
Designing an effective, ambitious and coherent EU regulatory framework to tackle deforestation

Building on local realities and reflections
in productive agrocommodity landscapes

Tropenbos International
Position Paper



An EU regulatory framework should consist of a smart mix of coherent and complementary measures that are strongly interrelated

For the EU to substantially reduce its contribution to global deforestation and play a leading role in achieving the Paris climate targets and the Sustainable Development Goals (SDGs), ambitious intervention measures are needed. These measures need to discourage unsustainable practices and encourage the fair and sustainable production, trade and consumption of commodities. This can be achieved only through an ambitious EU regulatory framework that has a smart mix of three components: (1) strong legislative demand-side measures; (2) additional supporting measures; and (3) partnerships with strong supply-side measures. This framework should be part of a wider set of measures to push for the required structural changes of international value chains in order to contribute to in order to contribute to the SDGs and international climate goals and to reduce pressures on forest frontiers in the long term.*



Component 1: Ambitious demand-side legislation

- To avoid a patchwork of measures, an EU regulatory framework should be cross-sectoral and cross-commodity.
- Demand-side measures should include mandatory due diligence requirements and minimum criteria on deforestation/conversion and human rights.
- To be effective, this requires a thorough understanding of how to implement a policy in a specific context and which additional supporting measures are needed.
- This framework should be part of a wider set of measures to push for the required structural changes, including living wage, addressing power imbalances in value chains, changes in consumption patterns and internalizing the value of forests and its ecosystem services.



Component 2: Additional supporting measures

The design and implementation of an EU regulatory framework should include a thorough analysis and understanding of potential impacts and unintended consequences for specific landscapes, commodities and actors, especially smallholders.

- It is essential that supporting measures are developed to ensure the impact and effectiveness of an EU regulatory framework, and the need for these measures should be discussed in close cooperation with producing countries.

It is especially important to understand how an EU regulatory framework may affect and interact:

- With specific landscapes, each with its own dynamics and contexts.
- In a global agrocommodity market with the potential risk that supply chains will shift to more lenient markets.
- With the risk of disengagement from high-risk-zones to “safe zones”.
- The risk of disengagement by certain actors and the risk of smallholder exclusion.



Component 3: Partnerships

Supply-side measures should:

- Be discussed and prioritized within the partnership in a multi-stakeholder approach and tackle underlying drivers of deforestation and address the local context.
- Consider improving producer’s capacities – especially for smallholders, and for the implementation of climate-resilient, alternative production models.
- Aim to harmonize policies with international frameworks and improve unclear or incoherent national policy frameworks (including definitions) to improve impacts.
- Aim to improve enforcement and governance capacity and strengthen institutions.
- Further clarify and improve tenure and user rights.

Key preconditions and process requirements for partnerships:

- Established for the long term but allowing for some flexibility to adapt to change.
- Based on mutual respect and trust and facilitate for an inclusive multi-stakeholder dialogue with true participation.
- Effective and not “reinventing the wheel”; partnerships should build on existing programmes and initiatives.
- Accountable and transparent and include a reliable monitoring system to measure progress and impacts.
- Supported with sufficient resources and capacity.

* See Tropenbos International policy brief (van Dam et al. 2019)

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In this position paper, we build on examples from producer countries Tropenbos International works in (presented in boxes as this one) as well as recent information and reports.



Component 1

Setting the bar: ambitious demand-side legislation

An EU regulation should apply to all companies, including financial institutions, that place forest and ecosystem-risk commodities (FERCs) on the European Union market. This should be irrespective of the company's size or place of registration (Burkhardt 2020).

Why a cross-commodity focus?

Indonesia is a key producer of palm oil, with 53% of global production in 2017. The country is also an important producer of other agrocommodities, such as rubber (25% of global production), cocoa and wood pulp. **Colombia** also produces a variety of the key deforestation-linked commodities, such as coffee, palm oil and beef (IDH 2020b).



1.1. Basic EU regulation requirements

It is important that the EU regulation clearly defines what is understood by “deforestation-free supply chains” and what minimum requirements must be complied with. Companies should demonstrate that FERCs, and any products containing them, come from land with these four characteristics:

No conversion or degradation of natural forests and other natural ecosystems, and with no link to violation of human rights

An EU regulation cannot be restricted to forests alone. It should also include other natural ecosystems, as without adequate ecosystem protection, EU measures to protect forests might result in increased pressure on and leakage to other ecosystems. Deforestation and ecosystem conversion are often linked to human rights

abuses, and have complex socio-economic drivers such as unclear land rights. It is therefore essential that companies also adhere to the relevant laws and international frameworks connected to human, social and economic rights.

With regards to forestry and land-use change, the requirements should be based on a set of clear sustainability criteria and definitions that go beyond legality, building on international accepted standards, definitions and principles

Legal compliance¹ is not enough to halt deforestation and forest degradation. Many ecosystems lack sufficient legal protection, or protection is fragile, which can still result in large areas being deforested (TRASE 2020). Also, limiting compliance to legality in the place of origin could create an unfair advantage for countries with less rigorous legal frameworks, and may even create an incentive for deregulation in producer countries. A regulatory framework should consist of a clear set of sustainability criteria,² based on international accepted principles, guidelines and definitions,³ such as the UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) or the OECD Due Diligence Guidance for Responsible Business Conduct.⁴



Why go beyond legal?

In **Bolivia**, deforestation increased from 128,043 ha in 2012 to 270,497 ha in 2019. In 2012, less than 8% of the country was legally deforested, compared to more than 42% in 2019 (ABT 2020).

With regards to human rights, the EU regulation should be based on the producer country's local and national laws but as a minimum, on key international agreements

Socio-cultural criteria should be based on and aligned with producer countries' laws. When these laws are not sufficient, criteria should lean on key international agreements; for example, for tenure rights, rights of indigenous people or FPIC. Examples of international frameworks are the ILO's Indigenous and Tribal Peoples Convention,⁵ and the ILO's eight fundamental conventions (Burkhardt 2020).



