

EU LEGAL REGIME FOR THE CONSERVATION AND SUSTAINABLE FOREST MANAGEMENT

Abstract The purpose of the paper is to review the state of legal support of Conservation and Sustainable Forest management at International and EU levels and analyze gaps and possible solutions. It is emphasized that forest biodiversity is increasingly threatened because of deforestation, fragmentation, climate change and other stressors. The underlying causes of deforestation are complex, involving government policy, market failure and poverty. A clear relationship is defined between the achievement of sustainable development goals and the need to ensure sustainable forest management. It is suggested to consider sustainable forest management as a tool to ensure that the goods and services derived from the forests meet present-day needs while at the same time securing their continued availability and contribution to long-term development. Attention is drawn to the EU setting an objective to halt global forest cover loss by 2030. The paper analyzes the EU forest strategy and its relationship with the EU's long-term vision for a climate-neutral economy.

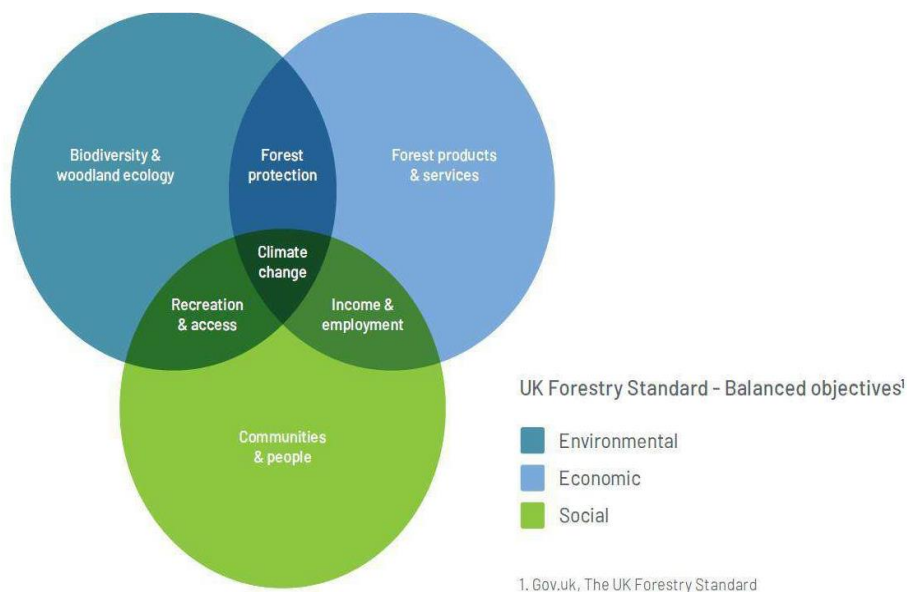


Introduction Forest is vital to life on Earth. According to FAO Global Forest Resources Assessment of 2000, the gross rate of deforestation between 1990-2000 was estimated to be 14.6mm ha/year, with a net rate of 9.4 mm ha/year after accounting for reforestation and growth in tree plantations. The vast majority of deforestation, 14.2mm ha/year, occurs in the tropics.

The Intergovernmental Panel on Climate Change (IPCC) estimates that 23% of total anthropogenic greenhouse gas emissions (2007-2016) come from agriculture, forestry and other land uses.

Simultaneously, deforestation and forest degradation are important drivers of climate change and biodiversity loss — the two key environmental challenges of our time. Forests have multiple uses

and benefits as storehouses of biodiversity, as stabilizers of the atmosphere and landscape, as human habitat, and as an essential natural resource.



Forests have multiple functions that are interdependent:

- Forests and forest resources provide livelihoods for more than a billion people.

- Forests play a crucial role in global climate regulation, including rain, temperature, and winds, and are one of the Earth's largest carbon sinks. About 25% of

the increase in atmospheric carbon concentrations in the past 150 years have come from changes in land use, such as deforestation and the cultivation of soils for food production. However, reforestation can reduce atmospheric carbon concentrations by sequestering carbon in trees and soil.

