

PROPOSAL FOR A REGULATION ON DEFORESTATION-FREE PRODUCTS

In a bid to slash the EU’s contribution to deforestation, Brussels wants to ban the import of coffee beans and beef grown on deforested land and set tough due diligence obligations for companies to clean up their supply chains.



That proposal is now headed to negotiations between the European Parliament and the Council of the EU — and there’s strong disagreement on the scope of the new rules and how to implement them. While the goal is to strike a deal by the end of the year, the lead European lawmaker on the text, Christophe Hansen of the center-right European People’s Party, conceded he’s concerned, calling member countries’ agreed position “quite conservative.” The Council, for its part, has said it wants to strike “the right balance ... between ambition and realism.”

Let’s take a look at the six thorniest issues negotiators will have to solve during talks, which start September 27.

1. Defining deforestation

A key battle will be defining what’s meant by deforestation and forest degradation. The Parliament and Council aren’t on the same page — and that’s a major issue because the definition will help determine the

areas targeted by the legislation. EU countries have proposed defining deforestation as “the conversion of forest to agricultural use, whether human-induced or not.” But Parliament wants to widen that definition to also include a forest’s conversion to a plantation forest — where trees are planted in a way that maximizes the production of wood. Nordic and Baltic countries — afraid that the Parliament’s definition would label common forestry practices as deforestation — are pushing back.

A similar dynamic is playing out when it comes to defining forest degradation. The Council wants to limit the definition to the conversion of primary forests into plantation forests. But the Parliament says forest degradation should not be limited to primary forests conversion, but rather account for substantial damage done to all kinds of forests. It proposed defining degradation also as “the reduction or loss of biological or economic productivity and complexity of forests.” That would prohibit companies from sourcing products from areas that have been illegally logged or where forest management has “a substantial or sustained impact on [forests’] capacity to support biodiversity or deliver ecosystem services.”

The three EU institutions also disagree on the cut-off date for calculating deforestation. The Parliament has proposed that products should be banned if they were produced on land deforested after December 2019, while the Commission suggested 2020 and the Council 2021.

2. Setting the scope

The European Commission’s initial proposal set out a list of six commodities to target — coffee, cocoa, soy, palm oil, cattle and wood. EU countries are happy with that proposal, but Parliament wants to include corn, rubber, poultry, pork, goat meat and charcoal. The Commission cautioned against extending the scope of the regulation — particularly for products whose contribution to deforestation wasn’t in its impact assessment. “The level of ambition will of course always be important but rather than overburdening the system at the outset and risking its failure, I’m convinced that here we need to advance step-by-step,” Environment Commissioner Virginijus Sinkevičius said. “If we want to enlarge the scope we must do that on the basis of solid data.” He added that targeting a longer list of commodities at the beginning could open the regulation up to legal challenge, “especially at the international level.”

Despite that divergence, both Parliament and EU countries agree that the Commission should assess the possibility of including the conversion and degradation of other natural ecosystems — such as wetlands, grasslands and savannahs — in the regulation, rather than only forests. They suggested that could be done when the regulation comes up for review within two years of its entry into force.

3. Due diligence and traceability

In its report, the Parliament called for banks, investment and insurance companies to be required to check that their clients don’t contribute to deforestation. That proposal is unlikely to survive negotiations, as countries don’t want the regulation to cover those sectors and has found an ally in the Commission. Sinkevičius warned that the Parliament proposal “would require setting two completely different regulatory tracks for monitoring and enforcement” when the EU already has a number of laws addressing “the environmental responsibility of financial institutions.”

Parliament also disagrees with Council’s suggestion that traders should face less stringent requirements when it comes to policing their supply chains, saying only those that source commodities from areas at low risk of deforestation should be entitled to simplified due diligence. Parliament also says they should still be required to perform some risk assessments. Both the Parliament and the Council want companies to check that their supply chains are free of violations against human rights and the land rights of indigenous peoples.

All three institutions agree that companies should be compelled to provide the exact location of the plot of land from which they source commodities. The Parliament proposed offering some flexibility by accepting polygon mapping of different plots when the exact location is difficult to pinpoint. But that unity could fray under pressure from unhappy industries warning that strict traceability requirements will be too difficult to implement.

4. Customs checks

Worried that the new regulation will burden customs authorities with extra paperwork, EU countries have called for minimal checks on shipments arriving from countries considered to be at low risk of deforestation. They also proposed that 5 percent of products coming from countries labeled as being at high risk of deforestation, and 1 percent of those labeled as standard risk, be checked annually.

The Commission has rejected the argument that its regulation will increase red tape. Sinkevičius told POLITICO that an impact assessment found that “it won’t be overburdening authorities.” The Parliament is not on board either, arguing that checks are essential to ensure the rules are applied. MEPs said 20 percent of products from high-risk countries should be checked as well as 5 percent from low-risk areas.

5. Penalties

The Commission has proposed that companies breaching the rules should be fined a maximum of 4 percent of their annual turnover.

Council backed the proposal, but Parliament wants to see the fine rise to “at least” 8 percent of a company’s annual earnings in the EU. Parliament also wants to require that businesses take measures to restore the environment when deforestation has been substantiated in the area where they source their products. The Commission should also publish a list of companies and traders that have breached the rules and paid a fine, MEPs said. Those suggestions are likely to meet with some resistance from the Council.

6. Benchmarking system

As part of its proposal, the Commission set out a system to classify countries as being at low, standard or high risk of deforestation. Both the Parliament and the Council are on board with that idea. But while the Parliament wants a system that clearly states which areas are at the highest risk of deforestation, the Council is wary of the diplomatic backlash it could cause from countries that get a bad rating.

In late July, countries in Latin America, Africa and Southeast Asia wrote to the EU institutions to express their “serious concerns” about the regulation, arguing that the proposed method for assessing countries’ risk to deforestation is “discriminatory and punitive in nature.”

Council has proposed amendments to “enhance [the system’s] fairness, transparency, objectivity, predictability and the framework for dialogue with third countries.” It notably recommends that before a country is moved to the high-risk category, the Commission “engage in a specific dialogue with that country, in order to contribute to preventing such a change if possible.” Both Parliament and the Commission are very keen to keep the three-category system. Given that the Council hasn’t disputed it outright, it’s not likely to be the biggest tension points during negotiations.