

Joint position paper on the EU's policy and regulatory approach to cocoa Partnership agreements

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1 Introduction: the importance of partnership agreements

The ultimate aim of the signatories to this position paper is to achieve a fully sustainable cocoa supply chain that allows cocoa farmers to enjoy living incomes and reduces and eventually eliminates human rights abuses, including child labour, and environmental degradation.

A crucial element of an EU strategy to achieve this aim is the introduction of mandatory EU-wide due diligence legislation, including the cocoa sector – as we argued in our first joint position paper on the EU's policy and regulatory approach to cocoa, in December 2019. This would help to create a framework for the sustainable and responsible consumption of cocoa (and other products) within the EU, the world's largest consumer of cocoa and chocolate. We will set out our position on this approach in more detail in our forthcoming joint position paper on due diligence legislation.

Although we fully support the implementation of such due diligence legislation, its effectiveness will be limited unless it is coupled with the creation of the enabling environment required to make progress on sustainable cocoa farming within cocoa-producing countries. Accordingly, we believe that it is essential for the EU to pursue the establishment of long-term partnership agreements with the governments of cocoa-producing countries, ensuring that all relevant stakeholders are involved, including local community representatives, farmers, industry, and civil society. These partnership agreements should include time-bound frameworks for action for all parties involved. They should place a particular emphasis on actions at the policy level by producer governments, and include incentive mechanisms and support from the EU and its member states to ensure that the necessary actions can be implemented successfully.

This focus on policy and governance in producer countries is a critical element that initiatives in the cocoa sector must take into account, contributing to establishing the right enabling environment, which in return is necessary for supply-chain-focused initiatives in the cocoa sector to be truly impactful at scale.

The objectives of these partnership agreements should be to:

1. Clarify what is needed to establish a sustainable cocoa sector within the producer-country partner and what different actors in the supply chain need to do to achieve it.
2. Set out the changes in governance, including transparency, and policy, and/or improved enforcement of existing policies, that would be needed to produce cocoa sustainably.
3. Put in place incentive and support mechanisms, including funding, to ensure that the required policy changes and measures are implemented.
4. Establish monitoring systems to assess the impacts of the policy changes and measures and ensure that any unintended negative consequences for people or the environment are avoided.

This paper puts forward our proposals for the content of such partnership agreements. These should build on existing dialogues between the EU and cocoa-producing countries, including climate dialogues, producer-country national processes and multi-stakeholder dialogues, international initiatives such as the African Standard for sustainable cocoa, the Cocoa and Forests Initiative, the Accra Agenda, the World Cocoa Foundation's Pathway to Sustainable Cocoa and the International Cocoa Initiative, and work by individual companies and certification schemes. The Voluntary Partnership Agreements (VPAs) established under the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan to improve forest governance and tackle illegal logging also provide an important model from which to draw lessons.

2 A multi-stakeholder deliberative process

The establishment of a producer-country national deliberative process, involving all stakeholders, to determine the conditions for the sustainable production of cocoa and to agree on the necessary reforms of policies, laws and institutions, must be central to each partnership agreement.

Modelled on the FLEGT VPAs, this deliberative process is not merely consultation; it must be a coordinated effort to open up decision-making in the cocoa sector, involving cocoa farmers and cooperatives, local communities, including women, and civil society, and the private sector, alongside government, in a framework in which all stakeholders respect, argue, build trust, decide and collaborate on an equal level. We note that the implementation of this model in the timber sector in Ghana has improved transparency and standards of governance and led to a measurable decline in levels of illegal logging.

Each partnership agreement therefore needs to feature a national platform involving all stakeholders, national and local, building where possible on existing structures and initiatives. Through this institution, stakeholders would discuss and resolve issues of national policy, including land tenure, and law enforcement that are driving unsustainable production in the cocoa sector, including reaching decisions to reform laws and policies. Local multi-stakeholder groups should also be established to oversee and contribute to the implementation of the agreement at a local level. We

recognise that this is not likely to be a rapid process but if it works effectively, it will underpin long-lasting reforms and improvement.

The process would benefit from the appointment of an independent facilitator able to assist in the establishment and operation of the national platform, resolve disputes and enable stakeholders to compromise on their initial positions to find common agreement. Capacity-building assistance will also be necessary for cocoa farmers' organisations, local communities and civil society – including, in particular, women – in the partner countries to enable them fully to participate in the process, and should be provided by the EU and its member states.

The national producer-country platforms should be mirrored by a permanent EU-wide platform bringing together EU decision-makers with European civil society and private sector stakeholders. Building on the current time-limited Sustainable Cocoa Initiative multi-stakeholder dialogue, this platform would enable participants to identify, discuss, and find ways to resolve, according to a deliberative process, issues of EU policy and law enforcement that are driving the unsustainable sourcing of cocoa. Joint discussions with the producer-country platforms would also be helpful.

3 Conditions for sustainable cocoa production

The main task of the national platform in each country should be to agree, and then to set out a way forward for realising, the conditions needed to achieve a fully sustainable cocoa supply chain that allows cocoa farmers to enjoy living incomes and reduces and eventually eliminates human rights abuses, including child labour, and environmental degradation.

