

TFA EU DEEP DIVES

SESSION ON IP/LCS & SMALLHOLDERS' LIVELIHOODS AND RIGHTS:

REFERENCES TO IPLCS, SMALLHOLDERS AND LIVELIHOODS IN THE PROPOSED EU DEFORESTATION-FREE REGULATION

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This document summarises the details relating to the inclusion of Smallholders and IPLCs, in the latest versions of the proposed EU Regulation on deforestation-free products¹².

1. INCLUSION OF SMALLHOLDERS AND INDIGENOUS PEOPLES / LOCAL COMMUNITIES IN THE LATEST VERSION OF THE PROPOSED REGULATION ON DEFORESTATION-FREE PRODUCTS (NOV 2021)

1.1. Framing

The *Proposal for regulation on deforestation-free products*³ provides the following framing in the explanatory text regarding the inclusion of smallholders, Indigenous Peoples and Local Communities within the scope of the regulation. Note that these therefore have no legal force, unless included in one of the Regulation's Articles (see section 1.2 below).

Smallholder production plays an important role in agriculture and smallholder livelihoods depend on access to markets for their product. As it currently stands, the proposed Regulation will require companies placing products on the EU market to ensure that these products have been produced in compliance with the deforestation-free definition. **No differentiation is made between smallholder and industrial production.**

1 [Proposal for regulation on deforestation-free products](#), European Commission (Nov 2021)

2 [European Parliament. Deforestation Regulation ***I Amendments adopted by the European Parliament on 13 September 2022 on the proposal for a regulation of the European Parliament and of the Council on making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation \(EU\) No 995/2010 \(COM\(2021\)0706 – C9-0430/2021 – 2021/0366\(COD\)\)](#)

3 [Proposal for regulation on deforestation-free products](#), European Commission (Nov 2021)

Furthermore, companies placing these products onto the EU market need to demonstrate that they have been produced in compliance with the laws of the country of production. This entails that labour, environmental and human rights laws applicable in the country of production (both national and international) will need to be taken into account when assessing the compliance of products. **This includes the rights of indigenous peoples, which is expected to contribute to protecting the rights of vulnerable local communities** (p.10. Fundamental rights).

Recognising that “forests provide subsistence and income to about one third of the world’s **population and [that] their destruction has serious consequences for the livelihoods of the most vulnerable people, including indigenous peoples and local communities who heavily depend on forest ecosystems**” (p.21, § 1), the Regulation acknowledges the importance of including smallholders, indigenous peoples, and local communities within its scope to achieve its intended impact.

As such, the Regulation highlights that the **Commission should work in partnership with producer countries (Article 28)**, as well as cooperate with international organisations and bodies, to reinforce its support and incentives with regard to protecting forests and transition to deforestation-free production, **acknowledging the role of indigenous people, local communities, and smallholders, while improving governance and land tenure**, increasing law enforcement and promoting sustainable forest management, climate-resilient agriculture, sustainable intensification and diversification, agro-ecology and agroforestry (p.26, §21).

These partnerships should also **pay specific attention to the challenges faced by smallholders**, for example, by recognising that **smallholders producing the relevant commodities covered by the Regulation, may face adaptation challenges** when the regulation comes into effect.

As such, the current Regulation text states that some of these challenges are **expected to be mitigated by the proposed cut-off date of 2020**, as most products currently in trade would be sourced from land put into production prior to 2020 (p.9, Impact assessment).

1.2. Relevant Articles with direct reference to smallholder and IP/LCs

Article 28: Cooperation with third countries

Partnerships and cooperation should allow the full participation of all stakeholders, including civil society, **indigenous people, local communities**, and the private sector including, **SMEs and smallholders**.

Partnerships and cooperation shall promote the development of integrated land use planning processes, relevant legislations, fiscal incentives and other pertinent tools to improve forest and biodiversity conservation, sustainable management and restoration of forests, tackle the conversion of forests and vulnerable ecosystems to other land uses, optimise gains for the landscape, tenure security, agriculture productivity and competitiveness, transparent supply chains, **strengthen the rights of forest dependent communities including smallholders, indigenous peoples and local communities**, and ensure public access to forest management documents and other relevant information.

Article 32: Review

No later than five years after the entry into force and at least every five years thereafter, the Commission shall carry out a general review of this Regulation and shall present a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal. The first of the reports shall include in particular, based on specific studies, an evaluation of:

- a. the need for and feasibility of additional trade facilitation tools to support the achievement of the objectives of the Regulation including through recognition of certification schemes;
- b. **the impact of the Regulation on farmers, in particular smallholders, indigenous peoples and local communities** and the possible need for additional support for the transition to sustainable supply chains.

2. SUMMARY OF PROPOSED AMENDMENTS

On the 13 of September 2022, the European Parliament has adopted the following Amendments⁴ to suggest **better smallholders' inclusion and respect of Indigenous peoples' and local communities' rights**, which are presented below.

Additionally, the Council proposed to **strengthen the human rights aspects** of the text, notably by adding several references to the United Nations Declaration on the Rights of Indigenous Peoples⁵.

Note that as of November 2022, it is not yet clear what the final wording of the Regulation will exactly entail, and consequently the level of inclusion of smallholder and IP/LC livelihoods and rights within this Regulation.

Proposed amendments to Article 2: Definitions

- » Include a definition for 'meaningful engagement with stakeholders', which encompasses **vulnerable groups such as smallholders and indigenous peoples, as well as local communities**.
- » For 'non-compliant products', include products that are not accordance with the relevant laws and standards relating to **the rights of indigenous peoples, tenure rights of local communities, and the right to free, prior and informed consent**.
- » For 'relevant legislation of the country of production,' include instruments protecting **customary tenure rights and the right to free, prior and informed consent (FPIC)**
- » Include definitions for '**human rights defenders**' and '**environmental rights defenders**'.

