

# Getting to “deforestation-free”

Clarifying the traceability requirements in the proposed EU deforestation regulation

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## Background

On 17 November 2021, the European Commission presented a proposal for a new EU regulation on deforestation-free products (the “**EU Proposal**”)<sup>1</sup> that aims to minimise the EU’s contribution to global deforestation by minimising its consumption of products linked to deforestation. The EU Proposal is an important step forward: global deforestation rates remain alarmingly high – around 10 million hectares of forest are still lost every year, almost 90% of which is caused by the expansion of agricultural production,<sup>2</sup> and the EU remains one of the world’s largest importers of deforestation.<sup>3</sup> Existing measures at the international and regional levels have failed to provide sufficient incentives to shift EU consumption away from products linked to deforestation.<sup>4</sup>

Against this backdrop, the European Commission has proposed a new regulation to ensure that EU consumption of a targeted list of forest-risk commodities (cattle, cocoa, coffee, oil palm, soy, and wood) and certain products derived from them (“**Covered Products**”) are “deforestation-free”<sup>5</sup> and have been produced legally in order to be placed on the EU market (Articles 3(a) and (b) of the EU Proposal; the “**Market Placement Criteria**”).<sup>6</sup> EU operators must exercise due diligence to ensure that their Covered Products meet these Market Placement Criteria before placing them on the market.

The establishment of a legal framework to address the EU’s global deforestation footprint has the potential to mark a watershed in global environmental governance and is a crucial step away from voluntary commitments and market-based measures towards binding legal requirements. It sends a clear signal that change is coming.

However, some industry stakeholders have adopted public positions resisting this change.<sup>7</sup> One element in particular has received significant criticism from industry participants: the requirement to trace forest-risk supply chains back to the point of production, known as a ‘traceability’ requirement.

This briefing explains the traceability requirements in the EU Proposal, responds to concerns raised by industry stakeholders, and reiterates why supply chain traceability is essential to minimising the EU’s contribution to global deforestation.

## Traceability: why it matters

The EU Proposal is explicit that EU operators must exercise due diligence in order to ensure that the Covered Products they intend to place on the EU market comply with the Market Placement Criteria (see Articles 4(2), (3), (5) and 10(1) and (4)). In order to confidently reach this conclusion, the EU Proposal prescribes a “framework of procedures and measures” that set out the minimum steps an operator must complete as part of their due diligence. These include requirements to collect certain information, conduct a risk assessment and adopt risk mitigation measures where necessary (Articles 8, 9 and 10).

As part of the minimum information gathering requirements in Article 9, operators are required to collect the “geo-localisation coordinates, latitude and longitude of all plots of land where the relevant [Covered Products] were produced”, as well as the “date or time range of production” (Art. 9(1)(d)) (the “**Geolocation Requirement**”). This information must be disclosed to national competent authorities in a “due diligence statement” that must be submitted before the Covered Products are placed on the EU market (Art. 4(2) and Annex II).

The justification for the Geolocation Requirement becomes self-explanatory when considered in the context of the Market Placement Criteria – that products must be “deforestation-free” and produced legally in order to be placed on the EU market. It stands to reason that unless operators know where their products were produced, they cannot know whether the land on which they were produced was previously forest, whether it was deforested and if so when, what local laws applied and what they required, or whether those requirements were met.

Traceability is therefore indispensable for a product-based regulation that aims to halt deforestation and forest degradation occurring at the point of commodity production.

## Addressing industry concerns regarding the proposed traceability requirements

Several industry stakeholders have raised concerns about the EU Proposal and especially the Geolocation Requirement on the basis that it would have significant negative impacts on them, their business, on smallholders, or on EU consumers and food security.<sup>8</sup> However, we consider that many of these concerns are unwarranted and do not reflect what the EU Proposal requires. With the aim of clarifying the requirements in the EU Proposal and their potential implications for EU operators, we address the main concerns raised by industry stakeholders below.

