

## European Cocoa Association position paper on Due Diligence

(December 2019)

### I. THE POTENTIAL ADDED VALUE OF EU DUE DILIGENCE REGULATION

#### Industry efforts to address sustainability challenges require an enabling policy environment

ECA member companies, individually and through a multi-stakeholder global approach, have a strong commitment to take actions to monitor, prevent, mitigate and remedy adverse human rights and environmental impacts of their own operations in their supply chains.

However, the European Cocoa Association members duly recognize that voluntary measures aimed at ensuring a sustainable cocoa sector cannot alone solve these issues without a strong enabling policy environment in both producing and consuming countries.

The legal framework and law enforcement capacity in producing countries is not sufficiently robust to address these complex issues, notably in respect to addressing problems of forced labour, worst forms of child labour, deforestation, land tenure, access to basic services (health, education) and poverty.

#### Human Rights Due Diligence

While progress has been made in terms of developing systemic interventions to address Child Labour - such as the [Child Labour Monitoring and Remediation System \(CLMRS\)](#) implemented by the [International Cocoa Initiative](#) – these have not yet been deployed at sufficient scale to reach the results needed.

This objective to effectively eradicate forced labour and child labour is made more difficult by the lack of basic infrastructure, birth certificates, the very long distances from farms to schools, insufficient children rights' protection safeguards, and the migration flows from neighboring countries - all factors that increase the risk of occurrences of the worst forms of child labour.

#### Environmental Due Diligence

In much the same way, voluntary company initiatives such as the [World Cocoa Foundation \(WCF\) Cocoa and Forest Initiative](#)<sup>1</sup> can only be truly effective if a number of local conditions are met. For example, companies' activities to map their supply chains need to be complemented by effective national forest policies, up-to-date forest, national park and reserve maps, relevant social safeguards and strengthened capacity to enforce legislation.

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<sup>1</sup> [World Cocoa Foundation, Cocoa and Forest Initiative action plans, 3 March 2019](#)

More robust **traceability systems**, that engage all actors in the supply-chain, need to be more formally embedded in producing countries' cocoa sourcing and marketing mechanisms to allow a proper chain of custody from farm to fork. This will only be made possible if the producing country governments significantly strengthen sector policies and support a cooperative approach with private and civil society actors from the cocoa sector, both on the supply and demand sides – convening these stakeholders to determine the best approaches to strengthen existing systems.

In addition, ECA considers that traceability must also be coupled with an effective **farmer registration system** that is maintained and updated. The census that is currently underway in both Ghana and Côte d'Ivoire could be a good starting point to put in place a farmer traceability system and avoid cocoa farm expansion at the expense of forest protection and human rights.

As the largest importer and consumer of cocoa globally, the EU has the duty and the responsibility to address the issues of cocoa sustainability, while providing the right **capacity-building support** and guidance to steer change in the current cocoa production practices.

## II. RECOMMENDATIONS FOR AN EU STRATEGY

ECA believes that an EU Due Diligence Regulation can add value to the functioning of the cocoa supply chain by creating a **level playing field** among companies importing into the EU market – notably through harmonized information requirements – and by driving the demand for sustainably sourced raw materials. However, for it to be meaningful, any EU due diligence system should include a clear strategy to create the above-mentioned enabling environment in cocoa origin countries. That includes a framework which allows for continuous improvements to identify and tackle the obstacles encountered, while taking into account the high level of complexity and the high number of intermediaries in the cocoa supply chain.

Concretely, ECA members recommend the following actions to the EU authorities:

### 1. To take into consideration the specificities of the cocoa sector

Due Diligence will only be effective when origin governments fully commit to addressing the issues that fall within their responsibility.

Issues related to law enforcement, land and forest governance, as well as labour policies and educational infrastructure, are first and foremost local governments' sovereign responsibility. Hence, EU authorities need to reach **an agreement on a framework for action and commitments with cocoa producing countries**, including strong audit measures and time-bound deliverables focusing on:

- **Land tenure:** Definition and clarification of land rights for cocoa farmers
- **Agricultural policy:** Define an agricultural policy aimed at supporting cocoa farmers to improve productivity on existing farm land