⁴ Amendments adopted by the European Parliament on 13 September 2022 on the proposal for a regulation of the European Parliament and of the Council on making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (COM(2021)0706 – C9-0430/2021 – 2021/0366(COD))

⁵ Council of the EU : Press Release: Council agrees on new rules to drive down deforestation and forest degradation globally - 28 June 2022.

Proposed amendments to Article 4: Obligations of operators

- » Proposition to include that operators shall **undertake reasonable, documented efforts to support the compliance of smallholders** with the provisions and requirements set out in this Regulation.
- » Proposition to include a **new requirement** stipulating that **operators** shall take the **necessary measures to:**
 - a. **engage** meaningfully with **vulnerable stakeholders** included in their supply chain: smallholders, indigenous peoples, and local communities and
 - b. **ensure** that these **vulnerable stakeholders receive adequate assistance and fair remuneration** so that their commodities and products can comply with the rules, in particular with regard to the geolocation requirement, and to ensure that the costs resulting from the implementation of this Regulation are fairly shared among the different actors in the value chain.
 - c. **follow-through on implementation of agreed commitments**, ensuring that **adverse impacts** to identified vulnerable stakeholders **are addressed**.

Proposed amendments to Article 9: Information requirements

Proposition to include that operators shall collect, organise, and keep for 5 years the following additional information:

- » adequate and verifiable information, obtained via independent audits and appropriate consultation processes, that the **area used** for the purpose of producing the relevant commodities and products **is not subject to any claims on the basis of indigenous, customary, or other legitimate tenure rights or subject to any dispute regarding their use, ownership, or occupation;**
- » adequate and **verifiable information disclosing the views of any indigenous peoples, local communities and other groups that claim tenure rights** in respect of the area used for the purpose of producing the relevant commodities and products regarding the production of those relevant commodities and products.

Proposed amendments to Article 10: Risk assessment and mitigation

- » Proposition to include the following risk assessment criteria as part of the risk assessment:
 - * the **presence of vulnerable peoples, indigenous peoples, local communities and other customary tenure rights holders** in the country and part thereof of the relevant commodity or product;
 - * the **existence of claims to or disputes** regarding the use of, ownership of, or exercise of **customary tenure rights** on the area used for the purpose of producing the relevant commodity or product, whether formally registered or not;
 - * **concerns** in relation to the country of production or parts thereof including **absence, violation, or lack of law enforcement of tenure rights and rights of indigenous people and local communities**
 - * outcome of **multi-stakeholder dialogues** where impacted parties, such as smallholders, SMEs, indigenous peoples, and local communities, have been invited to actively participate;

- » Proposition to include a new requirement in which, where relevant, operators shall ensure that **risk assessments** and mitigation measures are adopted which provide for the **participation and consultation of indigenous peoples, local communities, and other customary tenure rights holders** that are present in the area of production of the relevant commodities and products.

Proposed amendments to Article 11: Maintenance of due diligence systems and record keeping

- » Proposition to include that operators shall publicly report, as part of the due diligence process, on **measures they have taken to support the compliance of smallholders**, including through investments and capacity building.
- » Proposition to include that operators shall provide **evidence of consultation of indigenous peoples, local communities, and other customary tenure rights holders** that are present in the area of production of the relevant commodities and products.

Proposed amendments to Article 27: Country Benchmarking

- » Proposition to include as part of the assessment criteria whether:
 - * the national and subnational jurisdiction has developed jurisdictional approaches with the **meaningful engagement of all relevant stakeholders**, including civil society, indigenous peoples and local communities, and the private sector, including micro enterprises, SMEs, and smallholders, **to tackle** deforestation, forest degradation, forest conversion, **land rights violations** and illegal production;
 - * if applicable, the existence, compliance with, and effective enforcement of, **laws protecting the rights of indigenous peoples, local communities, and other customary tenure rights holders**.
- » Proposition to include that **evaluation of countries' risk levels** (through the benchmarking system) shall take into account any information received from interested parties, **including in particular indigenous peoples, local communities, smallholders**, and civil society organisations, and that these groups shall be appropriately consulted throughout the process.

Proposed amendments to Article 28: Cooperation with third countries

- » Proposition to include that the Commission and Member States, in cooperation with producer countries, shall **jointly promote the transition to practices supporting good governance, as well as protecting the rights and livelihoods** and subsistence of forest-dependent communities, including **indigenous peoples, local communities**, other **customary tenure rights holders** and **smallholders**.
- » Partnerships and cooperation shall also support or **initiate inclusive and participatory dialogue** towards national legal and governance reform processes to enhance forest governance and address domestic factors contributing to deforestation, allowing the full participation of all stakeholders, including civil society, indigenous peoples, local communities, women and the private sector including micro enterprises and other SMEs, and smallholders.
- » Proposition to include the involvement of smallholders and IP/LCs in the **development of joint roadmaps** based on agreed milestones to **support continuous improvement**.

- » Partnerships and cooperation mechanisms shall **pay particular attention to smallholders** in order to enable them to transition to sustainable farming and forestry practices and to comply with the requirements of this Regulation, including through enabling sufficient and user-friendly information. **Adequate financial resources shall be available** to meet the needs of smallholders.

Proposed amendments to Article 32: Review

Proposition to include that the **Commission shall continuously monitor the impact of this Regulation on vulnerable stakeholders** such as smallholders, indigenous peoples, and local communities, especially in third countries, also paying particular regard to the situation of women. The monitoring shall be based on a scientific and transparent methodology and shall take into account information provided by interested stakeholders.