- Forests are important repositories of biodiversity, offering a home for 60-90% of all terrestrial species on the planet. The World Conservation Union estimated in 1997 that 12.5% of the world's 270,000 species of plants and 75% of the world's mammals are threatened by forest decline.

- The forest product industry is a source of economic growth. The world's forests are also the source of an essential economic commodity - timber. In many developing countries, timber can be an important source of revenue and a major foreign exchange earner.

- The forest product industry is also a source of employment. It is observed that by destroying the forests, all potential future revenues and future employment that could be derived from their sustainable management for timber and non-timber products will disappear.

The global environmental services provided by forests, such as climate-change mitigation and biodiversity conservation, should be addressed at the international level because all nations have an interest in their maintenance. ¹

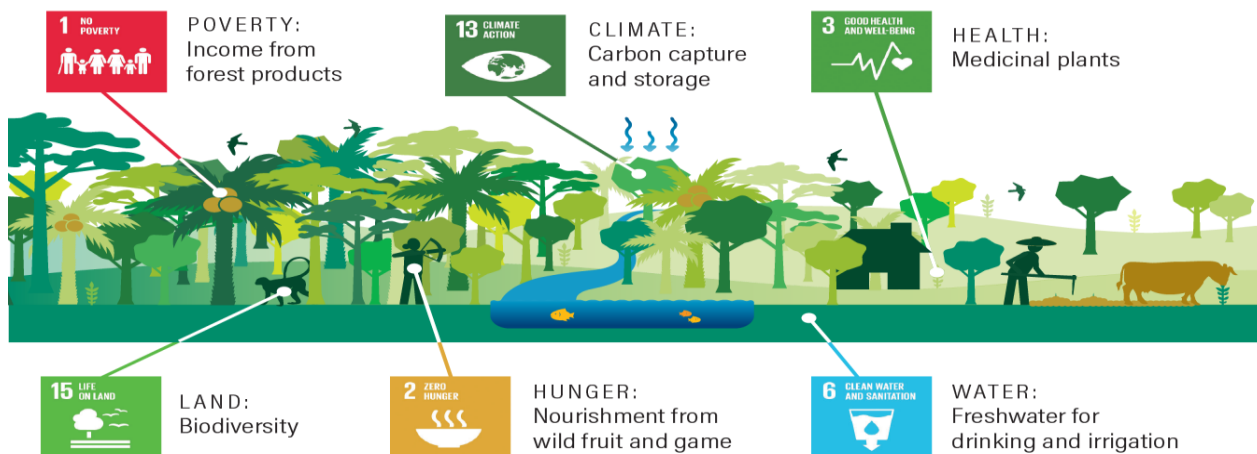
Forest may be assigned a primary management function, such as production, biodiversity conservation, soil and water protection, cultural and spiritual functions, or a combination of these and others.

SDG and Sustainable Forest Management It should be emphasized the critical and interdependent roles of forests of all types, biodiversity and sustainable land use in enabling the world to meet its sustainable development goals; to help achieve a balance between anthropogenic

¹ FAO Natural Forest Management. Accessible online: <https://www.fao.org/forestry/sfm/85084/en/>

greenhouse gas emissions and removal by sinks; to adapt to climate change; and to maintain other ecosystem services.

Familiar Forest Goods and Services **Support SDGs**



Source: *Why Forests? Why Now?* (Center for Global Development, 2016).