### 1 Industry concern: the EU Proposal requires segregated and / or identity-preserved supply chains

Concerns have been raised that the EU Proposal requires that EU operators must use certain supply chain models (such as ‘identity preserved’ or ‘segregated’ supply chains) or prohibits the use of certain supply chain models. (A ‘segregated’ supply chain is one where commodities with certain characteristics are physically segregated from other commodities without those characteristics to prevent mixing. In an ‘identity preserved’ supply chain, batches of commodities are given a unique identifier (e.g. a barcode or QR code) that registers details of their production (e.g. location, producer, date, organic, non-GMO) which is preserved as the commodities move along the supply chain.)

#### Clarification:

The EU Proposal *does not* require EU operators to adopt any particular supply chain model and it *does not* prohibit supply chains with products of mixed origin – supply chains need only be traceable.

The EU Proposal stipulates certain minimum steps which operators must complete as part of their due diligence and the outcome which that due diligence should achieve *without* dictating how operators must complete that process. Nor does it stipulate how operators should structure their supply chains in order to ensure their Covered Products are legal and “deforestation-free”. This allows operators to implement the due diligence requirements and, if necessary, to modify their supply chains, in a manner that best suits their operating context. This would allow operators to adapt their due diligence system in response to changing market dynamics, new sourcing opportunities, evolving industry practices and supplier standards. This approach is likely to put operators in the best possible position to avoid implementation challenges and minimise any potential administrative burden.

Importantly, the due diligence requirements, including the Geolocation Requirement, apply to “all the [Covered Products] supplied by each particular supplier” and in the quantity which the operator intends to place them on the market (Art. 8(1)). For Covered Products being placed on the EU market in shipments, these requirements would apply to each shipment taken as a whole. In other words, while the relevant supply chain must be traceable, it is *not necessary* that each individual product is traceable to its point of origin as it moves through the supply chain.

The Geolocation Requirement may nevertheless have practical implications because it implies that EU supply chains of Covered Products must be traceable to the point of production. The implications for each operator will largely depend on the current level of traceability in their supply chains. For operators sourcing from suppliers with traceable, legal and deforestation-free supply chains, no changes may be required. For example, there may be minimal implications for EU operators sourcing soy from Bunge, which supplies a quarter of the EU’s Brazilian soy imports<sup>9</sup> – the single largest exporter of Brazilian soy products to the EU,<sup>10</sup> because Bunge has already achieved traceability to the farm for 100% of its direct suppliers and 30% of its indirect suppliers and is committed to achieving zero deforestation across its global supply chains (including in other commodities such as palm oil) by 2025.<sup>11</sup>

Importantly, traceability does not necessarily mean that EU supply chains must be segregated or cannot include Covered Products of mixed origin. In this respect, it is important to distinguish the Geolocation Requirement from the requirements to consider supply chain complexity and risks of mixing with products of unknown origin or from deforestation-risk areas as part of the operator’s risk assessment (Articles 10(2)(f) and (g)). These risk assessment criteria are not operative provisions – they do not impose additional obligations on operators. This means that *mixed supply chains are permissible* and *segregated supply chains are not necessary* provided that the due diligence requirements can be completed for all the Covered Products supplied through the relevant supply chain.

## 2 Industry concern: the EU Proposal requires operators to connect individual commodities to the plot of land where they were produced

A similar concern that has been raised is that the EU Proposal requires EU operators to be able to identify the precise parcel of land on which each individual commodity – each soybean, cocoa pod, log of wood, drop of palm oil etc. – in their supply chain was produced, implying the need for ‘identity preserved’ supply chains in which the geolocation details of each individual plot of land of production is attached to each individual commodity.

### **Clarification:**

The EU Proposal *does not* require operators to know the specific plot of land on which each individual Covered Product in their supply chain was produced.

As noted above, the due diligence requirements, including the Geolocation Requirement, apply to all the Covered Products supplied by a particular supplier in the quantity which the operator intends to place them on the market (Art. 8(1)). For example, to each shipment of Covered Products, taken as a whole, entering the EU market. Operators are required to identify “all plots of land where the relevant [Covered Products] were produced” without needing to specify which Covered Products were produced on which plot of land. Likewise, the Geolocation Requirement does not require operators to discern the point of origin for each *individual* Covered Product – there is no obligation that operators must be able to identify the plot of land of production for an individual soybean, cocoa pod, log of wood or drop of palm oil.

