

Due Diligence Requirements and Business Perspectives

Prof. Dr. ALMUT SCHILLING-VACAFLOR, FAU Erlangen-Nuremberg

Workshop on the EUDR

European University Institute (EUI)

6 June 2024



MY RESEARCH

(in collaboration with Maria-Therese Gustafsson, Mairon Bastos Lima and Andrea Lenschow)

- Research at both sides of global supply chains (demand-side and supply-side)
- New supply chain regulations: France, Germany, Norway, EU's Deforestation Regulation (EUDR), CSDDD
- Research into policy-making, institutional design, company compliance, implementation and consequences
- 8 months of field research in Brazil, >120 interviews (2017-2024)
- Document analysis (company reports, legal documents, public statements etc.) and TRASE data
- Project to build up a Forest and Rights Observatory in Brazil (led by FERN)

EURACTIV

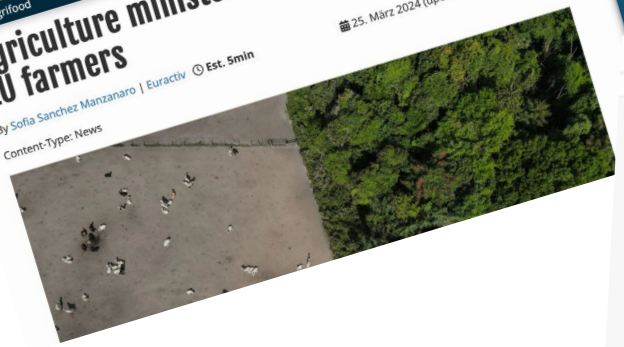
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Agriculture ministers push to weaken anti-deforestation rules for EU farmers

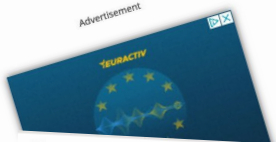
By Sofia Sanchez Manzanaro | Euractiv | Est. 5min

25. März 2024 (updated: 27. März 2024)

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EU anti-deforestation law harms Brazilian sovereignty: agriculture minister



Reuters

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Majority of EU countries ask bloc to scale back deforestation law

By Kate Abnett

March 26, 2024 5:25 PM GMT+1 · Updated 2 months ago



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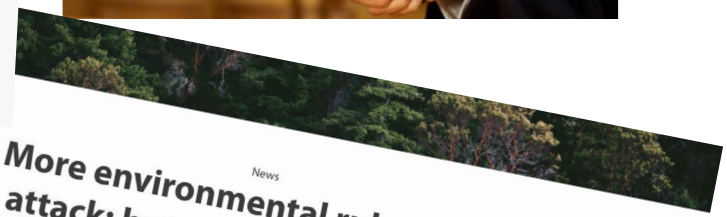
Deforestation unrest: EU policy implementation hangs in the balance after industry pushback

By Pearly Neo

09-Apr-2024 - Last updated on 09-Apr-2024 at 23:06 GMT

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News

More environmental rules under attack: but the pushback to the pushback continues

7 Mai 2024

In the run-up to EU elections in June 2024, EU and national politicians are continuing their roll back of the hard-won environmental gains of the European Green Deal. Such

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THE RISK OF
SYMBOLIC COMPLIANCE

Systematic analysis of 20 company reports and > 25 interviews:

- ➢ Changes in sustainability management
- ➢ However, many measures are based on existing practices
- ➢ ‘Paradox of transparency’
- ➢ Lack of consultation with stakeholders
- ➢ Reputational and legal risks lead to change in companies

FRANCE









Schilling-Vacaflor, A. and M.-T. Gustafsson (2023). “More Sustainable Global Supply Chains? Compan
Compliance with new Human Rights and Environmental Due Diligence Laws”. *Environmental Politics*.