This will require a discussion, first, of what constitutes 'sustainably produced cocoa' – building, where appropriate, on existing initiatives – and, second, of how this definition can be realised through the surrounding framework of national regulations, policies and institutions, or 'governance'.

While the final selection of issues should emerge from the multi-stakeholder process, and the negotiations between the producer country and the EU, we suggest the following as an indicative list of potential key elements:

- Land and forest governance: including defining and clarifying the land and tree tenure rights of cocoa farmers, consistent with international good practice, and increasing participation in, and the transparency of, decisions and planning over land use, cocoa production and forest protection.
- Land use planning and inter-ministerial coordination: encouraging the development of national land-use planning systems to clarify which areas are designated for cocoa production and which for forest protection, and improving coordination between the agriculture and forest ministries to ensure a set of coherent aims.
- Deforestation: supporting the implementation of governments' commitments under the Cocoa and Forests Initiative, namely to end the growing of cocoa in protected forest areas, ensure legal protection for trees and forests outside protected areas, encourage the uptake of agroforestry techniques, including via legal frameworks as appropriate. Also to ensure that the human rights of any farmers, farming families and/or communities who must be relocated due to enforcement of this policy are fully respected.

- Supply management: measures to avoid over-production of cocoa and consequent downwards pressure on prices and farmers' incomes.
- Children's rights: strengthening the ability of government to prevent the use of child labour, to support child labour monitoring and remediation systems, to protect children and to improve their access to good-quality education, health care, clean water and better nutrition.
- Forced labour and trafficking: strengthening the ability of government to protect children and adults, including vulnerable migrant populations.
- Living incomes: ensuring that cocoa farmers are able to generate a living income from their efforts, without which sustainable cocoa production is impossible. This includes price mechanisms designed to increase cocoa farmers' incomes, including the Living Income Differential.
- Support for farmers and farm organisations: including supporting cocoa farmers to improve productivity on existing farmland and to diversify their farms, improving access to inputs, sustainable techniques and training, including financial literacy, and loans for inputs and services.
- Strengthening cocoa farmers' organisations: to improve their internal governance, to ensure that they become democratic bodies which genuinely represent their male and female farmer members, and provide support in such a way that they can participate effectively in multi-stakeholder policy processes. This is a process that will take time.
- Agricultural and rural policies: encouraging the development of long-term national cocoa sector policies, including efforts to better coordinate national production targets and global demand for cocoa, and including objectives beyond simple production levels, including offering farmers opportunities other than cocoa production and the promotion of alternative – sustainable – agricultural models which are less export-dependent and support sustainable community forest management.
- Traceability: introducing a mandatory national traceability system for cocoa beans from all origins, including the indirect supply chain, and an effective farmer registration system.
- Law enforcement: improving the capacity of enforcement agencies, judicial systems and legal practitioners, and supporting the independence of the judiciary, to enforce existing laws and prosecute illegal activities.

While the precise way forward for each of these issues must be decided by the multi-stakeholder deliberative processes described above, it must also be acceptable to the EU, as a partner in the agreements, and in order to meet the requirements specified in forthcoming EU legislation. The outcome of this process should be commitments to reform policies and where necessary, laws and institutions, together with a time-bound roadmap for implementation which can be reviewed regularly and which is accompanied by incentive mechanisms to ensure that progress is made.

We recognise that a number of national and regional initiatives, including the development of the African Standard for sustainable cocoa by the African Organisation for Standardisation (ARSO), are already under way that have the potential to contribute to this process, but none so far covers the full range of critical issues or involves a genuine multi-stakeholder deliberative process. The multi-stakeholder structure should assess the extent to which these existing initiatives can contribute effectively to achieving a fully sustainable cocoa supply chain, while recognising that supply-chain focused initiatives such as the African Standard will only have impact when the enabling policy

environment is addressed first. Any referenced supply-chain-focused initiatives should be based on evidence of impact of implementation.

4 Support and incentives

To deliver successful outcomes, the partnership agreements need to include incentives and support for the producer countries, helping to ensure that the EU and partner countries work together to achieve a fully sustainable cocoa supply chain. This framework should aim to:

- Create incentives for producer countries to negotiate and implement partnership agreements with the EU.
- Provide technical, financial and capacity-building support for the negotiation and implementation of the agreements.
- Ensure that the EU makes efforts to coordinate funding with other donors to ensure that initiatives to support cocoa-producing countries are coherent and aligned.
- Deliver rewards – potentially through favourable trade and market access in the EU – for cocoa produced under the conditions defined in the partnership agreement.
- Encourage awareness amongst EU businesses and consumers of the economic, environmental and social benefits of a fully sustainable cocoa sector (the due diligence legislation we support has an important role to play in this).

The provision of financial, technical and capacity-building assistance from the EU and its member states will be necessary to support the implementation of the agreement, including the reform of policies and laws, and capacity-building for farmers, farm organisations, government agencies and other stakeholders. The announcement in January 2021 of €25 million to enhance the economic, social and environmental sustainability of cocoa production in Côte d'Ivoire, Ghana and Cameroon is welcome but represents only a small fraction of the sums likely to be needed.