This is an important distinction because due diligence conducted on a particular supply chain may cover multiple shipments of Covered Products supplied via that supply chain and does not require operators to trace individual products within each shipment. Where a shipment contains Covered Products for several operators (i.e. where the same supplier is supplying several operators), the entire shipment would need to be traceable because each operator will be subject to the same due diligence obligations. Depending on whether the supplier has segregated their consignment to each operator, it may be that each operator's due diligence effectively covers the whole shipment.

As above, it is important to distinguish the Geolocation Requirement (applied to each supply of Covered Products *in aggregate*) from the requirement to consider "the complexity of the relevant supply chain, in particular difficulties in connecting commodities and/or products to the plot of land where they were produced" in their risk assessment (Art. 10(2)(f)). This is a criterion which operators must consider in their risk assessment – it is *not* an additional traceability obligation.

### 3 Industry concern: the Geolocation Requirement will result in the exclusion of smallholders from EU supply chains

Concerns have been raised that the Geolocation Requirement would lead to the exclusion of smallholders from EU supply chains, resulting in economic marginalisation, impoverishment and practices that threaten the wellbeing of local communities, forests and biodiversity. The main rationale is that smallholders will not be able to provide geolocation details for their farms or that a large investment would be required to collect geolocation information for large numbers of smallholders.

#### **Clarification:**

The EU Proposal *does not* place any restriction on the participation or future inclusion of smallholders in EU supply chains.

However, the potential for unintended negative impacts on smallholder and family farmers supplying the EU market with Covered Products is a risk that deserves to be taken seriously. This is most relevant in the cocoa and palm oil sectors where smallholders represent a significant proportion of producers. For example, smallholder farmers have been recognised as being responsible for 70% of global cocoa produce<sup>12</sup> and up to 90% of cocoa production in West Africa,<sup>13</sup> while 34% of oil palm fruit grown in Indonesia, which produces 60% of the global palm oil supply – the world's largest producer – is grown by smallholder farmers.<sup>14</sup> It is therefore important to ensure that the EU Proposal does not compel EU operators to exclude smallholders from their supply chains and is accompanied by targeted support measures to support and empower smallholders.

In fact, smallholder associations in the cocoa<sup>15</sup> and palm oil<sup>16</sup> sectors have voiced support for a strong traceability requirement in the EU Proposal on the basis that it would improve their position in the global marketplace. They state that greater transparency would benefit smallholders by making them more visible in the value chain, would help drive much-needed sector governance reforms, and would counter efforts by larger industry players to undermine their agency and share of commodity prices.

While there are practical challenges to achieving traceability to the farm level in the cocoa and oil palm sectors, existing examples suggest it is feasible and emerging producer-country traceability initiatives are likely to provide sector-wide incentives and governance frameworks that have been missing in the past.

- (i) In the **cocoa sector**: almost a quarter (22.8%) of the world's cocoa fields are already certified by standards that include traceability and independent auditing requirements;<sup>17</sup> the governments of Ghana and Côte d'Ivoire and 35 leading cocoa and chocolate companies committed in November 2017 to achieve full traceability to the farm-level under the Cocoa & Forests Initiative (which has since been expanded to include initiatives in Cameroon and Colombia);<sup>18</sup> and as of April 2022 the Coffee-Cocoa Board in Côte d'Ivoire had georeferenced 993,031 cocoa farmers (estimated to represent approximately 76% of family cocoa farms<sup>19</sup>) as part of its national cocoa farmer consensus that will provide full traceability from farm to port, with Ghana and Cameroon developing similar national traceability schemes.<sup>20</sup>
- (ii) In the **palm oil sector**: nearly all large companies in the global palm oil supply chain (including growers, traders, consumer goods companies and financial institutions) have committed to achieving 'no deforestation' since at least 2020;<sup>21</sup> traceability to the mill is already common practice and has been achieved by all major European refiners;<sup>22</sup> 83% of the palm oil refining capacity in Indonesia and Malaysia is already subject to a 'no deforestation' commitment;<sup>23</sup> traceability to the plantation is already a common commitment in the palm oil sector and five major palm oil refiners have already achieved at least 48% traceability to plantation;<sup>24</sup> approximately 20% of global palm oil production is certified 'sustainable' by the Roundtable for Sustainable Palm Oil which includes traceability and independent auditing requirements;<sup>25</sup> an open-source 'universal mill list' was established in 2018 that geo-references 1,875 verified mill locations in 27 countries;<sup>26</sup> and the Indonesian Government is implementing a mandatory oil palm grower registration programme that includes the geolocation of oil palm plantations and is free for smallholders.<sup>27</sup>

