

Cocoa Coalition joint position paper

The proposed EU regulation on deforestation

23 March 2022



The signatories to this position paper welcome the publication of the proposed regulation on deforestation ('Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010').

We believe that the proposed regulation represents an important step forward in driving the necessary transformation of the cocoa and chocolate sector, by helping to minimise the risk of deforestation associated with cocoa and chocolate products placed on the EU market. We called for legislation of this type in the first position paper [we published in 2019](#), and in our more detailed position paper [published in October 2021](#).

We welcome in particular the application of the due diligence requirements throughout the cocoa and chocolate supply chain within the EU; the potential use of independent means of verification, such as satellite imaging, to underpin the information requirements; the application of the benchmarking risk analysis system within, as well as between, countries; the clear obligations on competent authorities for minimum levels of checks on companies, and minimum levels of penalties; and the inclusion of 'substantiated concerns' provisions for third parties to raise concerns over infringements of the legislation.

With regard to cocoa, we also support the inclusion of the requirement for full geolocation information on the origin of the products covered by the regulation. The efforts made by companies in the Cocoa Coalition and in the wider cocoa sector have shown how traceability systems, including geolocation information, can be implemented effectively even in complex supply chains featuring a very high proportion of smallholder farmers. We recognise the critical role of producer-country governments, alongside companies, certification organisations and others, in rolling out traceability systems to the farm level, and the progress led by the governments of Côte d'Ivoire and Ghana in setting up national traceability systems. We also recognise the inherent challenges in expanding these systems to cover the full supply chain, which is made up of millions of smallholder farmers, many of which are currently not part of formal farmer organisations. For this reason, we believe that

support from the EU for establishing and rolling out such systems to cover the entire supply chain should be a priority.

We are confident that the regulation has the potential to reinforce producer-country efforts to establish a sustainable cocoa sector for the long term as long as the burdens of compliance are shared fairly throughout the supply chain and cocoa farmers are not left to bear additional costs without adequate support.

In particular, we believe it essential that the European Commission conducts a comprehensive needs assessment of the challenges that will be faced by smallholder farmers in complying with the regulation, and the support that they will require. The assessment should pay particular attention to support for smallholder farmers, including for the establishment and comprehensive roll-out of traceability systems, which will prove particularly challenging for those smallholders who are currently not part of farmer organisations. It should also be gender-sensitive, taking into account the different barriers, needs and capacities of women farmers. This needs assessment will inform the scale and type of support that will need to be mobilised by the EU and its member states and by companies in the sector. This assessment should be initiated as soon as possible; it should not wait until the regulation has entered into force.

This needs assessment should also analyse the need for support for smallholders who have farmed in compliance with national law but in a way that caused deforestation after 31 December 2020 but before they had any knowledge of the regulation, to ensure that they are not left destitute.

We believe the regulation could be further strengthened through the steps outlined below. (In the proposed amendments, new or changed text is highlighted in red.)

1 Scope of regulation: natural ecosystems as well as forests

The scope of the environmental harm the regulation is designed to prevent is currently restricted to deforestation and forest degradation. We believe that this should be extended to include other critical ecosystems, in order to avoid displacing negative environmental impacts from forests to these other natural systems. We welcome the commitment in the regulation to review the need and the feasibility of such an extension, and we recognise the complexities inherent in drawing up the requisite definitions. However, we believe that the case for doing so now is strong enough, and therefore propose the following amendments, which draw on definitions used by, among others, the Accountability Framework Initiative and Rainforest Alliance.

Existing text in regulation	Proposed change to
<p><i>Article 1 (Subject matter and scope)</i></p> <p>...</p> <p>a) minimising the Union's contribution to deforestation and forest degradation worldwide</p>	<p>a) minimising the Union's contribution to deforestation and forest and natural ecosystem degradation worldwide</p>

Existing text in regulation	Proposed change to
<i>Article 2 (Definitions)</i>	<i>Add para:</i> (3) 'natural ecosystem' means an ecosystem that substantially resembles (in terms of species composition, structure, and ecological function) one that is or would be found in a given area in the absence of major human impacts, including both managed and unmanaged wetlands, savannah, and grasslands;
<i>Article 2 (Definitions)</i>	<i>Add para:</i> (7) 'natural ecosystem degradation' means changes within a natural ecosystem that significantly and negatively affect its species composition, structure, and/or function and reduce the ecosystem's capacity to supply products, support biodiversity, and/or deliver ecosystem services;
<i>Article 2 (Definitions)</i> (8) 'deforestation-free' means (a) that the relevant commodities and products, including those used for or contained in relevant products, were produced on land that has not been subject to deforestation after December 31, 2020, and (b) that the wood has been harvested from the forest without inducing forest degradation after December 31, 2020;	<i>Add sub-para:</i> (c) that the relevant commodities and products, including those used for or contained in relevant products, were produced on land that has not been subject to natural ecosystem degradation after December 31, 2020.
<i>All references throughout regulation to:</i> 'deforestation and forest degradation'	<i>Change to:</i> deforestation and forest and natural ecosystem degradation