Aligning social standards with national and local values

In **Ghana**, 80% of the land is held under customary regime and 20% is owned by government (USAID 2013). Under the customary land tenure system in Ghana, land is owned or held in trust by the traditional authority, including clans, individuals and Chiefs/Kings (Shem 2019; Dadson 2006). Land management in the Juabeso-Bia and Sefwi-Wiaw-so landscapes, for example, is in the hands of traditional rulers, family heads and other landowners, and the land tenancy arrangements known locally as abunu and abusa are widely used in the landscapes for the cultivation of food and cash crops such as cocoa (Tropenbos Ghana 2019). If human right indicators that tend to impose foreign socio-cultural values are defined externally, without being aligned with local laws, such as these in Ghana, achieving compliance may be difficult.

The EU regulation should allow for specific measures or guidance to tackle commodity-specific issues or contexts

Specific guidance or measures should, in cooperation with the sector, be developed for individual commodities, providing detailed instructions that are tailored to specific contexts or supply chains (Solidaridad 2020).

1 This is understood as compliance with the legal requirements of the country of origin as related to forestry and land-use change.

2 This is understood as compliance with EU-determined requirements based on the EU definition of, among other terms, "deforestation-free."

3 The Accountability Framework provides global consensus-based norms, definitions and guidance and can serve as a meaningful reference in policymaking.

4 Other examples include the United Nations (UN) Guiding Principles on Business and Human Rights (UNGPs), the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises and the OECD sector-specific guidance instruments.

5 See www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169.



Why the need for additional specific guidance?

In **Ghana**, in the Juabeso-Bia and Sefwi-Wiawso Landscape, more than 95% of land preparation for farming includes slash-and-burn practices. Farmers also rely heavily on herbicides and other pesticides for weed and pest control. Other important issues related to land use that need to be adequately addressed are productivity, intensification and minimum size of land. Problems in the cocoa sector (including child labour and deforestation) are underpinned by the poverty suffered by cocoa-farming households. A minimum price for cocoa would help secure farmers livelihoods (Tropenbos Ghana 2020b). A comprehensive and holistic approach to sustainable production is needed. In **Viet Nam**, growth in coffee production has slowed in recent years and faces environmental constraints (Enveritas 2020). Poor agricultural practices, such as the excessive use of fertilizers and irrigation and the absence of shade trees, leads to soil acidification. Degraded soils are associated with lower yields and infestation by nematodes (IDH 2020a). Adaptation of production to climate change is another important issue for coffee producers, as changing temperatures will make large parts of the currently farmed land unsuitable for coffee production (IDH 2020b). In **Bolivia**, the strong growth of soybean production, in addition to deforestation, is related to social and environmental threats, including soil erosion and land tenure conflicts (NEPCON 2017).

1.2. Defining a clear cut-off date

When developing a minimum standard for deforestation) or conversion, it is necessary to determine one specific point in time — the so-called cut-off date — at which the ecological status of a land area should be assessed, and past which deforestation, conversion and/or degradation for the purpose of extraction, harvesting and production of commodities would not be legally admissible for the purpose of access to the EU internal market (Greenpeace 2020).

Understanding the impacts of a cut-off date

In **Indonesia**, a 2008 cut-off date would likely benefit the older established plantation areas that are predominant in Sumatra, and reward the more established plantation companies that played key roles in earlier deforestation. Smallholder expansion tends to take off only after companies provide a market for their produce and basic infrastructure is in place (Jelsma 2019), delaying their expansion in frontiers. In more recent deforestation frontiers, such as Kalimantan, smallholders comprise less than 20% of the total area, compared to more than 50% in Sumatra. Smallholders are likely to be disadvantaged compared to companies who converted the forests that these communities were dependent on (Jelsma et al. 2020).



Options for determining a cut-off date

- **Year of entry into force of the EU regulatory framework:** This will not conflict with any earlier adopted national legislation, which may have allowed deforestation. However, it may give rise to a deforestation “rush” to secure future economic gains in the period between the adoption of the framework and its entry into force, which may jeopardise its objectives (Greenpeace 2020).
- **An earlier cut-off date:**⁶ This can be consistent with cut-off dates adopted in existing international frameworks, multi-stakeholder initiatives or global certification schemes (Nanni et al. 2020), and might therefore already be adopted as common practice in certain regions or sectors. On the downside, an earlier cut-off date may in reality be difficult to comply with for various reasons⁷ and may exclude certain regions or producer groups (if no alternative compensation mechanism is provided; see component 2).

Each cut-off date has its pros and cons, which differ per region and per stakeholder group. When choosing a cut-off date, the impacts should be well understood. This requires a thorough analysis and assessment of potential risks, impacts and unintended consequences.

⁶ For example, 2008 (aligned with the EU Renewable energy directive).

⁷ Examples include unfamiliarity with the requirements, mistakes by previous owners, and contradictions in previous legislation or incentives.

1.3. Compliance with criteria through mandatory due diligence

In addition to the product requirements set out above, EU legislation should also include a requirement that operators need to conduct due diligence⁸ regarding the compliance of their products with any regulatory requirements. The due diligence approach should be product-specific, as this allows the EU to define a product and to fine companies when their products do not comply. Any due diligence legislation should include clear and feasible measures to guarantee the independence, transparency and credibility of the process (Solidaridad 2020).

An essential element of due diligence is accountability. An EU regulation should ensure that companies cannot avoid liability for the harm they cause by adopting due diligence plans but failing to take action to implement them effectively (Brack and Ozinga 2020). This includes amongst others the development of tightly defined harms and guidance on what constitutes “reasonable” due diligence or care (Forest Trends, 2020). An EU regulatory framework should lead to impacts on the ground and should not just be a tick of a box (Solidaridad 2020).

Requiring operators and traders to ensure the transparency of their supply chains and the traceability of the FERCs they place on the EU market

Enforcing any measure is likely to require traceability across the supply chain (Ozinga 2020) back to where the product comes from (Brack and Ozinga 2020). This traceability mechanism enables the EU to hold individual companies throughout the supply chain accountable for safeguarding sustainability on the ground and to require companies to establish, and report on, traceability throughout their supply chains. At the same time, it is important to have an understanding of the complexities that companies encounter when they implement traceability as part of due diligence (see component 2).

Making use of certification schemes to facilitate compliance

Third-party certification can complement, but not replace, the thorough due diligence processes of companies (Burkhardt 2020). Importantly, certification should not be used as automatic proof of legal compliance. This can create a loophole, as certification can act as a shield for the liability of companies. Rather, certification should be used as tool to support companies to comply with an EU regulation, and should also support independent ground-truthing (van den Hombergh 2020). To ensure impact, the EU regulation should include a condition that certification schemes are designed and implemented effectively with regard to the sustainability criteria they are based on, and the robustness of their certification and accreditation process.

