



Position Paper on the proposed EU Regulation on Deforestation and Forest degradation

The European Cocoa Association (ECA) welcomes the proposed EU Regulation on deforestation-free products, which has the potential to contribute to a deforestation free cocoa supply chain when supported by an effective enabling environment in cocoa producing countries and supported by cocoa sector specific guidelines.

This Regulation goes hand in hand with existing efforts by all ECA member companies to halt deforestation, including through cocoa sustainability initiatives in several Member states and the multi-stakeholder Cocoa and Forest Initiative (CFI). The purpose of the CFI – which is signed by 35 leading cocoa and chocolate companies, the Governments of Ghana, Côte d'Ivoire, and Columbia – is to halt deforestation, and restore forests.

To guarantee the effective implementation of this Regulation with optimal results for all actors involved we call on the co-legislators to consider the following.

Our members have decades of experience in navigating the complexities of the cocoa supply chain and delivering sustainable development solutions to cocoa growing communities in partnership with civil society and government agencies. This has been primarily achieved in companies direct supply chain because this is where ECA members have improved transparency and access.

However due to the structure of the many types of sourcing supply chains, determined by national marketing systems, EU importers source a significant portion (+/- 50%) from large cooperatives, domestic exporters, international trade houses, and other business actors active on the open market. Influence from ECA members to ensure sufficient traceability to deliver the requirements as set out in the EU legislative proposal would be difficult to achieve without a nationally mandated system that requires a minimum level of farm administration and traceability (i.e., geo-localisation).

An effective enabling environment can be achieved through bilateral government-to-government partnerships, where ECA membership can be a partner in designing, developing, implementing, and trailing national systems that allow for a joint delivery of the transparency and traceability required to transform the cocoa supply chain to be deforestation-free, and put in place the building blocks for comprehensive due diligence across a variety of sustainability issues in the cocoa sector.

Definitions

A universally agreed and clear definition of forests, that takes into account agricultural practices that contribute to the broader sustainability in the cocoa supply chain, is of great importance to all actors.

To this end there is a need to clarify what is considered as 'forest' versus land under 'predominant agricultural use' as this is fundamental to the compatibility of cocoa-agroforestry systems.

Further differentiation is also needed between deforestation / forest cover loss and tree cover loss. Satellite imagery will in most cases not be able to differentiate 'forest' from 'cocoa-agroforestry' or other tree plantations from space.

- Hence, the availability of commonly agreed references to 'forest' data is essential for actors to monitor deforestation and identify Regulation breaches. Such data is currently not publicly available for most cocoa producing countries.

Furthermore, the Regulation does not currently provide for situations in which new trees could constitute a new forest, for example on farmland left purposely fallow to regenerate and improve conditions for agriculture in the future, or on farmland that has been abandoned for a period of time for instance to prevent the spread of pests and diseases, or to regenerate and improve conditions for agriculture in the future. This is common practice in smallholder agriculture mosaic landscapes.

The European Cocoa Association calls on the co-legislators to ensure that these plots of land will not be classified as forests under the Regulation, which would deprive the owners of such farmland of future income and from contributing to carbon capture and restoring biodiversity by planting native trees alongside their cocoa.

- Furthermore, clarity will need to be provided on what precisely constitutes 'deforestation' or 'forest degradation.' For example, what are the consequences for an individual farmer if he cuts down a single tree from a piece of land classified as 'forest' under the proposed Regulation?
- To facilitate the implementation of the Regulation and to minimise the administrative burden on operators and traders, the European Cocoa Association calls for the development and provision of maps indicating the presence of forests, as classified by the Regulation, per country or region.
- In addition, the compatibility of traceability requirements with mandatory cocoa purchasing policies from national bodies in producing countries will need to be assessed by the EU institutions since operators and traders have to comply with these national arrangements.

In addition, Article 3 of the proposed Regulation stipulates that the relevant commodities can only be placed on the market of the European Union when they

have been produced in accordance with the relevant legislation of the country of production. ECA Members are committed to strict compliance with the legislation of the jurisdictions in which they operate.

- To facilitate operators and traders to comply with the reporting obligations of this aspect of the Regulation, we would request the European Commission to publish a list of what it considers to be the relevant legislation in each country.

Scope

ECA Members agree with the proposed list of cocoa products included in the scope of the Regulation and consider important to include derived products in order to minimise the risk of circumvention.

The Regulation provides due diligence obligations on import and export. It follows reason that obligations would be in place for commodities produced in the EU. However, duplication of obligations for products already released for free circulation should be avoided.

- For commodities that are not grown within the borders of the European Union, or grown in insignificant quantities, an exemption must be created as operators will have already provided the required information the moment the cocoa beans or cocoa products enter the market of the European Union.