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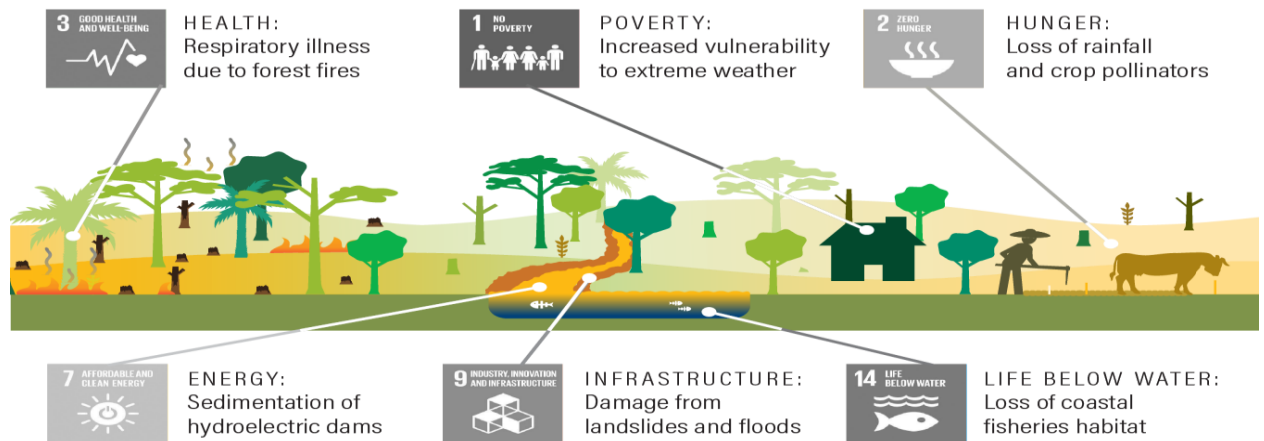
Forests are an integral part of global sustainable development. Forest goods and services supporting the UN Sustainable Development Goals: SDG 1 Income from forest products, SDG 2 Nourishment from wild fruit and game, SDG 3 Medicinal plants, SDG 6 Freshwater for drinking and irrigation, SDG 8 Sustainable and inclusive economic growth and decent work for all, SDG 10 Reduced income inequality, SDG 12 Sustainable consumption and production patterns, SDG 13 Carbon capture and storage, SDG 15 Biodiversity.

Mainly SDG 15, 'Life on land', is the goal that is most pertinent to the forestry sector. It aims to 'protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity losses.'² It's include Target 15.2 by 2020, promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally. And also targets 15.3 'End desertification and restore degraded land', 15.5 'Protect biodiversity and natural habitats', 15.6 'Promote access to genetic resources and fair sharing of the benefits', 15.9 'Integrate ecosystem and biodiversity in governmental planning', 15.A 'Increase financial resources to conserve and sustainably use ecosystem and biodiversity', 15.B 'Finance and incentivize sustainable forest management'. Last one determines mobilization of significant resources from all sources and at all levels to finance sustainable forest management and provide adequate

² The Global Goals. Accessible online: <https://www.globalgoals.org/goals/15-life-on-land/>

incentives to developing countries to advance such management, including for conservation and reforestation.

Hidden Ways Deforestation Undermines SDGs



Source: *Why Forests? Why Now?* (Center for Global Development, 2016).

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Today unsustainable commercial logging practices, among others root causes of deforestation were recognized as a central to international policy-making.

Hence, Sustainable Forest Management (SFM) is considered the key tool to deal with dramatic decrease in forest resources and an important strategy for achieving numerous SD goals.

A globally agreed definition of sustainable forest management (SFM) is impractical beyond a very general level because of the huge diversity of forest types, conditions and socioeconomic contexts worldwide.³

In 2007 The UNG recognizes SFM as a dynamic and evolving concept that aims to maintain and enhance the economic, social and environmental values of all types of forests for the benefit of present and future generations.⁴ The seven thematic elements of SFM, as described in the Non-legally Binding Instrument on All Types of Forests (NLBI) adopted by UNFF are: extent of forest resources; forest biodiversity; forest health and vitality; productive functions of forest resources; protective functions of forest resources; socio-economic functions of forests; and legal, policy and institutional framework.