Building on and making use of lessons learned and experience from certification standards

There is no need to reinvent the wheel: valuable lessons can be learned from certification systems about what works, and what does not. Certification schemes can raise the bar, as they can promote certain sustainability aspects that go further than what is required by EU legislation. Also, some certification requirements (e.g., on soil, water, use of pesticides, improving productivity), which may not be included in EU regulations, can support producers in further improving their sustainability practices, especially when these are adapted to local conditions (Tropenbos Ghana 2020b). Certification schemes could, in collaboration with the private and financial sector, reward farmers wherever they go beyond what is required by law; for example, through a price premium, or by using innovative tools such as green bonds (Conference DG ENV 2020).

Uptake will depend on the rate of expansion of certification schemes and on company and sector programmes (Brack 2019); this differs per commodity. The added value of certification is especially high for those regions and for those commodities that have a large uptake. This also makes it more likely that companies will invest in certification so that certification itself can be improved, rather than companies benefitting from low certification standards.

⁸ Due diligence is an ongoing, proactive and reactive reviewing process by which companies can ensure that they respect human rights and do not contribute to environmental damage (Solidaridad 2020).

Halting deforestation as part of the required long-term system change

An ambitious EU regulatory framework is essential to move toward deforestation-free agrocommodity supply chains, but structural changes are needed to contribute to the SDGs and international climate goals, and to reduce pressures on forest frontiers in the long term. This requires collaborative governance of development from all actors involved, including at least financial institutions, private sectors, governments and CSOs.

Changing consumption patterns

A change in the EU's market and consumption patterns is key. This requires promoting locally sourced sustainable production, and a shift toward more resource-efficient consumption patterns, with more plant-based proteins.

Structural market changes to guarantee a living income for farmers

The ability of small-scale farmers to earn a living income is critical to ensuring their viability and economic success. If smallholder households do not earn enough to live on, a sustainable sector is impossible. A living income is also a human right and a precondition for enabling access to other human rights (Fern et al. 2020).

Price fluctuations in a global agrocommodity market may also have a large impact on the livelihoods and decisions of producers. When the price is low, there is limited economic rationale for actors in the supply chain to implement sustainability projects (Scott 2019), especially since certified products are generally more expensive to produce. When prices are high, smallholder farmers are more attracted to cultivation, which may increase the market supply (Scott 2019).

A living income to ensure farmers' resilience

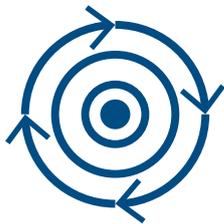
In the **Ghana** cocoa sector, there is increasing advocacy that cocoa farmers need a living income (Fern et al. 2020). The Living Income Differential (LID) implemented by Ghana and Côte d'Ivoire in autumn 2019 is a positive step. Also, the **Ghana** and **Cote d'Ivoire** governments recently announced a floor price for cocoa, aimed at alleviating concerns for producers (IDH 2020b).

In **Viet Nam**, True Price (Fobelets et al. 2017) found that 50–65% of the coffee producers that they studied earned a living income. In comparison, none of the Kenyan producers earned a living income. The better performance of Vietnamese producers is explained by higher yields and relatively lower costs of production.



Internalizing the value of forests and its ecosystems

It is important to promote and valorize standing forests and the integration of trees into productive landscapes. Internalizing environmental, social and governance considerations in policies and prices is essential, so that countries and local communities can generate income from forests to finance long-term development and conservation.



Component 2

Essential supporting measures to ensure an effective and ambitious framework across countries, landscapes and commodities

The drivers of deforestation — and therefore the issues that need to be addressed for an effective response — are affected by location, production system and forest type, and dependent on socio-economic and cultural context. Agrocommodities in a landscape (possibly those for export to Europe) are not produced alone, but are often produced in rotation with other crops, which may be grown partly or totally for self-subsistence or local markets. Leakage may occur when non-compliant agrocommodity land in a landscape starts to get used for crops destined for local markets (Obeng et al. 2019; Tropenbos Ghana 2020a).

Halting deforestation and moving to sustainable agriculture requires an understanding of the local context and its dynamics. To have impact and be feasible, a cross-commodity framework needs to accommodate specific commodity characteristics and landscape contexts, and must be tailored to the specific context, to avoid becoming a mechanism that ignores or overrides local realities and is thus destined to fail (Bager et al. 2020; Jelsma et al. 2020). An EU regulatory framework should consider — and as much as possible, avoid — potential negative direct and indirect impacts and unintended consequences such as leakage. In particular, it should not worsen the already vulnerable situation of actors, especially smallholders, given their crucial role in food production worldwide (Solidaridad 2020; van Dam et al. 2019). Through smart design, supporting measures can create the required support or mitigation needed for more stringent demand-side legislation (TRASE 2020).

Therefore, the design and implementation of an EU regulatory framework should do the following:

- Be based on an effective theory of change (TRASE 2020) and on a thorough analysis and understanding of potential direct and indirect impacts and unintended consequences for specific landscape contexts, commodities, and actors, especially smallholders.
- Include supporting measures to mitigate potential indirect impacts and unintended consequences — to be discussed in close cooperation with producing countries, and embedded in a partnership (see component 3) or more generally in the EU regulatory framework.
- Include thorough and continuous monitoring of potential indirect impacts and unintended consequences as part of the implementation strategy; this includes adjustment of measures over time when needed.
- Enhance the foundation of evidence-based decisions (BMEL 2020) and improve the theory of change and an understanding of which combination of measures has the potential to create the greatest impact.

2.1 Understanding Europe’s role and the potential risk for supply chain shifts to more lenient markets

The role of the EU in driving agrocommodity demand differs in each producing country and for each commodity. Europe’s share of global imports is relatively large for cocoa and coffee, while its role (and influence) is smaller for agrocommodities such as palm oil and soy. This has implications for the effect that an EU regulatory framework can have. When its role is more limited, agrocommodities that do not meet its criteria can find other markets; this is especially a risk in landscapes with other dominant export or local markets that have fewer restrictions.