Information requirements

Traceability requirements imposed by this Regulation would result in a fully segregated and traceable direct and indirect supply chain that distinguishes between deforestation-free cocoa and cocoa where the risk of deforestation is non-negligible or cannot be assessed to the level required by the Regulation.

Due to the complexity of the supply chain, the limitations of the existing regulatory and licensing systems in producing countries, and the need for an efficient transport and processing infrastructure, a significant portion of cocoa beans and products imported into the EU would not comply with the strict traceability and segregation requirements proposed.

For the Regulation to allow smallholder farmers access to the EU market the legislation must be implementable and workable for all stakeholders across the supply chain, while remaining in compliance with local rules and regulations.

- The requirements set out by the Regulation should reflect the realities and complex dynamics of each targeted supply chain.



- In this sense, an approach which allows for the mixing of 100% deforestation-free cocoa originating from known various plots of land must be preserved at all levels of the supply chain to allow for minimal disruption of trade flows.

While extensive work is being carried out by industry actors, NGOs, and origin governments to establish robust and reliable government-mandated national traceability systems, it is unlikely that these can be put in place with sufficient coverage by the time the obligations from the Regulation enter into force. In the absence of robust national traceability systems and farm registration, smallholder farmers would be the ones bearing the burden of the implementation of the legislation, as their cocoa products would in most cases not be compliant for import into the EU market.

Significant progress has been made by a range of industry actors to demonstrate that the deployment of such systems is feasible in supply chains where operators have direct commercial relations with groups of farmers or cooperatives. Companies have mapped farms and introduced digital traceability systems in parts of their direct supply chain, but these systems were not developed for the strict traceability requirements as currently proposed.

They have also already started to build segregated supply chains from countries where they are linked to such “direct” supply chain networks.

- For these efforts to be brought to scale, they must now be integrated and harmonised in the development of national traceability systems applicable to all supply chain actors, so that cocoa supply chains where there are more upstream intermediaries (i.e., middlemen, national exporters, trade houses, terminal exchange) can be connected.

By imposing strict traceability obligations too early, we would risk putting the burden on individual farmers, operating independently, as their cocoa products would no longer be imported into the European market.

There is also a risk that domestic and cross-border smuggling will increase, or that farmers will replace cocoa farming with other crops in new converted forests.

Under several national initiatives for sustainable cocoa - signed by EU Member State governments, several NGOs as well as industry actors - a more reasonable time path has been suggested for full traceability in the supply chain.

- ECA Members call on the co-legislators to seek for alignment with these national initiatives for sustainable cocoa.
- The European Cocoa industry calls on the co-legislators to extend the implementation period for commodities with highly fragmented supply chains

and where millions of smallholder farmers have relatively small plots of land (2-3 ha).

- Information requirements regarding the plot of land, defined as 'an extension of land within a single real-estate property as defined by the laws of the country of production' should reflect the geo-localisation in the absence of robust land tenure documentation, and while the national systems are under development.
- Given the specificities of the cocoa sector where smallholder farmers sell their cocoa to cooperatives, traceability of cocoa products to the cooperative, should be considered as an option during a transition phase.
- Furthermore, cooperatives and first points of delivery should be able to be certified to allow for simplified traceability, minimising the administrative burden for all actors and leading to safer objective outcomes.

Risk assessments

The European cocoa industry recognizes the importance of assessing the presence of risks that may exist in a supply chain.

- To this end, the European cocoa industry calls on the European Union to ensure that criteria listed in Article 10 of the proposed Regulation will be applied in an equal manner across the European Union.

The lack of harmonised standards and reference data for conducting risk assessments may lead to discrepancies between due diligence systems put in place by companies, as well as controls thereof by EU Members States in determining the relative risk and to ensure that companies comply with clear requirements.

The risk assessment criteria listed in Article 10.2(e) of the proposed Regulation, namely "concerns in relation to the country of production and origin, such as level of corruption, prevalence of document and data falsification, lack of law enforcement, armed conflict or presence of sanctions imposed by the United Nations Security Council or the Council of the European Union" should not be determined by companies on an individual basis, as the European Commission and Member States' authorities would be better placed to consider these aspects.

- Therefore, the European Cocoa Association suggests integrating the risk assessment criteria listed above in the assessment of countries under Article 27.
- While this is not foreseen in the legislative proposal on sustainable corporate governance, we believe that an ombudsman system, offering operators and traders the possibility to report suspected deforestation areas, should be considered.

Controls

The European Cocoa Associations calls on the European institutions to ensure that controls conducted under this Regulation are transparent, uniform in their application across all Member States and with minimum disruption to trade flows.

