change at the scale and pace needed.

For policies that have the potential to level the playing field and unlock more effective action by the private sector – such as mandatory due diligence – the devil is in the detail. In order to be effective, due diligence systems must be tailored to the specific context (i.e. region and commodity) as impacts are affected by location, production system, forest type, and socio-economic and cultural context-dependent factors. Careful guidance on how to implement a policy can be just as important as the policy instrument chosen.

Apply policy mixing to increase complementarity, feasibility and effectiveness, while reducing risks of spillover: there is often a trade-off between political feasibility and effectiveness in environmental policy, but this can be overcome through policy mixing: packages of policies that build policy legitimacy and support (e.g. coupling 'sticks' with 'carrots') while creating synergies. For instance, development assistance or green diplomacy – listed in the consultation – may alone do little to reduce loss of natural habitat in producer countries. Yet they can be crucial for supporting more stringent and effective policy measures, such as import bans or stricter sustainable criteria. They can also mitigate politically damaging claims that legislation is being used as a barrier to trade. Efforts that support public governance in producing countries can also contribute to reducing the potential impacts of "market bifurcation" or supply-chain divergence – i.e. that production not complying with EU policies would continue but would be directed towards other consumer markets.

Designing optimal policy mixes requires identifying the 'low-hanging fruits' (i.e. feasible policy proposals

building on viable theories of change), such as mandatory due diligence, and focusing on priority targets in a tiered manner, while finding ways to increase support by key stakeholders, and reduce and share costs and complexity.

Such a tiered approach may require focused guidance on the priorities for specific commodities. Guidance can also be important for enforcement by providing a benchmark for judging whether a company has taken proportionate action or not. It is important that a tiered approach is periodically re-evaluated to minimise risks of any spillover and to ensure emerging frontiers of habitat loss are not overlooked.

Complementarity with existing policies, e.g. renewable energy, trade agreements, and the EU sustainable finance plan, is critical for building policy support. Sequencing policies and gradually expanding scope over time can ensure that priority targets are tackled first, and also help facilitate acceptance and reduce risks of spillover.

Engage a broad consortium of finance, supply-chain and government stakeholders: broad political and financial support in both producer and consumer countries is essential to build the foundation for strong policy action to address deforestation by both the public and private sector, while ensuring legitimacy and effective implementation. Support for producer countries can help legitimise more stringent interventions, e.g. trade policy measures, by establishing the foundations on which such interventions rest, e.g. good governance and technical capacity. Existing EU policies such as FLEGT and the IUU function through collaboration with producer countries to support stronger, domestic action. Support for producers and producer countries can also facilitate the successful implementation of ongoing industry supply-chain and jurisdictional initiatives, as well as mitigate risks that smallholders and other vulnerable groups are sidelined in the process.