These elements allow forest owners and stakeholders to define SFM in specific countries and under local conditions, including the management objectives and how forests should be managed to

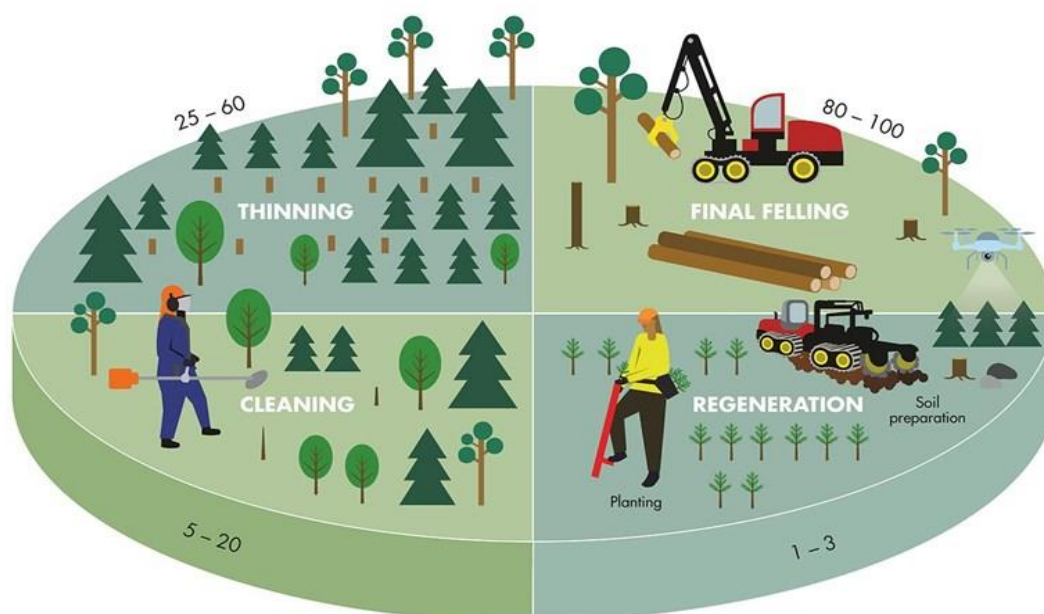
³ FAO Natural Forest Management. Accessible online: <https://www.fao.org/forestry/sfm/85084/en/>

⁴ FAO Sustainable forest management. Accessible online: <https://www.fao.org/sustainable-forests-management/en/>

achieve them, while respecting the basic principle of perpetuity in the maintenance and enhancement of forest values.

SFM is a multidimensional and multipurpose concept.⁵ Forests can perform many functions simultaneously and deliver various combinations of goods and services, depending on national and local conditions that may change over time.

In its broadest sense, SFM encompasses the administrative, legal, technical, economic, social and environmental aspects of the conservation and use of forests. In addition to forest products, sustainably managed forests provide important ecosystem services, such as carbon sequestration, biodiversity conservation, and the protection of water resources.⁶



The maintenance and enhancement of forest values in perpetuity does not mean that forests remain in a static state. Forests will always be subjected to natural and/or human-induced disturbances, and SFM must therefore be perceived as a dynamic process. The key to SFM is to maintain the resilience of the forest to withstand perturbations while ensuring its capacity to adapt to longer-term environmental change.

SFM aims to ensure that the goods and services derived from the forests meet present-day needs while at the same time securing their continued availability and contribution to long-term development. So SFM is a continual process of improvement. SFM is always responsive and adaptable to changing knowledge and needs.⁷

⁵ FAO Natural Forest Management. Accessible online: <https://www.fao.org/forestry/sfm/85084/en/>

⁶ FAO Sustainable forest management. Accessible online: <https://www.fao.org/sustainable-forests-management/en/>

⁷ FAO Sustainable forest management. Accessible online: <https://www.fao.org/sustainable-forests-management/en/>

A common view of precise SFM model is developed through planning processes involving all stakeholders to clarify what constitutes SFM in a particular subnational unit or landscape, given physical, economic and other constraints.