- **Reinforcing mandatory traceability mechanisms** across all cocoa origins
- **Law enforcement:** Improving the capacity of local authorities to enforce existing laws
- **Deforestation:** Provide EU support to the implementation of the Cocoa and Forest Initiative in Côte d'Ivoire and Ghana, and if relevant, its extension to other cocoa producing countries
- **Child labour:** Strengthen infrastructure and systems in respect to delivery of birth certificates, and access to quality education
- **Forced Labour:** Strengthen risk-based monitoring of labor practices, allowing the identification of high-risk areas for forced labor and improved remediation

Therefore, in order to be properly implemented, Due Diligence must be preceded by a series of negotiated supply and demand side measures such as the ones that could be envisaged through the Voluntary Partnership Agreements (VPAs) under the EU Forest Law Enforcement Governance and Trade (FLEGT) Action Plan.

For any EU action on due diligence to be effective, the proposed EU legislative framework should consider both the **specificities of cocoa production** and its social and economic situation.

## **2. To take into account the UN Guiding Principles of Business and Human Rights**

The EU Due Diligence Regulation should take guidance from the UN Guiding Principles on Business and Human Rights (UNGPs)<sup>2</sup>, as well as on the OECD-FAO Guidance for Responsible Agricultural Supply Chains<sup>3</sup>.

More specifically, the EU should consider the three pillars of the UNGPs – Protect, Respect and Remedy and consider their key elements:

1. The State duty to protect human rights
2. The Corporate Responsibility to respect Human Rights
3. Access to remedy

## **3. To take a holistic approach to cocoa sustainability**

As mentioned by the OECD-FAO, *“industry-driven programmes are most credible when they involve not only business but also civil society organizations, trade unions and relevant experts and allow building consensus among them”*<sup>4</sup>.

In this regard, ECA highlights that a collaborative framework, based on commitments from the different public and private stakeholders (Governments of cocoa producing countries, industry, the EU authorities, International Organizations and civil society) is the best approach to build effective partnerships and promote a sustainable and transparent cocoa supply chain.

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<sup>2</sup> United Nations, Guiding principles on business and human rights, New York and Geneva, 2011

<sup>3</sup> OECD-FAO, Guidance for responsible agricultural supply chains, Paris, 2016

<sup>4</sup> *Idem*, p. 23

#### **4. Assess the feasibility of having a cocoa sector specific approach versus a general forest-risk commodities wide strategy**

While multi-commodity EU Due Diligence Regulation would appear to be the preferred policy option, one could envisage that its application be phased by commodity, based on sectorial risk and implementation preparedness.

For all the above reasons, we consider that an EU Due Diligence Regulation applying to all companies that place cocoa or cocoa products on the EU market could be a necessary and positive step forward to a sustainable cocoa supply chain, under the right conditions and with the correct framework.

All measures under consideration - from trade and environmental protection to development aid - should be embedded in a mix of coordinated measures to reflect policy coherence objectives at EU level.

All requirements foreseen in legislation requiring carrying out due diligence should apply equally to all the actors of the supply chain, namely the cocoa producing countries, the certification schemes, the cocoa and chocolate industry and the retailers.

### **III. CONCLUSION**

To achieve sector-wide change, all actors involved in the supply chain must take bold commitments on sustainability, while conducting due diligence in their operations.

This can be partially achieved through setting up an EU Due Diligence Regulation for all companies placing cocoa and cocoa derived products on the EU market, complemented by supply and demand-side measures such as the Voluntary Partnership Agreements (VPAs) - similar to the existing FLEGT Action Plan for legally sourced timber.

We also note the urgency to act and therefore look forward to reviewing the EU Commission study on due diligence requirements through the supply chain which was launched in March 2019 by DG Justice.

The members of the European Cocoa Association will continue to strive for the best approach to ensure that cocoa farming is sustainable, for a thriving future of the cocoa sector, farmers, the industry and consumers, and the best use of natural resources.

*The European Cocoa Association (ECA) is a trade association representing the European cocoa sector and regrouping major companies involved in the cocoa bean trade and processing, in warehousing and related logistical activities in Europe.*

*Together, ECA Members represent two-thirds of Europe's cocoa beans grinding, half of Europe's industrial chocolate production and 40 % of the world production of cocoa liquor, butter and powder. ECA also serves as a senior management-level discussion forum for the broad spectrum of companies directly or indirectly related to the cocoa chain.*

**This position paper has been endorsed by the ECA Board and by all ECA Effective members:**

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