Teresa Ribera, Executive Vice President for a Clean, Just and Competitive Transition

Kaja Kallas, High Representative for Foreign Affairs and Security Policy and Vice-President of the European Commission

Jessika Roswall, Commissioner for Environment, Water Resilience and a Competitive Circular Economy

Jozef Síkela, Commissioner for International Partnerships

Maroš Šefčovič, Commissioner for Trade and Economic Security; Interinstitutional Relations and Transparency

28 January 2025

Dear Commissioners Ribera, Kallas, Roswall, Síkela and Šefčovič

Ensuring EUDR benchmarking reflects human rights and environmental risks

We are writing to urge the European Commission to ensure that benchmarking under the European Union Regulation on Deforestation-Free Products (EUDR) upholds the law's ambitions and reflects human rights and deforestation risks existing in areas of production.

The EUDR is a landmark piece of legislation that will ensure that EU citizens' consumption does not drive the destruction of irreplaceable forests or the violation of the rights of Indigenous Peoples and traditional communities who rely on forest ecosystems.

The benchmarking process under Article 29 of the EUDR aims to assist in enforcing the regulation by classifying countries or areas within them as "low, standard or high risk". Commodities produced in high risk areas will be subject to additional checks by Competent Authorities. As well as supporting enforcement, the benchmarking status of a country or area will determine how much effort businesses must expend on due diligence.

The Commission published material on 2 October 2024 that anticipated that most countries would be rated low risk. The Commission then reiterated this point on several occasions. This statement, in itself, is concerning, given the Commission has not yet finalised the methodology, nor benchmarked any country. Such statements risk giving the appearance that the benchmarking process is politicised, rather than based on objective criteria.

Benchmarking that does not reflect human rights and environmental risks in areas of production would undermine the objective of ending European complicity in deforestation. Further, it would be a disservice to traders and operators if the benchmarking misrepresented the real conditions in areas of production, leading them to take inadequate due diligence and risk mitigation measures, and potentially increasing the risk of non-compliance of their products.

We believe the following issues are the most important to safeguard the integrity of the benchmarking methodology and its results.

High risk status should not be limited to countries subject to UN sanctions

The document "General principles on the benchmarking methodology" (General Principles Annex), released on 2 October 2024, states that the categorisation of countries as high risk "pays special attention to countries subject to UN Security Council and EU Council sanctions." This wording is ambiguous but appears to imply that only countries subject to sanctions will be classified as high risk. We urge you to ensure the benchmarking process categorises countries or areas based on a comprehensive assessment of the risk of deforestation and forest degradation, as well as the enforcement of laws on deforestation and the protection of human rights, as provided in Article 29 (3) and (4).

The EUDR is clear that determination of risk "shall be based primarily on" the rate of deforestation and forest degradation, rate of expansion of agricultural land for relevant commodities, and production trends of relevant commodities and of relevant products in a jurisdiction, as per Article 29(3). While UN sanctions "may", and indeed should, be taken into account in the assessment, the regulation is clear that these criteria cannot substitute each other. In our view, for the Commission to propose a methodology that places the existence of sanctions above criteria in Article 29(3) is incompatible with the regulation.

Furthermore, while the existence of sanctions is a relevant factor, it is far from being the only one that would strongly suggest a high risk status. By way of example, others may also include prevalence of human trafficking in an industry, as has been the case for cocoa farming in Ghana and Cote d'Ivoire, or persistently high levels of illegal deforestation, as has been demonstrated for the Brazilian Amazon for a decade.

Benchmarking should consider illegality and human rights risks from the outset

To ensure the benchmarking captures the risks of non-compliance, it should evaluate whether production of covered commodities and derived products may be in violation of human rights and relevant national laws, as foreseen in Article 29(4)(c) and (d) of the EUDR. Human Rights Watch, for example, proposed a check list for evaluating human rights risks that is tailored to the EUDR.

However, the General Principles Annex indicates the Commission will only consider illegality and rights violations in a "further assessment" which is "possible" but not required. In our view, failing to consider the criteria in Article 29(4)(c) and (d) will not capture the real risks of non-compliance with Article 3(b) of the EUDR.

Research by NGOs and civil society groups has shown how interests linked to agribusiness have been responsible for dispossessing smallholders and Indigenous peoples from their land, draining and burning peatlands, polluting air and waterways, poisoning workers and local communities with hazardous pesticides, intimidating and killing rights defenders and trade unionists. These factors are all relevant to considering whether a product is compliant with the EUDR and must be taken into account in the benchmarking.

Some of the breaches of Indigenous human rights and national laws related to agricultural production have taken place in areas likely to be at low risk of deforestation. This includes areas deforested prior to December 2020 or where there has been clearance of ecosystems that do not meet the definition of "forest". Where there are continued breaches of relevant national laws tied to the production of relevant commodities, products grown in these areas are at risk of violating the EUDR.