International legal frameworks In 1990, Swedish Prime Minister Ola Ulstein first put forward a proposal to create an international convention for the conservation and sustainable development of the world's forests in response to the failure of existing international forest protection programs.

At the UNCED in Rio de Janeiro in 1992, nations didn't reach the united view of an international treaty on forests. Key points of contention were the implications of a forest convention to state sovereignty, possibility to apply an international definition of SFM over such a wide range of socioeconomic and ecological conditions, and question over field of the convention application (tropical forests or all forests).

UNCED adopted the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation, and Sustainable Development of All Types of Forests.

The principles should apply to all forests:

- That forests should be protected both for their ecological value and for their subsistence and economic value to local communities
- States have sovereign right to exploit the natural resources within their jurisdiction and the corresponding obligation to ensure that their activities do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction
- States have the sovereign right to manage and utilize their own forests in accordance with their developmental needs and on the basis of national policies
- National policies should recognize and support rights of indigenous people and forest dwellers.
- Unilateral trade restrictions on timber and forest products should be removed.

The proposal for a forest convention was revisited in 1995 at the third meeting of the Commission on Sustainable Development and governments established the Intergovernmental Panel on Forests (IPF), from 1995-1997, to further examine sustainable forest management and the need for an international forest convention.

The IPF was succeeded by the Intergovernmental Forum on Forests (IFF) from 1997-2000. The outcome of the IPF/IFF process was a set of 270 proposals for sustainable forest management. Nations convene annually under the UNFF to voluntarily report on their progress in implementing IPF/IFF proposals. Other international forums on forestry include the Committee on Forestry (COFO) of the FAO and the International Tropical Timber Organization (ITTO).

Relevant Treaties on the International level are:

- Convention on Biodiversity (1992), which established the use of forest biological diversity and the fair and equitable sharing of the benefits from the use of forest genetic resources.
- United Nations Framework Convention on Climate Change (1992) aims at stabilizing the concentration of greenhouse gases in the atmosphere to prevent dangerous human-induced changes to the global climate system.
- Kyoto Protocol (1997). Protocol to UNFCCC that provides Clean Development Mechanism and Joint Implementation for meeting emissions targets, which include carbon sequestration through reforestation and afforestation.
- Convention to Combat Desertification (1992) in which forests are addressed as an important element for the prevention of drought and desertification.
- International Tropical Timber Agreement (1994) promotes international trade in tropical timber, the SFM for tropical forests, and the development of forest industries through international consultation and cooperation, policy work and project activities.
- Convention on the International Trade of Endangered Species (1979) covers endangered forest species subject to international trade restrictions.

The European Legal Framework for Forestry As the Treaties make no specific reference to forests, the European Union does not have a common forestry policy and it remains primarily a national competence. However, the EU has established a European forest strategy and supports many actions that have a significant impact on forests in the EU and in third countries.⁸

In September 2013 the Commission provide ‘A new EU Forest Strategy: for forests and the forest-based sector’, which proposed a European reference framework for sectoral policies having an impact on forests. This strategy has an aim to ensure that Europe’s SFM and to strengthen the EU’s contribution to promoting SFM to tackle deforestation worldwide.

In September 2015, it adopted the accompanying multi-annual implementation plan of the EU forest strategy. So-called ‘Forest MAP’ draws up a list of the actions that are to be taken in response to challenges in the European timber sector.

The plan of actions to tackle deforestation and forest degradation first outlined in the 2019 Commission Communication on Stepping up EU Action to Protect and Restore the World's Forests.⁹ New strategy is raised in the December 2019 with Commission communication on the European Green Deal, Member States welcomed the publication of the strategy and ‘its increased ambition for

⁸ Fact Sheets on the European Union European Parliament: The European Union and forests. Accessible online: <https://www.europarl.europa.eu/factsheets/en/sheet/105/the-european-union-and-forests>

⁹ Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Stepping up EU Action to Protect and Restore the World’s Forests COM/2019/352 final Accessible online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0352>

the contribution of forest through their multifunctional role to the European Green Deal and 2030 Agenda’.