Possible additional counteracting measures:

- Carry out green diplomacy with other major non-European countries that import high-risk agrocommodities (such as China or the US) with the aim of encouraging them to also require greater sustainability including human rights standards (Solidaridad 2020).
- Support the development and implementation of national sustainability frameworks or standards in producing countries, which should be mandatory for all producers.

2.2 Understanding the risk of disengagement from high-risk areas and a move to “safe zones”

One potential risk is that companies may ensure compliance with regulatory criteria by simply shifting their sourcing to areas with a low deforestation risk while abandoning regions that are considered “high-risk” (Brack 2019). While such companies may avoid having any direct negative impact, they also fail to improve their supply chains and to have a positive impact on landscapes, leaving the producers behind (Solidaridad 2020).

Possible additional counteracting measures:

- Provide incentives and support for frontrunner producers and other actors to engage in high-risk areas (Solidaridad 2020); for example, by rewarding producers for sustainable practices (premiums, secured markets) or by valorizing standing forests and trees in the landscape (e.g., through carbon stocks or other environmental services).
- Carry out risk assessments of countries or sub-national jurisdictions, which are likely to be helpful to companies sourcing from high-risk areas (Brack and Ozinga 2020).

2.3 Understanding smallholder dynamics and their risk of disengagement

Smallholder farmers produce around 70–80% of the world’s food (Ricciardi et al. 2018) and are responsible for a large share of the production of agrocommodities worldwide (Pasiiecznik et al. 2017). Making a transition to deforestation-free value chains therefore requires smallholders to be included and supported (van

Dam et al. 2019). There is, however, a risk that companies may choose to disengage from certain actors, especially smallholders, because of their difficulties in complying with criteria and traceability requirements (Solidaridad 2020). This means an opportunity will be lost to promote sustainable production.



Understanding smallholder dynamics and their specific characteristics

In **Bolivia**, small farms and communities comprise 57% of the titled area and make an important contribution to agricultural production (INDC-Bolivia 2015).

In **Indonesia**, smallholder palm oil producers covered nearly 6 million hectares in 2019 and make up around 40% of the production market (DJP 2019; Purwanto and Jelsma 2020). Lessons learned from RSPO and ISPO reveal the challenges to including smallholders in certification. In 2019, ISPO certification covered 63% of company-managed plantations, while smallholder certification covered a mere 0.1% of the smallholder oil palm acreage. A study on eligibility for certification in Kalimantan (Schoneveld et al. 2019) indicates that most smallholders cannot comply with the requirements; even the less stringent ISPO is likely to lead to smallholder marginalization, unless considerable support is given to them and investments are made (Jelsma et al. 2020).

In **Viet Nam**, more than 640,000 smallholdings are involved in coffee production, representing the majority of private coffee farms. Around 85% of the total coffee area is cultivated by households (ICO 2019).

In **Ghana**, the primary focus of almost all smallholder farmers in the Juaboso-Bia and Sefwi-Wiawso Landscape is cocoa production, with about 90% of smallholder farmers relying on cocoa as their only source of livelihood (Tropenbos Ghana 2020a).

Difficulties in meeting the criteria

When too many barriers exist for smallholders to meet the criteria, or if companies believe that it is more difficult for smallholders to demonstrate compliance with the criteria, there is a risk that companies will exclude smallholders from the supply chain (Brack and Ozinga 2020). There is also a risk that the costs of compliance may be passed down to lower-tier suppliers, worsening the already vulnerable situation of producers (Solidaridad 2020).

Possible additional counteracting measures:

- Develop a thorough understanding is needed of what is happening on the ground.
- Promote a process of ongoing engagement, meaningful inclusion and continuous improvement⁹ (Solidaridad 2020), and for certain contexts promote a certain degree of risk-tolerance,¹⁰ based on a clear timeline and preconditions (see component 3).
- Develop and provide incentives to keep smallholders participating.
- Promote paying living wage and higher commodity prices to smallholders.
- Focus monitoring efforts on impacts on the ground, not only on reporting (Solidaridad 2020).

Difficulties in realizing full traceability

Proving full traceability is an important element of due diligence (see component 1), but it may be complex and difficult to achieve for smallholders, especially for certain supply chains and contexts. Integrating smallholders in sustainable supply chains is difficult due to the complexity of the supply chains and to limited information. The location of smallholders is often unknown, and traceability can be challenging and costly for downstream supply chain actors (Ozinga 2020). This may lead to the risk of smallholders being excluded.

⁹ For example, by first calling attention to unsustainable production practices, then supporting supply chain actors in making more sustainable decisions (Ozinga 2020).

¹⁰ The due diligence approach as formulated in the UN Guiding Principles and OECD guidance is understood to be an ongoing process. It is not assumed that all negative impacts can be avoided immediately; companies are supposed to prioritize their actions depending on the level and type of risk, and work with suppliers to tackle the problems, rather than disengage straight away. There is an assumption that the standard of performance will improve over time. This gradual approach rewards engagement, encouraging companies to work with their suppliers in producer countries to reduce over time the extent of human rights abuses and environmental harm in their operations (Brack and Ozinga 2020).

Traceability in a context with many interactions

In **Indonesia**, traceability is challenging for the significant portion of oil palm planted by smallholders (Pacheco et al. 2018). The supply chains prove the most complex to trace, monitor and support (Jelsma et al 2020). Lessons learned from sustainability initiatives (e.g., RSPO, ISPO) help to understand the feasibility of implementing due diligence, and what is needed to make it work in practice (Jelsma et al. 2020).

Viet Nam has more than 3,000 middlemen and they handle nearly all the country's robusta coffee. Middlemen tend to be independent operators (Enveritas 2020) and are examples of the many interactions in the supply chain.

In **Ghana**, smallholders have limited capacity to implement traceability (Tropenbos Ghana 2020b). Current efforts in traceability are driven mainly by foreign companies. Even then, in most cases traceability is only from farm to first point of purchase, as defined in the Cocoa and Forest Initiative (Tropenbos Ghana 2020b). Full traceability cannot easily be realized when the basic infrastructure for tracing is not available (Tropenbos Ghana 2020b).

Possible additional counteracting measures:

- Understand the complexities that companies encounter when conducting traceability as part of due diligence (Solidaridad 2020).
- Consider traceability for certain contexts and actors as a process of continuous improvement, based on a clear timeline and preconditions. Companies should act on the basis of the best available data, taking a pragmatic approach in identifying key areas of risk (TRASE 2020).
- Stimulate the use of remote sensing, block chain technology procedures and other innovative technical tools to facilitate traceability (BMEL 2020).
- Stimulate the integration of smallholders in marketing units by strengthening farmer's associations, cooperatives and farmer groups.