To ensure the benchmarking process provides operators, traders and Competent Authorities with a meaningful guide to the risks of breaching the EUDR, we recommend that the Commission should consistently apply criteria defined in Article 29(4)(c) and (d) of the EUDR to risk assessments for all regions, from the outset, even if deforestation risk is considered low.

Forest degradation must be considered alongside deforestation as a risk factor

For timber and wood products, the term 'deforestation-free' means that the product was not produced on land subject to deforestation *or harvested in a way that induced forest*

degradation (emphasis added). However, the outline of the benchmarking methodology in the General Principles Annex only mentions deforestation rates (i.e. the conversion of forested land to agricultural use). This is contrary to Article 29(3), which explicitly refers to "forest degradation" as one of the criteria that risk benchmarking "shall be based primarily on."

The Commission's design of the benchmarking methodology cannot sidestep the original requirements of the regulation, as stated in Article 29(3)(a). Jurisdictions with large forestry industries, which may see more forest degradation than deforestation for agriculture, must not be mistakenly treated as low risk.

Production trends should be considered for all EUDR-covered commodities

The benchmarking methodology set out in the General Principles Annex only proposes to consider production trends of timber and cattle. This would be an undue narrowing of the intended scope of Article 29(3)(c) which states "production trends of relevant commodities and of relevant products" must be considered. It is therefore necessary to include production trends for all relevant commodities and their derived products.

Trade agreements should not undermine evidence-based risk classification

The recently agreed EU-Mercosur Agreement provides that the agreement and actions taken to implement it "*shall* be *favourably* considered, among other criteria, in the risk classification of countries" (emphasis added). This is a clear reference to the EUDR benchmarking process. An obligation on the Commission to *favourably* consider the Mercosur Agreement in its benchmarking assessment of Mercosur countries goes beyond Article 29(4)(b), which provides that the Commission may consider (favourably or otherwise) agreements "that address deforestation and forest degradation and facilitate compliance of relevant commodities and relevant products with Article 3 and their effective implementation." This seems inconsistent with the Commission's obligation under the EUDR that the benchmarking exercise "be based on an objective and transparent assessment", as previously pointed out in a letter signed by 30 civil society organisations.

It is also unclear whether the Mercosur Agreement would qualify as an agreement that may be considered under Article 29(4). The wording in the Agreement also raises the prospect that deforestation hotspots in the Mercosur region, or areas known for human

rights violations, may be classified as lower risk as a result of this agreement. The benchmarking process should be led by transparent and objective criteria that are applied equally to all jurisdictions.

In summary, we urge the Commission to ensure that the benchmarking methodology:

- Considers human rights violations and risks of illegality from the outset for all countries, consistently with Article 29(4)(c) and (d), including for countries with low deforestation or forest degradation rates;
- Does not use UN sanctions as the main or sole criteria to determine whether a country or parts thereof are high risk;
- Considers forest degradation alongside deforestation, which is consistent with the text of the regulation;
- Considers production trends for all commodities covered by the EUDR;
- Does not unduly characterise trade agreements as neutralising measurable risks of deforestation, illegality, and rights violations.

Our organisations' experts remain at your disposal to further discuss these recommendations.

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ClientEarth
Rainforest Foundation Norway
Amigas de la Tierra
Both ENDS
Connecting people for change
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CANOPÉE
FORÊTS VIVANTES
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ENTRAIDE& FRATERNITE
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EUROPEAN TRADE JUSTICE COALITION

Full list of signatories

Amigas de la Tierra (Friends of the Earth Spain)
Both ENDS
Bruno Manser Fonds
Canopee
ClientEarth
CNCD 11.11.11
Coffee Watch
Deutsche Umwelthilfe
Development Fund Norway
Earthsight
Ecologistas en Acción
Entraide & Fraternité
Environmental Investigation Agency
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Ethical Trade Norway
Eurogroup for Animals
European Trade Justice Coalition
Fair Trade Advocacy Office
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Friends of the Earth Europe
Framtiden i våre hender
Global Witness
Greenpeace European Unit
Human Rights Watch
Legambiente
Mighty Earth
Norwegian Forum for Development and the Environment
OroVerde - The Tropical Forest Foundation (Germany)
Perkumpulan Kaoem Telapak
Polish Ecological Club in Krakow Gliwice Chapter
Rainforest Foundation Norway
SAVE Rivers (Malaysia)
The Borneo Project
The Wilderness Society
TROCA - Plataforma por um Comércio Internacional Justo
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WWF European Policy Office
ZERO - associação sistema terrestre sustentável