2 Scope of regulation: company size

As we have argued in our previous papers, due diligence obligations: 'should apply to all companies placing cocoa, cocoa products and chocolate (among other commodities) on the EU market, including those that import, process and sell cocoa, cocoa products and chocolate. The legislation should apply to companies regardless of where they are based or registered or their legal form or size, including state-owned enterprises. We recognise that smaller companies may possess simpler supply chains. We do not believe, however, that these companies should be exempted from the due diligence obligation. In a very fragmented end market, the inclusion of smaller players is critical to

establish a level playing field and to ensure that all companies do their part and work closer together to improve the sustainability of the cocoa sector.’

Accordingly, we believe that the exemption of SME traders from the due diligence obligations and the requirement to file due diligence statements should not be maintained, particularly given that 99 per cent of companies in the EU, by number, are SMEs. We propose a change in the threshold company size for traders from SMEs to micro-enterprises (defined as companies which employ fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed €2 million).

Existing text in regulation	Proposed change to
<p><i>Article 6 (Obligations of traders)</i></p> <p><i>Article 11 (Maintenance of due diligence systems and record keeping)</i></p>	<p>Change all references to ‘SMEs’ to ‘micro-enterprises’</p>

3 Smallholder ownership of geolocation data

As stated above, we welcome the inclusion of the requirement for geolocation coordinates of the plots of land where commodities are produced in the information requirement stage of the due diligence procedure. Providing this data, however, along with the specific time or period of time of production, will pose significant challenges to cocoa cooperatives and smallholders. It will require a significant improvement and modernisation of many producer organisations’ management systems, and intensive capacity-building measures for cooperatives and farmers, particularly those smallholders outside formal organisations. As we have highlighted above, these should be high priorities for EU support.

We refer below (in sections 6 and 7) to the provision of support to producer countries and smallholders, but there is also a specific issue round the ownership of the geolocation data. It will be important to ensure that data and access to EU markets does not become the exclusive preserve of larger companies with more effective management systems and technologies. We therefore propose the following amendment designed to ensure that data ownership remains with producers.

Existing text in regulation	Proposed change to
<p><i>Article 9 (Information requirements)</i></p> <p>(3) The Commission may adopt delegated acts in accordance with Article 33 to supplement paragraph 1 concerning further relevant information to be obtained that may be necessary to ensure the effectiveness of the due diligence system.</p>	<p>(3) The Commission may adopt delegated acts in accordance with Article 33 to supplement paragraph 1 concerning further relevant information to be obtained that may be necessary to ensure the effectiveness of the due diligence system, as well as the application of information requirements to smallholders and related safeguards on their right to retain ownership and control over proprietary data.</p>

4 Engagement with stakeholders

One potential unintended adverse consequence of the proposed regulation's market-access approach is to create an incentive for companies placing products on the EU market to abandon high-risk sources in favour of low-risk sources (where this is a feasible option), where the regulatory requirements are less strict. In order to promote a shared approach to challenges and to disincentivise disengagement, the regulation should ensure meaningful engagement with all relevant stakeholder groups, including smallholders, throughout the risk assessment and risk mitigation steps of the due diligence process – which is in line with the general approach to due diligence expressed in, among other documents, the OECD *Due Diligence Guidance for Responsible Business Conduct*. The amendment below inserts that element in the regulation.

We also believe that the EU should foster long-term sourcing relationships between retailers, brands and traders and smallholders and their producer organisations, recognising the role companies can play in providing appropriate support, addressing counter-productive purchasing practices, and creating an enabling environment for smallholders to invest in sustainable and deforestation-free cocoa production. Some of these measures will be encouraged by the amendments we propose below in sections 6 and 7, on partnership agreements and impacts. We also believe that they should be addressed in the proposed Corporate Sustainability Due Diligence directive, and we intend to raise the issue in that context.