Exploring the option for compensation

The feasibility of meeting the EU requirements depends partly on the definition and cut-off date used, and partly on whether a distinction is made between types of forest cover, as this has an impact on assessments of forest cover. In cases where agrocommodities are produced on recently cleared forest land (and the EU requirements are not met), the public consultation¹¹ on the range of various demand-side measures explores the option that these clearances are compensated for by tree planting in another location.

High forest cover countries: DRC as an example

Forest cover differs per country and per landscape. In DRC, about 67% of the country is covered by tropical forests, mainly natural forests, representing 60% of the forests of the Congo Basin (UNFCCC-DRC 2018).

The Bafwasende Landscape has a forest cover of 98% (Tropenbos DRC 2020). Deforestation is, however, increasing, mainly as a consequence of shifting cultivation (IDH 2020b; UNFCCC-DRC 2018). There is increasing pressure to bring land into cultivation for agrocommodities such as palm oil. There is by estimation around 280 Mha of additional land suitable for palm oil production in the region, and more than half of this area is located in DRC (IDH 2020b). These developments point to the risk of increasing forest degradation and deforestation and underline the need for sustainable economic growth and giving value to the forest (UNFCCC-DRC 2018).

¹¹ Running from September to December 2020. See also: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12137-Deforestation-and-forest-degradation-reducing-the-impact-of-products-placed-on-the-EU-market/public-consultation>

In terms of environmental services, **it is better in all cases to avoid deforestation than to cut down trees and subsequently reforest**, as deforestation leads to irreversible effects in terms of biodiversity loss and soil degradation. Also, trees and forests provide valuable ecosystem services (soil, water, carbon storage) within an agricultural landscape and need to be protected to safeguard their productivity (Tropenbos International 2018). Planting new trees in another area cannot compensate for this, and particular attention should therefore be paid to developing incentives to value standing trees, forests and ecosystem services.



Understanding the dynamics between forest loss and afforestation

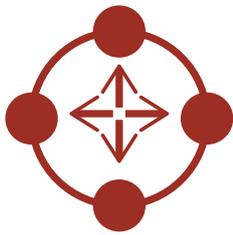
The actual forest area in **Viet Nam** has increased from 11.3 million ha in 1995 to 13.7 million ha in 2010, but much of the increase in that period has been due to the establishment of new plantations, while the quality of natural forests continues to be more fragmented and degraded. As of 2010, more than two-thirds of Viet Nam's natural forests are considered poor or regenerating (MARD 2016).

In **Ghana**, in the Juabeso-Bia and Sefwi Wiawso Landscape, there is a difference between on-reserve and off-reserve deforestation. Off-reserve deforestation refers to the removal of tree cover on agricultural land, usually to less than 10%. In cocoa farms the canopy cover scarcely reaches 30% (Tropenbos Ghana 2020a).

However, under specific circumstances, to be discussed and bilaterally agreed within a partnership (see component 3), some form of compensation could be allowed by planting new trees of comparable quality and diversity in another area to avoid unintended consequences. This might be especially relevant for countries with high forest cover such as DRC and Suriname. Planting should be allowed only under careful, inclusive and participatory land-use planning processes, under the condition of clear set of criteria and governance rules, such as these:

- Exclude the option for compensation for forests with a high social or environmental value (carbon stock, biodiversity water, soil), or forests that are legally protected, building on approaches such as high conservation value (HCV) and high carbon stock (HCS).
- Planting of new trees should take place within the same geographical landscape and should not lead to competition for land or to tenure conflicts.
- The permanence of new trees should be guaranteed over time. To ensure this, it is crucial that reliable monitoring and enforcement mechanisms are in place.
- Lessons can be learned from existing initiatives such as the RSPO remediation and compensation procedure (RSPO 2015)¹².

¹² See for example the work done by Proforest (2018) on High Forest Cover Countries and the procedures in the RSPO remediation and compensation procedure. RSPO growers are required to complete HCV assessments of their land holdings for new plantings since November 2005. The intent is that areas of land under the control of RSPO growers that contain or support high conservation values (HCVs) are not cleared for planting after this date. However, there has been land clearance without prior HCV assessment since November 2005, and the RSPO recognizes the importance of restoring or compensating for the potential HCV losses. It is acknowledged that such land clearance may have resulted from a wide range of causes (including unfamiliarity with RSPO requirements). Therefore, rather than insisting on requirements that would exclude certain growers from certification and/or RSPO membership, the RSPO has developed a procedure to remediate and compensate for land clearance without prior HCV assessment since November 2005.



Component 3

Partnerships: strong supply-side measures to tackle underlying drivers and address the local context

Ambitious EU legislation alone will not solve the underlying drivers of deforestation in producer countries. Strong supply-side measures should therefore be part of the smart mix of measures to address deforestation. Supporting partnerships are needed that stimulate dialogue and tackle the underlying drivers and enablers of deforestation. Partnerships should also discuss and address the unintended consequences (see component 2) that arise from implementation of these measures.

3.1 Partnerships to support supply side measures

Supporting measures should address fundamental issues on the ground and be prioritized by a partnership. Determining the issues will depend on the context and the agrocommodity.

Support measures to improve smallholders' capacity

Although smallholders play a significant role in global agricultural production, they often live in poverty and struggle to have access to or participate more equitably in sustainable agricultural supply chains. Their capacity to move to more sustainable practices is limited (Jelsma et al. 2020). One of the key underlying reasons for this is that smallholders are often poorly organized, or not organized at all (Ozinga 2020). Also, most smallholder producers do not have sufficient access to global financial markets and also lack financial capacity (Ozinga 2020).



Supporting smallholders and understanding their needs

In **Indonesia**, independent oil palm smallholders generally have little access to high-quality planting materials, finance, markets and agricultural input. Their knowledge of good agricultural practices is limited. This has resulted in oil palm yields far below potential and in low farmer incomes (Purwanto and Jelsma 2020). Improving their performance is vital for the sustainability of the sector (Jelsma et al. 2020).