Interview with human rights manager of large French agri-food company:

„When your supply chain is so long, you feel like you run, run, run and you try your hardest, but you actually don't know, if it is going to make that person's life better? [...] We put processes and tools in place, but you don't know, you don't see their consequences physically. Sometimes it's hard to kind of visualize that, also for our colleagues [...] They want to see what you do and whether it makes a difference. But when something is so remote, that's really difficult". (February 2022)

VOICES

Interview with international environmental NGO:

"We know that they are implementing some tools to make things better. But this is mainly for us and other organizations, the public or their clients. They do not really improve." (interview, March 2024)

„[Human rights and environmental due diligence] has the potential to create a false impression of change, without making any substantial positive impact on the situation of rights-holders on the ground." (Surya Deva, Special Rapporteur on the Right to Development 2023)


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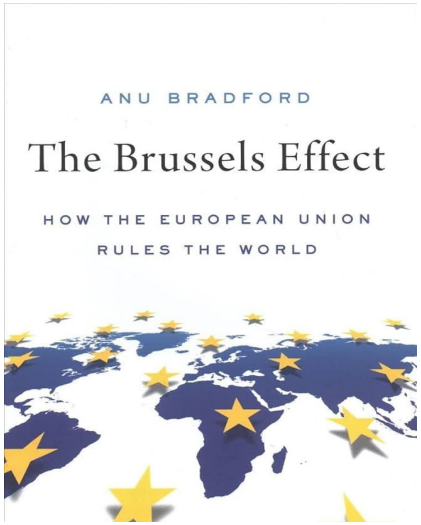

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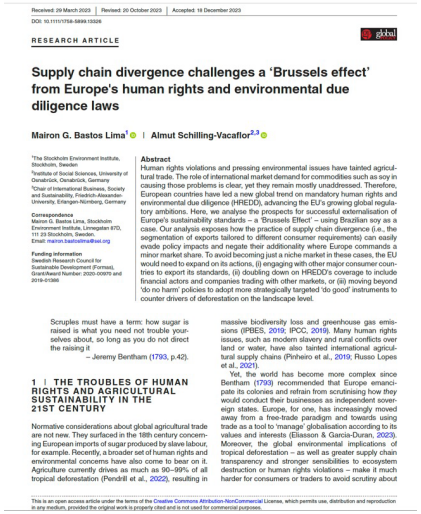

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Does supply chain divergence limit the effectiveness of the EUDR?





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RESEARCH ARTICLE

global

Supply chain divergence challenges a 'Brussels effect' from Europe's human rights and environmental due diligence laws

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Abstract
Human rights violations and pressing environmental issues have tainted agricultural trade. The role of international market demand for commodities such as soy in causing those problems is clear, yet they remain mostly unaddressed. Therefore, European countries have led a new global trend on mandatory human rights and environmental due diligence (HREDD), advancing the EU's growing global regulatory ambitions. Here, we analyse the prospects for successful externalisation of Europe's sustainability standards – a 'Brussels Effect' – using Brazilian soy as a case. Our analysis exposes how the practice of supply chain divergence (i.e., the segmentation of exports tailored to different consumer requirements) can easily evade policy impacts and negate their additionality where Europe commands a minor market share. To avoid becoming just a niche market in these cases, the EU would need to expand on its actions, (i) engaging with other major consumer countries to export its standards, (ii) doubling down on HREDD's coverage to include financial actors and companies trading with other markets, or (iii) moving beyond 'do no harm' policies to adopt more strategically targeted 'do good' instruments to counter drivers of deforestation on the landscape level.

> Scruples must have a term: how sugar is raised is what you need not trouble yourselves about, so long as you do not direct the raising it
> – Jeremy Bentham (1793, p.42).

1 | THE TROUBLES OF HUMAN RIGHTS AND AGRICULTURAL SUSTAINABILITY IN THE 21ST CENTURY

Normative considerations about global agricultural trade are not new. They surfaced in the 18th century concerning European imports of sugar produced by slave labour, for example. Recently, a broader set of human rights and environmental concerns have also come to bear on it. Agriculture currently drives as much as 90–99% of all tropical deforestation (Pendrill et al., 2022), resulting in massive biodiversity loss and greenhouse gas emissions (IPBES, 2019; IPCC, 2019). Many human rights issues, such as modern slavery and rural conflicts over land or water, have also tainted international agricultural supply chains (Pinheiro et al., 2019; Russo Lopes et al., 2021).

