



# BOFAXE

## How Do You Like Your Coffee? Green!

### The International Legal Response to Coffee Fueled Deforestation

— More than two billion cups – that is the global amount of coffee we are consuming every day. Notwithstanding its value as a culinary treat and a remedy for staying awake on long days, the increasing coffee production requires large areas of farmland in the tropical regions, in which coffee is harvested. Its massive land use thus contributes to the severe problem of deforestation. Since deforestation marks the second leading cause for climate change, which does not only affect the coffee farmers themselves but the whole world, approaching this conflict from an international law perspective becomes necessary. Particularly a focus on the recent European Deforestation Regulation reveals actual shortcomings in the increasing attempts of minimizing deforestation, as such regulations come with additional burdens, particularly on smallholders. This post argues that effective international regulation on coffee production requires – next to environmental protection – taking into account all three elements of sustainable development: the economic, the environmental, and especially the social dimension.

#### The Interrelation Between Lucrative Coffee Production and Environmental Damage

In order to first illustrate the global scope of coffee production, it is notable that coffee is largely produced in the tropics, with Latin America covering 55 percent of global coffee supply. What is special about coffee production is that 80 percent of coffee-farmers are smallholders, which depend on coffee for their livelihoods. Therefore, these farmers are more vulnerable to the impacts of climate change, as they do not have the capacities to adapt to changing circumstances, e.g., through the diversification of crops.

With a global amount of 2 million metric tons between 2010 and 2018, it does not come as a surprise that this lucrative business puts pressure on the producers to extend their land and increase their yields. Thereby, the growing demand for land leads to deforestation of tropical forests, which in turn led to emissions of 21 million tons of carbon dioxide in 2017. To make it more tangible: This amount is equivalent to the emissions caused by 4.5 million cars. Moreover, deforestation in these tropical countries creates a huge loss of biodiversity, leading to further ecological consequences for biological resources. At the same time, lacking commitments to prevent deforestation of the companies which produce and trade with coffee beans call for international action.

#### Does International Law Regulate (Sustainable) Coffee Production?

At the international level, a range of agreements concerning coffee production exist under the umbrella of the International Coffee Organization (ICO), with its 49 members covering more than 90 percent of global coffee trade. Established by an agreement in 1962 under the auspices of the UN, agreement in 1962 under the auspices of the UN, the ICO “aims to encourage the sustainable development of the global coffee sector in economic, social and environmental terms”, putting a focus on international cooperation and a balance between production rates and fair pricing. This objective of a sustainable development of coffee production has been reinforced by its latest agreement in 2022, which dedicates a chapter to sustainable development (Chapter XIII). Art. 40 of this agreement establishes the sustainable management of coffee resources and processing as a priority and explicitly refers to the economic, social, and environmental dimensions of sustainable development. It further contains references to the UN Sustainable Development Goals and entails assistance of the organization for members in developing their coffee sector in a sustainable way, including the whole supply chain. This provision is complemented by Art. 41, which calls for improving the living and working conditions of stakeholders in the coffee sector by certain standards. Thereby, the agreement brings all parties together for the first time as it includes a level of participation for private actors and the civil society as well, and demands for more cooperation between exporting and importing countries regarding the multiple issues surrounding coffee production and trade. Moreover, the 2022 agreement’s focus on sustainability and its demand for climate change mitigation and adaption proves that sustainability issues like deforestation are now generally acknowledged. With its proposal of assistance by the ICO in developing a more sustainable supply chain, first steps towards implementing these goals in practice are taken. It remains questionable, however, how far these forward-looking goals can limit the continuing deforestation. Despite its ambitious commitments, especially the social dimension is rather neglected: financial and technical assistance for coffee farmers is promised, but necessary support in order to combat the growing land use and hence deforestation often does not become reality. Thus, unsurprisingly, the Coffee Barometer 2023 paints a bleak picture, displaying that deforestation still proceeds, notwithstanding the goals of this agreement.