Existing text in regulation	Proposed change to
<p><i>Article 10 (Risk assessment and risk mitigation)</i></p> <p>(8) The Commission may adopt delegated acts in accordance with Article 33 to supplement paragraphs 2, 4 and 6 as regards relevant information to be obtained, risk assessment criteria and risk mitigation measures that may be necessary to supplement those referred to in this Article to ensure the effectiveness of the due diligence system.</p>	<p><i>Add new para:</i></p> <p>(8) Operators shall meaningfully engage with relevant stakeholder groups throughout the risk assessment and risk mitigation process. They shall engage with stakeholders prior to taking any decisions that may impact them.</p> <p>(9) The Commission may adopt delegated acts in accordance with Article 33 to supplement paragraphs 2, 4, 6 and 8 as regards relevant information to be obtained, risk assessment criteria and risk mitigation measures that may be necessary to supplement those referred to in this Article to ensure the effectiveness of the due diligence system.</p>

5 Benchmarking risk assessments

The benchmarking process sets out a series of factors to be taken into account in assessing the risk level of the source country or part of country. One of these (in Article 27(2)(f)) is an assessment of the national laws that prevent deforestation, and the standards of their enforcement. We believe that this should be widened to include a wider range of relevant laws, including the categories listed in the definition of the 'relevant legislation of the country of production' in Article 2, which underlies the prohibition and due diligence obligations.

Among other things, this will assist operators in carrying out their risk assessment and risk mitigation procedure, as outlined in Article 10, which includes a requirement to assess conditions in producer countries such as the prevalence of corruption and document and data falsification. It will not always be straightforward for companies to make these assessments, and we believe it would be helpful if the benchmarking process could be extended to cover additional relevant factors.

Existing text in regulation	Proposed change to
<p><i>Article 27 (Assessment of countries)</i> (2) (f) whether the country concerned has national or subnational laws in place, including in accordance with Article 5 of the Paris Agreement, and takes effective enforcement measures to avoid and sanction activities leading to deforestation and forest degradation, and in particular whether sanctions of sufficient severity to deprive of the benefits accruing from deforestation or forest degradation are applied.</p>	<p>(2) (f) whether the country concerned has national or subnational laws in place, including in accordance with Article 5 of the Paris Agreement, and in the categories of relevant legislation defined in Article 2 (28), and takes effective enforcement measures to ensure that those laws are implemented and to avoid and sanction activities leading or contributing to deforestation and forest degradation, and in particular whether sanctions of sufficient severity to deprive of the benefits accruing from deforestation or forest degradation are applied.</p>

6 Partnership agreements

The Cocoa Coalition has consistently argued that the effectiveness of due diligence legislation will be limited unless it is coupled with the creation of the enabling environment required to address the root causes of deforestation and 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. We set out our proposals at more detail in our [paper of June 2021](#).

We welcome the inclusion of the commitment in the regulation of an obligation on the Commission to ‘develop partnerships and cooperation’ with producer countries ‘to jointly address deforestation and forest degradation’ (Article 28(1)). However, the nature and timing of this support is not yet clear, nor are the Commission’s plans to build such partnerships with all major cocoa-producing countries.

We call on the Commission to develop proposals to build partnership agreements or frameworks with all major cocoa-producing countries as a matter of urgency, aiming to address not just deforestation but also its root causes, which generally include poverty and weaknesses in governance and law enforcement.

These partnership agreements should include time-bound frameworks for action agreed by both the EU and the partner country. They should place a particular emphasis on actions at the policy level by producer governments, and should include meaningful incentives and rewards for cocoa farmers

farming sustainably, and support, including development assistance, from the EU and its member states to ensure that the necessary actions can be implemented successfully.

Article 28(3) lists a number of issues that ‘partnerships and cooperation mechanisms’ are to focus on. We believe this list should be extended, to include in particular:

- The use of multi-stakeholder processes in producer countries to define the scope of relevant legislation, and a focus on strengthening national systems of governance and law enforcement, drawing on the experience of implementing the Voluntary Partnership Agreements negotiated between the EU and timber-exporting countries to control illegal logging and the trade in illegal timber.
- The clarification and protection of land use rights, which is critical to any strategy for a sustainable cocoa sector.
- Support for smallholder farmers, from both governments and companies, including for the establishment and comprehensive roll-out of traceability systems, which, as noted above, will prove particularly challenging for those smallholder farmers who are currently not part of farmer organisations.

Existing text in regulation	Proposed change to
<p><i>Article 28 (Cooperation with third countries)</i> (1) The Commission shall engage with producer countries concerned by this Regulation to develop partnerships and cooperation to jointly address deforestation and forest degradation. Such partnerships and cooperation mechanisms will focus on the conservation, restoration and sustainable use of forests, deforestation, forest degradation and the transition to sustainable commodity production, consumption processing and trade methods. Partnerships and cooperation mechanisms may include structured dialogues, support programmes and actions, administrative arrangements and provisions in existing agreements or agreements that enable producer countries to make the transition to an agricultural production that facilitates the compliance of relevant commodities and products with the requirements of this regulation. Such agreements and their effective implementation will be taken into account as part of the benchmarking under Article 27 of this Regulation.</p>	<p>(1) The Commission shall engage with producer countries concerned by this Regulation, including, as a priority, all countries exporting significant volumes of the products listed in Annex I, to develop partnerships and cooperation to jointly address the root causes of deforestation and forest degradation. Such partnerships and cooperation mechanisms will focus on the conservation, restoration and sustainable use of forests, deforestation, forest degradation and the transition to sustainable commodity production, consumption processing and trade methods. Partnerships and cooperation mechanisms may include structured dialogues, support programmes and actions, administrative arrangements and provisions in existing agreements or agreements that enable producer countries to make the transition to an agricultural production that facilitates the compliance of relevant commodities and products with the requirements of this regulation. Such agreements and their effective implementation will be taken into account as part of the benchmarking under Article 27 of this Regulation.</p>