Yet, the world has become more complex since Bentham (1793) recommended that Europe emancipate its colonies and refrain from scrutinising how they would conduct their businesses as independent sovereign states. Europe, for one, has increasingly moved away from a free-trade paradigm and towards using trade as a tool to 'manage' globalisation according to its values and interests (Eliasson & Garcia-Duran, 2022). Moreover, the global environmental implications of tropical deforestation – as well as greater supply chain transparency and stronger sensibilities to ecosystem destruction or human rights violations – make it much harder for consumers or traders to avoid scrutiny about

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Bastos Lima, M.G. and Schilling-Vacaflor, A., 2024. Supply chain divergence challenges a 'Brussels effect' from Europe's human rights and environmental due diligence laws. *Global Policy*.

DIFFERENCES ACCORDING TO MARKET SHARE?

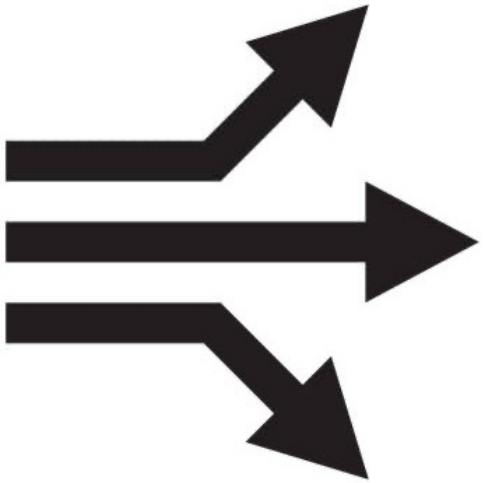
- Europe's stated ambition is not to just clean its own supply chains but to lead a global transition away from agriculture-driven deforestation
- However, convergence to the top -- a ‚Brussels Effect' – requires that the costs of adapting are lower than the advantages
- Market share, therefore, becomes critical.
  - *The EU consumes about 25-35% of the world's coffee, 40% of Brazil's exports.*
  - *50-60% of the world's cocoa.*
  - *12% of Brazilian soy exports, and ever less.*
  - *5% of the global palm oil production.*
  - *1% of Brazilian beef.*



Bastos Lima, M.G. and Schilling-Vacaflor, A., 2024. Supply chain divergence challenges a 'Brussels effect' from Europe's human rights and environmental due diligence laws. *Global Policy*.

Supply chain divergence: A reality check

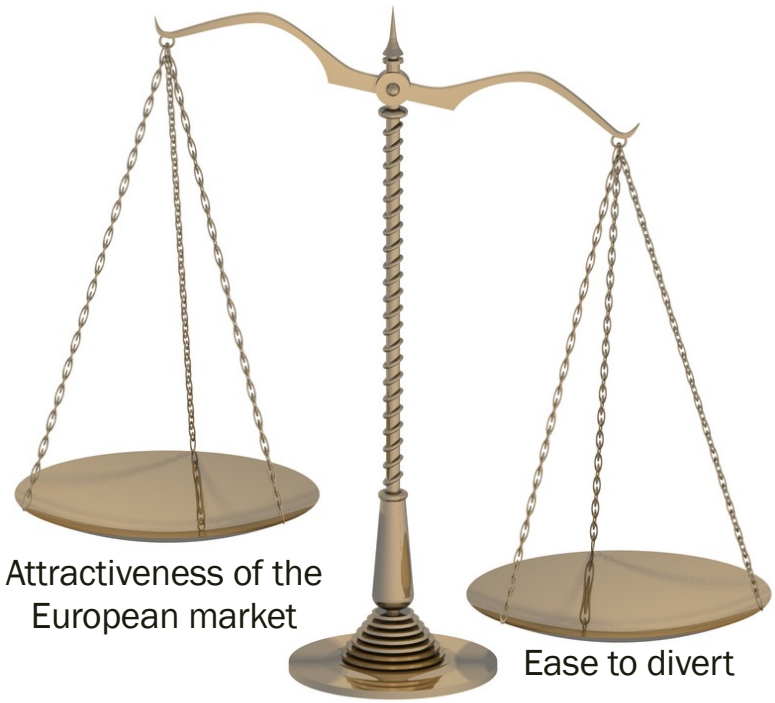
	Purchases of Brazilian soy (2020)	Deforestation exposure
China	53,156 kt	445ha/100kt
Brazil	23,870 kt	395ha/100kt
Spain	2622 kt	334ha/100kt
Japan	1079 kt	317ha/100kt
France	1993 kt	258ha/100kt
Thailand	4116 kt	253ha/100kt
Germany	1492 kt	201ha/100kt
Netherl.	3964 kt	117ha/100kt
Norway	247 kt	108ha/100kt
Denmark	249 kt	79ha/100kt







