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Shared resources, shared responsibilities?

Deforestation and forest degradation are global problems. Solutions for them must be globally relevant, and that is achieved through cooperation

The European Union Deforestation Regulation (EUDR), which will come into effect in January 2024, is welcome news for global climate change solutions. With the EUDR, the EU aims to halt deforestation and forest degradation worldwide by affecting changes in the supply chains of forest-based commodities and products derived from them. As such, the regulation sets a new standard on goods linked to deforestation for some 800 million Europeans.

Yet, notwithstanding the need and benefits of reducing deforestation and forest degradation, the EUDR exemplifies a fundamental global problem in implementing internationally agreed approaches to redress climate change impacts. Global gains expected from climate mitigation action are possible when solutions are globally coordinated, but the European Commission's unilateral approach is likely to undermine the net gains expected from the regulation. The regulation also illustrates an urgent fundamental problem in redressing climate change, namely how to effectively, efficiently and sustainably govern global commons resources – such as forests – which also fall under national jurisdictions.

The scale and scope of global deforestation and land degradation are enormous. Within 30 years, the world lost forest land 'equalling an area larger than the European Union', much of which was in Africa. Impacts from such wanton loss also affect the rest of the world. This is because forests act as carbon sinks, holding up to 662 gigatonnes, which represents a six gigatonne decrease in carbon stock within five years until 2020. The continuing release of the carbon captured by forests contributes to the extinction of species, including humans. Still, 'every year, the world continues to lose 10 million hectares of forest'.

A conflict-prone approach

So, surely it isessential to end such senseless destruction and elimination of an ecosystem critical to our existence. For Brussels, the way to do so is to set a European standard on cattle, cocoa, coffee, palm oil, rubber, soya and wood, as well as associated products. The regulation's Article 3 prohibits those commodities and related products from being exported from and imported to the EU unless three conditions are met; they must be 'deforestation-free', they must 'have been produced in accordance with the relevant legislation of the country of production', and they must be 'covered by a due diligence statement'. The Commission will develop a scheme to assess each country as either 'high risk' or 'low risk' of deforestation to enforce these rules.

The Commission failed to imagine that the scope of its regulation is certain to conflict with other forest regulatory regimes outside the Union. With few exceptions such as on human rights, states retain 'complete sovereignty over all their natural wealth and resources'. This includes a country's right to assess and determine the state of its forests and the extent to which they are used as a natural economic resource. European forestry regulation, which is not binding for states outside of the Union, cannot curtail or supersede this right. The commitment of the Union to 'promoting and implementing ambitious environment and climate policies across the world' is simply that — an ambition that does not imply that the EU has superior authority above States' sovereignty. Perhaps anticipating this conflict, the Commission offers 'specific dialogue' with countries that it will place on its 'high risk' list to inform them about the consequences of its classification.

To ensure that products and commodities comply with the regulation, EU Member States will act as de facto policy enforcers outside the Union.

The Commission also argues in the regulation that the destruction of forests 'has serious consequences for the livelihoods' of indigenous peoples, who are protected by human rights laws. But this appeal is without basis because human rights laws are codified and enforced by *national* laws, not foreign regulations. The Commission presumes to understand indigenous peoples' social needs, which are met by their use of forests for medicine, firewood and food — forbidden practices within the scope of the regulation.

Moreover, to ensure that products and commodities comply with the regulation, EU Member States will act as *de facto* policy enforcers outside the Union by carrying out 'checks in situ' and conducting 'spot checks,

including field audits' in so-called third countries. It is inconceivable to imagine German authorities arriving in Namibia, the EURD at hand, to conduct compliance checks. Geopolitical cooperation on policymaking and implementation to address global problems is simply not done this way. Managing conflicts through dialogue after the fact falls below basic standards of cooperation in global environmental governance. Surely, someone within the Commission must have had the foresight to envisage that the EURD is certain to cause diplomatic headaches for the EU and may well undermine the Union's global credibility in areas for which it *actively seeks cooperation*.

Although the Commission anticipates dialogue with offending States, it is traders and operators who would be bound by the obligations of its regulation. Traders are 'any person in the supply chain other than the operator', the latter being a 'legal person', which is a business registered in the EU. The regulation obliges operators to prepare an 'electronically available and transmittable due diligence statement' that includes name and address, a 'harmonised system code', the full scientific commodity name, the quantity in kilograms, the country name and the 'geolocation of all plots of land where the relevant commodities were produced.' They must use this information to assess and mitigate risks and determine that there is no or only a negligible risk before related products are sold within the EU. It is unclear how the Commission plans to hold accountable traders, in Tanzania for example, for European consumption of products that are not from 'deforestation-free' supply chains.

Lacking international climate leadership

The failure of the Commission to properly foster global cooperation while formulating the EUDR confirms a vacancy in international political leadership on climate change, left open since Germany's former Chancellor Angela Merkel – nicknamed the '*Klimakanzlerin*' (climate chancellor) – left public office two years ago. Within two days of Washington putting the Paris Agreement in peril, Merkel stepped up to halt a much-feared cascading effect by rallying China and India to uphold their commitment to the accord. Brussels failed to perceive the need for a similarly tactful approach when developing a regulation that will clearly impact non-European countries. It is not sufficient that the EUDR aims to benefit all of humanity because national priorities do not necessarily converge, and defining goals that are good for all requires a certain political leadership presently lacking in international climate change governance.

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All this means that the Commission cannot conceive of a legal instrument that interferes with the natural resources of other states, which the implementation of the EUDR would do by determining the presence or severity of national forestry laws and assessing the rate of deforestation outside of the EU. Deforestation and forest degradation are global problems. Solutions for them must be globally relevant and that is achieved through cooperation. The EURD is a good starting point, but it now needs to be brought in harmony with other, similar regulatory regimes worldwide, most certainly in countries and regions with high rates of deforestation and degradation. This means policy development between countries and regions, which includes coordination, integration and implementation. It also means cooperative and collaborative sustainable management and protection of natural forests between all global regions. But instead of such coherence that anticipates the specific needs of such countries, the EURD places an undue burden on their sector.

The UN Food and Agriculture Organisation observes that less than 25 per cent of forests in Africa have management plans, compared to 96 per cent in Europe. Subsequently, carbon stocks have increased in Europe and decreased in Africa. This huge disparity in forest management implies a certain inequity in resources, but the Paris Agreement aims to address this by urging developed countries to share technology and transfer knowledge to complement those in developing countries. The Commission should now collaboratively find ways to integrate such provisions within the EURD. Also, solidarity is a legal principle in the EU; yet, this word is missing in the EUDR. Finding a place for it, along with the EU using this regulation as a way to implement the Technology Framework of the accord that the regulation appeals to, could contribute to Brussels credibly filling the present vacant political leadership position in transnational environmental governance. It should be understood that net gains in tackling deforestation are possible when policy solutions for the problem are simultaneously implemented worldwide.