To safeguard smallholder inclusion, long-term support tailored to their needs and capacities is needed, acknowledging that the considerable differences among smallholders and among landscapes require tailor-made solutions (Jelsma et al. 2020).

Solutions should achieve the following:

- Improve the economic position of farmers; for example, by improving contracting and purchasing practices between farmers and buyers or by improving farmers' negotiating power with buyers (Fern et al. 2020).
- Strengthen the participation of farmers in policy-making processes (Fern et al. 2020).
- Strengthen the institutional capacity of farmers, including strengthening cooperatives and their roles, functioning, performance and structure (Fern et al. 2020; Ozinga 2020).
- Provide access to affordable finance to improve farmers' capacity and negotiating position with buyers (Fern et al. 2020).
- Support improved practices to increase yields, reduce costs and increase uptake, or to develop support and safeguard measures to ensure that farmers' adherence to a traceability system does not make them worse off (Fern et al. 2020; Purwanto and Jelsma 2020; Tropenbos Ghana 2020b).

Develop and implement alternative, climate-resilient production models

Partnership measures should also anticipate climate impacts on agrocommodity producing landscapes to reduce farmers', especially smallholders', economic vulnerability. This includes support for the development and uptake of climate-resilient models and alternative production models, such as options to diversify to other crops or markets.



Alternative production models to improve resilience

For coffee smallholders in **Viet Nam**, converting to intercropping and other climate-resilient models can provide economic benefits when compared to mono-cropping. High-value crops such as black pepper and fruit trees are suitable for intercropping, helping to diversify farm income (IDH 2020a). The diversified revenue also provides a buffer to volatility in the global robusta market; volatility only stands to increase as the impacts of climate change intensify.

Develop support measures to improve the coherence of policies with international frameworks

In recent years, an increasing number of countries have developed policies and legislation on halting deforestation, and on climate change mitigation and adaptation. Ideally, to be effective, the EU regulatory framework should be aligned with these national objectives and frameworks. This includes objectives set in country's Intended Nationally Determined Contributions (INDCs), which are the primary means for governments to internationally communicate the steps they will take to address climate change.



Considering local and national definitions

In **Indonesia**, all land is classified as either forestry area (*Kawasan Hutan, KW*) or land for other uses (*Areal Penggunaan Lain, APL*). Although the KW area is supposed to consist of forests and protected areas, 25% of it was not covered by forests in 2011. An estimated 20 million ha (16% of the forestry domain) is classified as "conversion forest," meaning that it can be legally cleared. Of the APL area, 7 million ha is still forested. APL forests are prone to deforestation and prove difficult to protect due to other development priorities (Jelsma et al. 2020).

Another important consideration is which forest definitions are used in a country, and in its REDD+ and INDC plans, and in how well these align with the definitions proposed in the EU regulation, as this will determine how feasible it is to comply with the EU requirements. How forests are defined affects, for example, the amount of land available for agricultural production, and the costs of monitoring compliance (Ozinga 2020). When the legal and practical definitions of forest differ, this creates uncertainty and ambiguity and can lead to confusion around compliance requirements (TRASE 2020). Harmonization of definitions, on the other hand, will simplify enforcement and compliance (Tropenbos Ghana 2020).

Solutions should achieve the following:

- Support ambitious policies and objectives of producer countries to protect forests.
- Align with and contribute to each country's climate and SDG objectives and policies, including those in its INDC.
- Establish a process and dialogue to reach further consensus and alignment of national and internationally used definitions of forest (e.g., forest cover) and deforestation.

Examples of policies and NDCs in producing countries that aim to reduce deforestation and promote sustainable agriculture

In **Colombia**, zero-deforestation agreements were signed with four productive agro-chains (palm oil, cocoa, beef and dairy) between 2017 and 2020 as part of the country's involvement in the Tropical Forest Alliance 2020. Colombia also established the National Council to Combat Deforestation and Other Associated Crimes, an integrated institutional framework to curb deforestation through surveillance and control measure (Minambiente 2019).

In **Ghana**, the NDC policy action for the agricultural sector emphasizes the need to build resilient agriculture (e.g., through promoting climate smart practices) in vulnerable landscapes to respond to the country's development needs and, at the same time, withstand future climate shocks (MESTI 2019).

In **Viet Nam**, the government released the Vietnam Sustainable Coffee Plan up to 2020, and a vision to 2030. The plan sets specific environmental directives, including putting a cap on nationwide coffee cultivation at 600,000 hectares (ICO 2019).

In **Indonesia**, a core component of the implementation of the National Action Plan for Reducing GHG emissions and of the REDD+ framework is reducing emissions from deforestation and forest degradation (Purwanto et al. 2020).

Other examples include the moratorium on clearing primary forests in state forest areas from 2019 (IDH 2020b), the MoEF Ministerial regulation on Essential Ecosystem Areas Management, and the National Action Plan on sustainable oil-palm plantation 2019–24 (Tropenbos Indonesia, 2020).



Improve unclear or incoherent national and regional policies and laws to improve impact

In many producer countries legislation is still unclear or incoherent. Some laws, for example in the agricultural sector, may actively undermine attempts to tackle deforestation. Lack of coordination or even conflict between forest and agricultural policies may dramatically increase deforestation (Ozinga 2020). Harmonizing policies that support and strengthen each other can, on the other hand, create synergies that improve overall policy effectiveness (Bager et al. 2020).

Solutions should achieve the following:

- Improve coherence between national and regional policies and between sectoral policies and priorities.
- Coordinate and establish an overarching land-use planning process (Tropenbos Colombia 2020; Tropenbos Ghana 2020a).



How inconsistent policies and laws can hamper efforts to halt deforestation

In **Bolivia**, the INDC has committed to zero illegal deforestation by 2020 and to increase the surface area of forested and reforested areas to 4.5 million ha by 2030 (INDC-Bolivia 2015). In recent years, however, policies have started to favour the agricultural sector. Law 1098 (2018), for example, promotes the expansion of the agricultural frontier for the production of sugar cane and biofuels (IBIF 2020).

In **Ghana**, the policy on use and management of off-reserve forests is unclear and there is no explicit law on deforestation in off-reserve areas (Tropenbos Ghana 2020).

In **Indonesia**, competing legal frameworks, divergent interests and associated struggles over authority and revenue streams undermine the effectiveness of current laws (Jelsma et al. 2020). There is also a lack of coordination among stakeholders working on oil palm sustainability (Purwanto and Jelsma 2020).