# BOFAXE

## How Do You Like Your Coffee? Green!

### The International Legal Response to Coffee Fueled Deforestation

#### In How Far Can Anti-Deforestation Laws Solve the Dilemma?

Three major coffee-importing regions – the UK, the US, and the EU, together accounting for two thirds of global coffee imports – recently adopted regulation directly addressing the issue of deforestation. In 2020, the UK was the first country to announce a law preventing the import of commodities from illegally deforested areas by placing responsibilities on larger companies. Likewise, the US has made a commitment to legislate a similar framework. Thereby, these states developed a regulation that inhibits the import of coffee beans associated with deforestation and refrains from touching upon the sovereignty of the exporting country and principles of the World Trade Organization.

Besides these commitments, the 2023 European Deforestation Regulation (EUDR) has attracted attention, as it puts strict regulation on the import of products from deforested areas and thereby caused unintentional effects. Under Art. 3(a) EUDR, commodities and products must be “deforestation-free” to be exported to the EU. This requires operators to prove that their products comply with Art. 3 by exercising due diligence, including the collection of data, and establishing risk assessment and risk mitigation measures (Art. 8, 9, 10 and 11 EUDR). Although its entry into force is dated 30 December 2024 (Art. 38 EUDR), its impact already casts its shadow, since the difficulty of complying with these rules forces EU importers to scale back purchases from smallholders in Africa. The detailed mapping of their supply chains, which involves tracing a huge number of farmers, partly in remote regions, makes it difficult for importers, since they often do not have direct contact to the farmers. On top of that, corruption in the producing countries complicates the collection and credibility of documents. Altogether, the EUDR might thus lead to the EU losing control of forest conservation in these areas, as the crops will still be grown on deforested areas, but not for the EU market anymore. Although this regulation provides an overarching and strict framework towards countering the issue of deforestation, it neglects the farmer’s perspective.

#### Striking a Balance Between Environmental and Social Concerns

What may help to reconcile the ambitious plans to stop deforestation and secure the livelihood of smallholders in the coffee sector is a closer look at the concept of sustainable development.

Sustainable development is acknowledged as a modifying norm in the interpretation of existing rules and can thereby help to reconcile economic, environmental and social concerns. It thus influences the existing framework and decision-making process. As demonstrated above, the EUDR neglects the difficulties of both farmers and importers to comply with the strict regulation and thereby does not attach enough importance to the social dimension. With Art. 34 EUDR, it establishes a review of impacts including the impact on smallholders. However, this is not due until 30 June 2028, although the impacts are already known by now. Interpreting these rules in light of sustainable development forces decision-makers to put a greater focus on rules which involve support for and assistance to the stakeholders who face obstacles in complying with this regulation. Although this concept cannot pull forward an explicit date, it can impact the way these rules are enforced. By taking account of the social dimension, it requires a stronger focus on assistance and more leeway for both traders and farmers to adapt to the new standards. Whether this interpretation, which considers the social aspect of sustainable development as well, will find entry into practice, remains to be seen.

Nevertheless, there do exist initiatives that support exporting countries and especially smallholders to comply with these rules and prove that it can be a promising approach to reconcile all three dimensions in the coffee sector. One example of what this assistance can look like is the Fairtrade initiative, which ensures a minimum price for coffee that covers the production costs and helps to invest in companies in order to comply with sustainability standards. Such initiatives show that it is not impossible to comply with the strict rules and that anti-deforestation law, adapted to the actual needs of producers, can lead to a success for all parties involved.

Therefore, these initiatives to support the local farmers must be involved in the process of implementing the 2022 agreement of the ICO to ensure that the chapter about sustainability does not only remain an empty shell. Since the UK legislation does not explicitly include coffee beans and the US commitment did not yet reach the status of a binding law, the EUDR marks the most advanced anti-deforestation law concerning coffee trade. In order to ensure that the EUDR can be a role-model for future legislation, it should be implemented in light of the concept of sustainable development, specifically by acknowledging the farmers’ concerns and finding a well-balanced regulation for a future-oriented and sustainable coffee production.