- To this end, the plan for controls developed by competent authorities should be coordinated with the authorities in other Member States to ensure harmonisation.
- In addition, these plans should be disclosed to the public, enabling operators and traders to take the required preparations and they should specify how controls on bulk commodities will work in practice.
- As the proposed Regulation provides for interim measures to be taken in the event of the detection of 'possible serious shortcomings' it is of fundamental importance to clearly define what constitutes 'possible serious shortcomings' as well as what the consequence would be if, after close examination, no shortcomings have been detected.

Sector-specific guidelines

To facilitate the application of the Regulation by both operators and traders, as well as by customs and competent authorities, cocoa-specific guidelines should be developed. Not merely to contribute to a smooth application of the Regulation, but also to guarantee a level playing field across all Member States of the EU.

Examples where such guidance would be of added value include the following:

- Conditions relating to agroforestry practices, regrowth of secondary forest on fallow lands and other smallholder farming practices that are unique to the cocoa sector and that may create frictions with the definitions set out in the draft legislation
- The use of Copernicus satellite imagery
- The collection of verifiable evidence of "deforestation-free" compliance
- The weighing of the risk assessment criteria listed in Article 10 in a uniform fashion

Furthermore, this guidance should address the granularity of data required from farmers to comply with the Regulation (such as addresses and emails required under Article 9), the farmer practices that should be reflected in the traceability requirements (as the farmers do not segregate their production per plot of land) or the expected changes in the product flows, segregation and data management within farmer cooperatives.

Similarly, this guidance should provide operators and traders with a clear expectation of what would be considered credible and verifiable information.

- The Members of the European Cocoa Association believe that the drafting of cocoa specific guidelines will facilitate the adaptation of smallholders and farmers' cooperatives to operate within the framework of this EU Regulation and will support operators/traders to comply with its requirements.
- In addition, such guidelines will ensure a harmonised application of risk assessment in all EU Member States.

Country benchmarking system and cooperation with third countries

Cooperation with origin countries should lead to tangible results, namely the creation of the enabling environment for sustainable cocoa production. This cooperation should put farmers at the centre as they should be incentivised to comply with traceability measures and be registered.

Through policy dialogue, the EU should encourage producing country governments to adopt measures to provide additional remuneration to producers, in the form of a bonus or premium, to encourage them to produce deforestation-free cocoa.

To combat indirect effects such as products linked to deforestation being diverted to non-EU markets, this cooperation should focus on strengthening national government-mandated traceability mechanisms. Not only to contribute to an environment in which European businesses can operate safely, but also to ensure that the smallholder farmers are not negatively impacted by the implementation of the regulatory requirements.

The establishment and strengthening of such systems will also help deliver on the commitment made to the European consumer, as well as to avoid undesired indirect effects including leakage of products linked to deforestation to non-EU markets.

In addition, the cooperation should focus on the training of farmers in sustainable farming practices as well as supporting alternative livelihoods.

To further incentivise producing countries to complete and strengthen effective national traceability systems, we also ask the co-legislators to consider developing a mechanism which would facilitate the recognition of the conformity of these national traceability systems with the proposed Regulation.

If deemed equally effective by the EU to reach the objectives of the Regulation, commodities originating from these national traceability systems should be assigned a certificate of compliance with the traceability requirements of the proposed Regulation. This certificate should then be recognised by the Member States' competent authorities.



To ensure continued compliance of these national traceability systems with the standards of the EU Regulation, regular auditing by an EU body should take place according to uniform and transparent standards.

- Consequently, in the event a producing country has a robust national traceability mechanism in place, evaluated and recognised as such by the European Union, the due diligence procedure should allow for simplified traceability data from the relevant producing country.

Transitional period

The transition period, proposed to be 12 months for non-SME operators and traders, should be extended, in dialogue with producing countries.

This would help them, as well as operators and traders in adapting to the new obligations, to make necessary adjustments in agricultural practices, and contribute to the process of local regulatory reform and enhanced law enforcement to maintain their access to the EU market.

For processed commodities a gradual phase-in should be considered to allow for required adaptations to take place in production countries.

Final remarks

The European Cocoa Association is committed to working towards a cocoa sector that is free of deforestation and is looking forward to working with the co-legislators to ensure that this legislative proposal will be effective in combatting deforestation while ensuring that the requirements set out by the Regulation are implementable with minimal disruption to trade flows.

Ultimately, to reach a situation in which all forms of deforestation and forest degradation are eliminated, an extensive partnership approach with producer countries is of the utmost importance with a view of contributing to an enabling environment for sustainable cocoa production.