EU authorities promote that EU will become ‘the first climate-neutral continent by 2050’.



According to Glasgow Leaders’ Declaration on Forests and Land Use and the pledge of 140 countries to eliminate forest loss by 2030 and to support restoration and sustainable production and consumption. This declaration recognizes that land use and land management are responsible for an estimated 23% of global anthropogenic greenhouse gas emissions and that any plausible scenario to limit global warming to 1.5. Together with it 26 countries and the European Union – which together account for over 33% of the world’s forests and nearly 60% of the world’s GDP – will launch the Forest and Climate Leaders’ Partnership (FCLP).

In December 2022, the EU agrees Regulation on deforestation-free products, which is a new law to fight global deforestation and forest degradation driven by EU production and consumption. This Regulation aims to guarantee that the products EU citizens consume do not contribute to deforestation or forest degradation worldwide. It will repeal the EU Timber Regulation. When the new rules enter into force, all relevant companies will have to conduct strict due diligence if they place on the EU market, or export from it: palm oil, cattle, soy, coffee, cocoa, timber and rubber as well as derived products (such as beef, furniture, or chocolate).¹⁰ Operators and traders will have to prove that the products are both deforestation-free (produced on land that was not subject to deforestation after 31 December 2020) and legal. Companies will also be required to collect precise geographical

¹⁰ Green Deal: EU agrees law to fight global deforestation and forest degradation driven by EU production and consumption. An official website of the European Union. Press release Accessible online: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_7444

information on the farmland where the commodities that they source have been grown, so that these commodities can be checked for compliance.¹¹

The Commission will run a benchmarking system that will assess countries or parts thereof and their level of risk of deforestation and forest degradation - a high, standard or low risk - also taking into consideration agricultural expansion for the production of the seven commodities and derived products.¹² Obligations for companies will depend on the level of risk. This will also help guide the EU's work together with partner countries on halting deforestation, while also paying particular attention to the situation of local communities and indigenous people.

In March 2023, Commission publishes two sets of guidelines on forests:

Guidelines on Biodiversity-Friendly Afforestation, Reforestation and Tree Planting - provide a set of practical recommendations to support authorities, forest and landowners, and managers and civil society to better implement biodiversity-friendly afforestation, reforestation and tree-planting projects including at the local level.

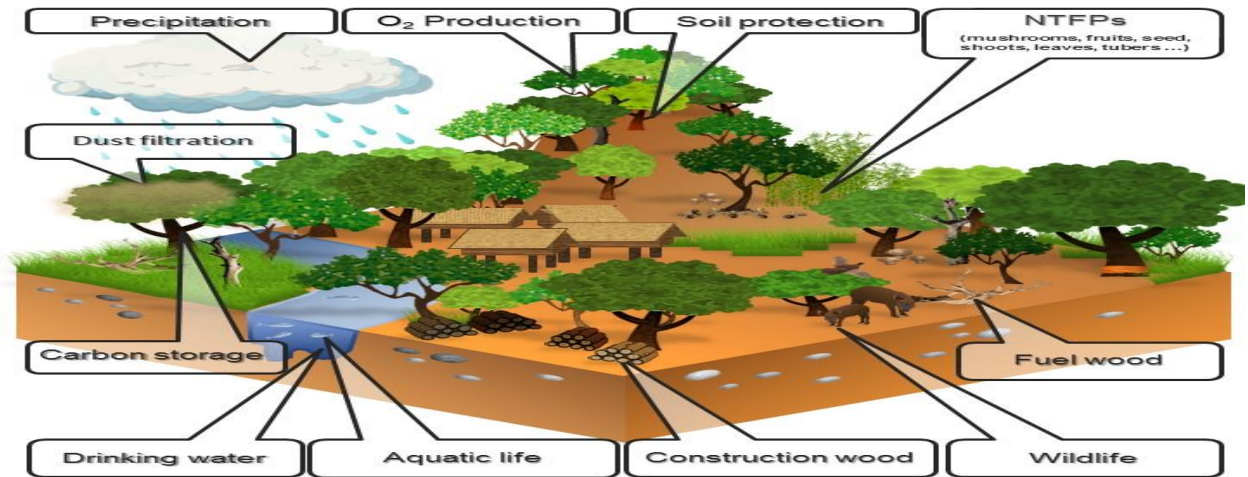
Guidelines for Defining, Mapping, Monitoring and Strictly Protecting EU Primary and Old-Growth Forests - here is a commitment to strictly protect all remaining EU primary and old growth forests. The guidelines thus set out criteria for identifying primary and old-growth forest areas based on a list of indicators or principles. A timeline is suggested for their mapping and strict protection.