In **Colombia**, cattle ranching is encouraged as a substitute economic activity to coca crops and has generated deforestation (Tropenbos Colombia 2020).

Support measures to improve enforcement, government capacity and institutional strengthening

National policy frameworks, as well as ambitious national-level initiatives, can be constrained in their implementation by enforcement issues (IDH 2020b). For example, Indonesia's extended forest moratorium is a sign of strong top-down action against deforestation, but frequent amendments and a lack of enforcement have diluted their success (IDH 2020b). Countries often lack the capacity to achieve and sustain a climate of good governance and enforcement. Lack and non-transparency of data can be another problem (Jelsma et al. 2020).



Understanding local and national capacities

In **Ghana**, the only legal constraint limiting deforestation for cocoa is the prohibition of land-clearing within national parks and forest reserves. In addition, enforcement of the prohibition is weak, and needs to be improved (Tropenbos Ghana 2020a). This may mean that national forest agencies will need more resources. Another measure would be to introduce legal accountability for downstream actors who buy from illegally deforested areas (Fern et al. 2020).

Solutions should address measures that achieve the following:

- Provide support to develop the required structures, capacity and institutional strengthening so that monitoring, enforcement and implementation of policies are improved.

Support measures to improve tenure and user rights

Insecure tenure rights¹³ have been associated with deforestation and forest degradation (Chomitz et al. 2007). Secure rights can, on the other hand, eliminate the need to clear forest to claim land — a common driver of deforestation in the tropics — and can encourage stewardship of resources over the long term. Tenure is also central to climate change mitigation efforts, since tenure rights determine rights and responsibilities under schemes such as REDD+ (Larson and Springer 2016; Seymour et al. 2014).



Weak tenure rights hamper sustainable practices

In **Bolivia**, soy production is linked to land tenure conflicts that continue to exist in the expansion zone, threatening the rights of indigenous and traditional communities (NEPCON 2017).

In **Indonesia**, an estimated one-third of palm oil smallholders don't have the necessary land-tenure permits. In some cases, smallholders have moved into state-owned forest areas (CIFOR 2019). A study of smallholder farmers in Ketapang Regency learned that 61% of them have no certificate of title. Legality of land in the form of a Certificate of Ownership is a requirement for farmers to obtain ISPO certification (Irawan and Purwanto 2020). Land-tenure insecurity contributes to unsustainable practices, since farmers are less willing to invest in sustainable production due to their lack of secure tenure to the lands they manage (Tropenbos Indonesia, 2020).

In **Ghana**, cocoa farmers do not own the naturally occurring trees on their farm. This removes the incentive for farmers to allow any natural tree regrowth on their farms, which presents a serious obstacle to any reforestation or agroforestry plans. Another issue is weak ownership rights over land (Tropenbos International 2018).

¹³ Tenure rights determine who is allowed to use which resources, in what way, for how long and under what conditions, as well as who is entitled to transfer rights to others and how (see Larson, 2012)

Solutions should achieve the following:

- Support measures to provide further clarity on tenure and user rights.
- It is essential that EU demand-side measures include requirements related to human and social rights, including tenure rights (see component 1).
- To further strengthen these rights, especially for smallholders and local communities, indigenous peoples need to be included as important guardians of forests worldwide.¹⁴

3.2 Key preconditions and process requirements for strong partnerships

Not just the content but the process of developing an effective partnership is important.

Long-term partnerships with the flexibility to anticipate and adapt to change

Long-term partnerships are needed to foster long-term changes in landscapes and value chains (Solidaridad 2020). The partnership should have some flexibility in order to anticipate and adapt to changes in context.

Mutual respect and trust

Within a partnership, there should be mutual respect and trust for commitment while acknowledging state sovereignty (Tropenbos Ghana 2020b). A partnership should reflect the aspirations of both partners; i.e., the producer country and the EU, while both partners should have some responsibilities as well (Tropenbos Ghana 2020b). It is important that both partners clearly understand what they will achieve from the partnership, and that they understand each other's context, objectives and key drivers (Conference DG ENV 2020).

Inclusive multi-stakeholder dialogue with true participation

Any partnership should have a multi-stakeholder process that stimulates dialogue and creates ownership to ensure effective implementation (Tropenbos Ghana 2020b). Stakeholders should be able to prioritize what they see as the most important measures to tackle underlying drivers and enablers of deforestation (Fern et al. 2020). It is therefore important to get the right people around the table: those who are affected by the partnership, and those responsible for implementing it (Ozinga 2020).

There should be an enabling environment to facilitate these partnership discussions (Tropenbos Ghana 2020b) and participatory processes. This means that participants should have the capacity to participate and be truly representative of their constituencies. This also means that all necessary information should be accessible to those participating, and that there is enough time for consultation (Ozinga 2020). Decision-making should build on methodologies that enable participants to decide jointly on priorities and policy actions, after considering topics from other participants' point of view (Fern et al. 2020).

Do not reinvent the wheel: build on existing programmes and initiatives

When developing support measures in a partnership, it is important to know and understand which initiatives and programmes already exist; to assess and learn from them, and to build on and possibly merge with them. This can include adding objectives, stakeholders or partners to existing programmes, or ensuring that information is being shared by them (Fern et al. 2020; Ozinga 2020).

Lessons learned in the VPA-FLEGT process

In **Ghana** it was observed that effective consultation and engagements under the FLEGT-VPA should be underpinned by multi-stakeholder processes. As with the VPA, some flexibility should be allowed to ensure that the partnership can address emerging issues. This should not, however, completely change the partnership's focus (Tropenbos Ghana 2020b).



¹⁴ Indigenous and local communities manage almost one-quarter of the world's lands. In Colombia, forest tenure is held for a major part by ethnic groups, who live in the territories where 53.4% of the natural forests is found (Minambiente 2019).

Partnerships can learn from, build on and cooperate with other initiatives:

- REDD+ capacity-building processes (e.g., technical support, finance) and their objectives, such as better governance (Bager et al. 2020);
- Governmental programmes and initiatives;
- Multi-stakeholder initiatives and dialogues;
- Landscape and jurisdictional approaches,¹⁵ which can foster partnerships, and existing integrated/landscape-level approaches, which can be scaled up and adopted by other regions (IDH 2020a).
- Corporate commitments;
- Voluntary certification and national standards and approaches; and
- Existing Voluntary Partnership Agreements (VPAs) on timber (Solidaridad 2020).