Existing text in regulation	Proposed change to
<p><i>Article 28 (Cooperation with third countries)</i> (3) Partnerships and cooperation shall promote the development of integrated land use planning processes, relevant legislations, fiscal incentives and other pertinent tools to improve forest and biodiversity conservation, sustainable management and restoration of forests, tackle the conversion of forests and vulnerable ecosystems to other land uses, optimise gains for the landscape, tenure security, agriculture productivity and competitiveness, transparent supply chains, strengthen the rights of forest dependent communities including smallholders, indigenous peoples and local communities, and ensure public access to forest management documents and other relevant information.</p>	<p>(3) Partnerships and cooperation shall promote the development and strengthening of integrated land use planning processes and government-mandated sector wide traceability systems, relevant legislations (including multi-stakeholder processes to define the scope of relevant legislation), fiscal incentives and other pertinent tools to improve forest and biodiversity conservation, sustainable management and restoration of forests, tackle the conversion of forests and vulnerable ecosystems to other land uses, optimise gains for the landscape, tenure security, agriculture productivity and competitiveness, and transparent supply chains, protect the rights of ownership, tenure and access to land, including rights of tree tenure for local and indigenous communities, and the right to give or withhold free, prior and informed consent, strengthen the rights of forest dependent communities including smallholders, indigenous peoples and local communities, strengthen national systems of governance and law enforcement, and ensure public access to forest management documents and other relevant information.</p>
<p><i>Article 28 (Cooperation with third countries)</i></p>	<p><i>Add new para:</i> (4) The Commission shall ensure that there are sufficient resources to support smallholders in third countries to comply with the requirements of this Regulation and facilitate their access to the EU market.</p>

As noted above, we also call on the Commission to conduct a comprehensive needs assessment of the challenges that will be faced by smallholder farmers in complying with the regulation, and the support that they will require.

We plan ourselves to publish a more detailed paper on the types of support that should be made available to producer countries and cocoa farmers, from the EU and its member states and from companies in the sector.

7 Reviews of impacts on producer countries

While welcoming the regulation overall, we remain concerned at the likely impact on farmers in producer countries, particularly smallholders, facing the need to change their behaviour over a short period of time or see their products excluded from the EU market. The reviews of impacts envisaged

in the regulation should therefore include more timely and more comprehensive assessments of impacts and corresponding needs.

Existing text in regulation	Proposed change to
<p><i>Article 32 (Review)</i></p> <p>(2) No later than five years after the entry into force and at least every five years thereafter, the Commission shall carry out a general review of this Regulation, and shall present a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal. The first of the reports shall include in particular, based on specific studies, an evaluation of:</p> <p>(a) the need for and feasibility of additional trade facilitation tools to support the achievement of the objectives of the Regulation including through recognition of certification schemes;</p> <p>(b) the impact of the Regulation on farmers, in particular smallholders, indigenous peoples and local communities and the possible need for additional support for the transition to sustainable supply chains.</p>	<p>(2) No later than two years after the entry into force and at least every five years thereafter, the Commission shall carry out a general review of this Regulation, and shall present a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal. The reports shall include in particular, based on specific studies, an evaluation of:</p> <p>(a) the need for and feasibility of additional trade facilitation tools to support the achievement of the objectives of the Regulation including through recognition of certification schemes;</p> <p>(b) the impact of the Regulation on farmers, in particular smallholders, local businesses, indigenous peoples and local communities, specific measures that have been put in place to support smallholders in third countries to comply with the requirements of this Regulation and facilitate their access to the EU market, and the possible need for additional support and other legislative and non-legislative measures for the transition to sustainable supply chains.</p>
<p><i>Article 32 (Review)</i></p>	<p>Add new para (5):</p> <p>(5) The Commission shall continuously monitor the impacts of this Regulation on smallholders, indigenous peoples and local communities in third countries. Such monitoring shall take place through multi-stakeholder dialogues and information exchanges with third countries, intergovernmental, non-governmental, civil society and smallholder organisations, as well as indigenous peoples and local communities. The findings of this monitoring shall be taken into account in the review referred to in Article 32.2(b).</p>

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