In May 2003, the European Union adopted Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan. It tackles illegal logging and associated trade but it does not address deforestation as such. The two main components of the FLEGT Action Plan are the EU Timber Regulation (EUTR) and Voluntary Partnership Agreements (VPA) between the EU and timber producing countries.

¹¹ Green Deal: EU agrees law to fight global deforestation and forest degradation driven by EU production and consumption. An official website of the European Union. Press release Accessible online: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_7444

¹² Questions and Answers on new rules for deforestation-free products. European Commission - Questions and answers. Accessible online: https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_5919

Issues and conclusions On the one hand, it looks obvious that international community has an important and urgent need to tackle deforestation and to create effective common system of the Conservation and SFM. So, at glance it seems unclear the absence of proper legally binding act against deforestation in the international and/or EU level. On the other hand, the way to find the proper legal regime, more over to put it in force and implement worldwide is complicated and complex in many senses.



Achievement Problems:

-Many countries do not have forest legislation to promote SFM. Even where forest management plans exist, they are limited to ensuring the sustained production of wood and lack sufficient attention to the sustainable production of non-wood products and ecosystem services and the maintenance of social and environmental values. Also, other land uses may appear more economically attractive to land managers than forest management.

-Promotion of SFM needs more collaborations in the international arena. More leaders should reaffirm international financial commitments and increase finance and investment from public and private sources, while also improving its effectiveness and accessibility, to enable SFM.

- There is no one-size-fits-all solution. Solutions need to be specific to each country and region, with an overall two-fold objective of protecting existing forests.

- The process of the forest Certification should be strengthened. Certified forests constitute only 4% of the forest area.

- In a rapidly changing and uncertain environment, timely, transparent and reliable forest information is crucial. National Inventory Data should be made freely available.

- Knowledge and expertise from indigenous peoples and local communities is crucial for an inclusive global forest monitoring strategy. (8) International-to-local actions that empower indigenous people and local communities and that depend on suitable information on where and why forests are changing should be created.

A possible solution could be a creation of new globally coordinated data ecosystem that enables all actors to access, share, review and refine open-source and validated geospatial data and systems for their analyses.

Nowadays EU makes its own commitments to create the international legal frameworks to promote conservation and sustainable forest management and self-guard it. EU strategy should act as a bridge between national policies and broad EU objectives and programs.

However, of course the new EU strategy is not perfect and have some doubts, such as:

- The EU by itself cannot reverse the trend of deforestation. It needs to be part of a global alliance for sustainable, biodiverse forest coverage worldwide;
- the need to strike a balance between the SD aspects of SFM and to maintain the diversity of forests and forest management practices in different Member States and regions, respecting their competences in the area;
- creation of the EU forest monitoring and data collection and a reinforced EU forest governance mechanism may be a bridge for partnership EU and national local communities;
- doubtful to added value of developing national strategic plans for forestry;
- a more comprehensive approach is necessary, including concrete proposals on how to remunerate the noncommercial ecosystems services provided by forests.

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