This assistance could be supported through the establishment of a dedicated financing mechanism, potentially with support from EU-based financial institutions and cocoa companies, to invest in the sustainable transition of the cocoa sector and in local sustainable development. Funds should be administered by landscape-level multi-stakeholder groups and be used to implement local landscape management plans, with support specifically targeted on smallholder farmers.

Assistance should also be provided to help establish the multi-stakeholder deliberative process and ensure wide stakeholder participation in it. This includes, as noted, support for the appointment of independent facilitators able to assist in the establishment and operation of the national platform.

A clear and time-bound roadmap for progress in establishing the multi-stakeholder deliberative process and implementing the agreement should be agreed between the EU and each partner country. An early warning system could be used to flag up problems with lack of progress and provide an opportunity to resolve them.

One option for providing incentives to encourage compliance would be to link the provision of financial assistance to satisfactory progress along the roadmap. Progress could be rewarded with special financial products by European lending institutions, perhaps with lower interest rates.

Another option to encourage and reward compliance would be the creation of a trade preference in the EU market for cocoa produced under the conditions set out in the partnership agreement. This could be offered by providing that cocoa produced under these conditions is automatically compliant with any market-related requirements introduced by the EU. For this option to work, national traceability and export licensing schemes would need to be established to ensure that only cocoa produced under the conditions set out in the agreement could be exported. These should be built on existing structures and initiatives, though we recognise that considerable further work would be necessary to ensure that these systems are adequate to ensure compliance. Such an export licensing system could be reinforced by EU legislation to bar imports of unlicensed cocoa from the partner countries, ensuring that the licensing system could not be evaded. Any market restrictions would only be applicable after support to the producer countries to address the challenges on the ground had been delivered.

A third option to encourage compliance would be to link any risk rating, or benchmarking, system the EU introduces (an option currently under consideration) to progress along the roadmap. Satisfactory progress in implementing the policies and measures set out in the roadmap could be recognised through a lower rating for the country in question.

Other means of rewarding compliant cocoa from the partner countries, including through public procurement policy, should also be considered.

5 Monitoring and enforcement

Effective, practical and independent joint monitoring and enforcement mechanisms will be crucial for the effective implementation of the agreements, including regular monitoring of the roadmap of policy actions agreed between the EU and the partner country.

We note that the Cocoa and Forests Initiative signatories agreed in November 2017 to put in place joint monitoring mechanisms, and that official or semi-official mapping of land use and deforestation has proceeded in both Ghana and Côte d'Ivoire. Most cocoa traders and chocolate manufacturers have also begun to disclose their direct cocoa supply chains, making monitoring more feasible. The EU observatory on deforestation and forest degradation, shortly to be established, should play a role in tracking the impact of the agreement on levels of deforestation.

It will also be important to track whether the implementation of the agreement leads to leakage of cocoa beans not produced to sustainability standards to other export destinations, and the transfer of cocoa purchasing to countries not covered under partnership agreements. The EU should make efforts to encourage other cocoa-importing countries to establish similar frameworks.

The monitoring systems should also track the impact of the agreements more widely than just cocoa production and deforestation, including, for example, changes in farmgate prices, farmers' incomes, the incidence of child labour, patterns of land use and other factors. It will be important also to ensure that any unintended negative consequences of policies and measures are identified and prevented or mitigated.

Contact details for supporting organisations

Fairtrade International

Jon Walker, Senior Advisor, Cocoa (press@fairtrade.net)

Fair Trade Advocacy Office

Charlotte Vernier, Junior Advocacy and Communications Officer (vernier@fairtrade-advocacy.org)

Ferrero

Francesco Tramontin, Vice President Group Public Policy Center and EU Institutional Affairs
(Francesco.Tramontin@ferrero.com)

The Hershey Company

Tim McCoy, Director, Cocoa Partnerships (TMcCoy@hersheys.com)

International Cocoa Initiative

Sarah Dekkiche, Director of Policy and Partnerships (s.dekkiche@cocoainitiative.org)

Mars Wrigley

Michelle O'Neill, Global Vice President Corporate Affairs Cocoa (Michelle.ONeill@effem.com)

Mondelēz International

Virginie Mahin, Global Head of Social Sustainability & Stakeholder Engagement
(Virginie.Mahin@mdlz.com)

Nestlé

Paolo Giro, European Affairs Advisor (Paolo.Giro@be.nestle.com)

Rainforest Alliance

Emma Harbour, Global Director, Advocacy and Themes (eharbour@ra.org)

Solidaridad

Gert van der Bijl, Senior EU Policy Advisor (gert.vanderbijl@solidaridadnetwork.org)

Tony's Chocolonely

Paul Schoenmakers, Head of Impact/Impactus Prime (pauls@tonyschocolonely.com)

Unilever

Matt Close, Executive Vice President, Global Ice Cream (Ilaria.Ida@unilever.com)

VOICE Network

Antonie C. Fountain, Managing Director (antonie@voicenetwork.eu)