Examples of existing initiatives and programmes to build on

- Multi-stakeholder initiatives and programmes: In **Ghana**, the Cocoa and Forests Initiative (CFI) covers a significant scope of the Ghana Cocoa Forest REDD+ Programme, which is operationally based in so-called Hotspot Intervention Areas (Tropenbos Ghana 2020a), with a multi-stakeholder landscape approach as the basis for interventions. In addition, the Africa Palm Oil Initiative, under the Tropical Forest Alliance 2020, is working with stakeholders at both the national and regional levels to develop acceptable principles for responsible oil palm development in Central and West Africa, including **Ghana** and **DRC**. One of the ambitions of the CFI is to improve supply chain mapping, and to have 100% of cocoa sourcing traceable from farm to first purchase point (CFI 2018). In **Indonesia**, FOKSBI is a multi-stakeholder dialogue forum to harmonize all sectors and initiatives focused on sustainable palm oil, under the coordination of the national government (FOKSBI 2020).
- Government programmes: In **Indonesia**, various government programmes involve land legality, reclassification and redistribution, such as addressing overlapping land-use claims through its One Map policy, peat restoration, and moratoria on further oil palm developments. Technical and financial support could improve the effectiveness of these programmes (Jelsma et al. 2020).
- Corporate commitments: About 74% of palm oil refining capacity in Southeast Asia is covered by zero deforestation or NDPE (No Deforestation, No Peat, No Exploitation) commitments (IDH 2020b). In **Ghana**, various individual cocoa companies have committed to making 100% of their supply traceable from farm to first purchase point (Tropenbos Ghana 2020a).
- Certification schemes and national standards: In **Indonesia**, the ISPO was established in 2011. This certification standard is based on national legislation and is generally less stringent than RSPO. ISPO has been mandatory for all companies since 2014 and will become mandatory for smallholders (Jelsma et al. 2020). In addition, much can be learned from jurisdictional approaches and from Verified Sourcing Areas, currently being developed and implemented in **Indonesia** (Seymour et al. 2020; IDH 2018).
- Landscape approaches: In **Viet Nam**, UN Environment, as part of a consortium of partner organisations is working to establish a zero-deforestation jurisdiction for commodity cultivation in four districts of the Central Highlands (Scott, 2019).

Effective monitoring, transparency and accountability

Effective monitoring of progress is important to be able to make partnerships accountable for progress and to adapt partnerships' objectives if needed (Tropenbos Ghana 2020b). It is also important to monitor the wider impacts of a partnership, so if any unforeseen consequences arise from the implementation process, they can be flagged and effectively addressed. Data and information generated by both producer and consumer countries should be consistent, transparent and accessible to all the stakeholders involved (Tropenbos Ghana 2020b).

The development of national monitoring and/or traceability schemes can facilitate monitoring of implementation at the country and supply-chain level in a harmonized and coordinated way, and may also reduce the administrative burden for producers and companies. Potentially producers and companies can learn from and build on elements of existing monitoring platforms and schemes (e.g., those developed for REDD+ or VPA-FLEGT). Lessons learned from the VPA in Ghana underlined that sufficient resources (human and financial) needed to be available in order to successfully implement any scheme (Tropenbos Ghana 2020b).

¹⁵ For cocoa and palm oil almost 50% of the top producing regions do have active jurisdictional approaches (IDH 2020b).

Effective monitoring: learning from and building on existing monitoring and traceability schemes

In **DRC**, a national surveillance, monitoring, verification and notification system linked to REDD+ activities has been developed (CDPN 2015), while in **Viet Nam**, a timber legality assurance system is being developed under the VPA so it can issue FLEGT licences to verified legal timber products (EFI 2020).

In **Ghana**, several monitoring schemes led by the private sector are operational, but with different parameters. Such disjointed monitoring systems pose a risk to the reliability of results and performance, especially in the absence of a nationally approved scheme. For effective measuring of standards and for successful implementation, there should be a national platform to generate and host data, as well as a harmonized scheme for measuring performance (Tropenbos Ghana 2020b). The ambition of the Cocoa and Forests Initiative (CFI) in Ghana is to develop a transparent and credible process, aligned with the REDD+ Monitoring and Evaluation Framework, to measure and monitor the progress of CFI implementation. This process will be in line with the national forest monitoring system (CFI 2018).

Need for sufficient resources and capacity

Halting deforestation, restoring degraded forest areas and promoting sustainable production require investment (Fern et al. 2020). If the EU embarks on partnerships it must allocate sufficient funds and do so in such a way that it has measurable impacts on the ground, including increased capacity (Tropenbos Ghana 2020b; Ozinga 2020).

These are some of the various options to mobilize funds:

- **Mobilizing development assistance and public finance:** Here, it is important to align with existing finance, such as national funds or REDD+ funds.
- **Increasing the price paid to smallholder farmers for their produce** (Ozinga 2020).
- **Diverting finance provided by companies and the financial sector** away from support for deforestation by requiring transparency and by subjecting financial institutions to EU due diligence requirements (Ozinga 2020).
- **Stimulating the financial sector to invest in sustainable solutions**, including deforestation-free supply chains; for example, through green bonds or sustainable landscape bonds (Fuchs and van Gool 2020; Jelsma et al. 2020).

Examples of options to mobilize finance

- Mobilizing public finance: With the adoption of the national REDD+ strategy and in anticipation of the emergence of the Green Climate Fund, in 2012 the **DRC** established a national REDD+ fund as a financial tool. The regions receiving priority investments from this fund are those most affected by deforestation; e.g., Tshopo, Bas-Uele and Mai-Ndombe (UNFCCC-DRC 2018).
- Innovative solutions: In **Indonesia**, a pilot in West Kalimantan demonstrated that the Results-Based Payment Scheme under the REDD+ programme has great potential for delivering financial flows to local communities, who are subsequently incentivized to practise conservation and peatland management (Purwanto et al. 2020).
- More capital for sustainable efforts: Investment in sustainability efforts in the coffee sector is estimated to be US\$ 350 million annually, a fraction of the annual US\$ 200 billion coffee market (IDH 2020b). More can be mobilized for this purpose (or diverted from non-sustainable financial flows).

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