Bastos Lima, M.G. and Schilling-Vacaflor, A., 2024. Supply chain divergence challenges a 'Brussels effect' from Europe's human rights and environmental due diligence laws. *Global Policy*.



UNDERMINING EFFECTIVENESS

SUPPLY CHAIN DIVERGENCE

- Brazil's soy sector has had little difficulty in selling to each according to their will.
- ALZ Grãos emblematic case.
- Large producers sometimes have different – more and less problematic – farms
- The EUDR may just lead to reshuffling, with soy supplies from consolidated agricultural areas meeting the 12% demand that flows to Europe while plenty of other domestic or Asian consumers take the rest – with no accrued difference at the end of the day.

Bastos Lima, M.G. and Schilling-Vacaflor, A., 2024. Supply chain divergence challenges a 'Brussels effect' from Europe's human rights and environmental due diligence laws. *Global Policy*.

Interview with staff from Brazil‘s public prosecutor:

„This meat from Pará mainly satisfies the national market. Why? Because this allows the large slaughterhouses and producers from Mato Grosso, from the South and South-East [Regions] to export. In these areas, they have more sanitary control, better traceability and they have fewer problems with deforestation.“

(April 2022)

Interview with Brazilian trader:

It is all about what the market wants and will pay for. If they want sustainable soy and will pay for it, we will give them sustainable soy. If they want just any soy, we will give it to them [...] If they want blue soy, we will give them blue soy.

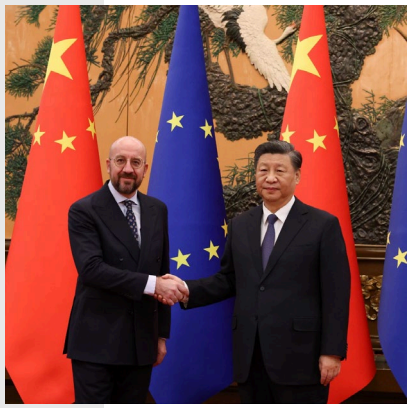
(November 2018)

VOICES

Bastos Lima, M.G. and Schilling-Vacaflor, A., 2024. Supply chain divergence challenges a ‘Brussels effect’ from Europe's human rights and environmental due diligence laws. *Global Policy*.

ADDITIONAL POLICIES ARE NEEDED

How to enhance the effectiveness of the EUDR and counteract company strategies such as symbolic compliance or supply chain divergence?



Upscaling or diffusing European rules? – Unlikey, especially in our current context of fragmented globalization. However, interesting processes in Brazil. [de jure Brussels Effect]



Challenging companies to harmonize rules at the company level, not differentiate according to consumer market; e.g., criticize double standards [de facto Brussels Effect]



Zoom out of individual supply chains to address their unsustainable advance at a broader level, i.e., supporting other land uses that could hedge against deforestation-based expansion.