Despite the apparent feasibility of smallholder traceability, a significant risk factor for smallholder exclusion is whether operators currently sourcing from smallholders will exclude them from their supply chains in order to minimise the cost of compliance. In this regard, the role of large commodity traders may be decisive. For example, eight companies acquire approximately 60% of Côte d'Ivoire's cocoa and just four companies acquire approximately 64% of Indonesia's palm oil.<sup>28</sup> Most global palm oil trading companies have already committed to include smallholders in their supply chains<sup>29</sup> and major European confectionery companies are already investing in smallholder traceability and have even called for stricter traceability requirements.<sup>30</sup>

These sectoral dynamics should be taken into account by EU operators and the European Commission in developing smallholder support measures. More specifically, the European Commission should elaborate on its 2019 commitment to "develop and implement incentive mechanisms for smallholder farmers to maintain and enhance ecosystem services and products provided by sustainable forest management and agriculture"<sup>31</sup> and present concrete proposals to mitigate any risks of unintended negative impacts on smallholders related to the EU Proposal.

#### 4 Industry concern: obtaining and disclosing geolocation, producer and product information would violate data privacy and competition / antitrust laws in producer countries

Concerns have been raised that a requirement to collect geolocation coordinates of smallholder farms would be contrary to data privacy protection laws in third countries (namely Indonesia) and would result in the exclusion of smallholders from EU supply chains, or that the disclosure of information regarding suppliers, buyers, production areas, and product composition could violate competition or antitrust laws in different geographies.

**Clarification:**

The EU Proposal *does not* require personal information or private data of smallholders to be publicly disclosed. Nor does it require information about suppliers, buyers or product composition to be publicly disclosed. Geolocation co-ordinates are not private data or personal information.

While operators are required to collect the name, email and address of direct suppliers and buyers as part of their due diligence process (Articles 9(1)(e) and (f), which reflect existing requirements under EU food safety rules<sup>32</sup>), they are not required to make this information publicly available and need only disclose it to competent authorities upon request (Art. 9(2)). The compulsory disclosure of a supplier's or buyer's name, email or address at the request of a competent authority for the purpose of enforcing the EU Proposal would not violate EU competition law and is highly unlikely to violate third country competition or antitrust laws (in the unlikely event those laws apply to disclosures in the EU).

While operators are required to include geolocation details of all plots of land of production in each due diligence statement, there is no obligation to publicly report this information. Furthermore, public access to the central register of due diligence statements will be restricted to an anonymised dataset (Art.31(5)), thereby disassociating geolocation information from the relevant operator.

Likewise, there is *no obligation to disclose the material composition of products* placed on the market – operators need only identify the products they intend to place on the market according to their Harmonised System code and a free text description in the relevant due diligence statement (Annex II to the EU Proposal). Further details about product ingredients or composition are not required.

Some concerns have been raised specifically about purported legal prohibitions in **Indonesia** that prevent disclosure of oil palm concession details or geolocation coordinates of smallholder plots. However, there is no such legal prohibition. In fact, the Indonesian Government has been ordered by the Supreme Court of Indonesia in 2017<sup>33</sup> and more recently by the State Administrative Court in February 2020<sup>34</sup> to disclose concession maps and plantation permits. However, the Indonesian Government has refused to comply,<sup>35</sup> despite exhausting all means of appeal,<sup>36</sup> and has instead exerted pressure on palm oil plantation companies not to disclose their concession details<sup>37</sup> despite being legally entitled to do so. The legal entitlement of plantation companies to disclose their concession maps and permit details has also been confirmed by the Roundtable on Sustainable Palm Oil.<sup>38</sup>

## 5 Industry concern: the EU Proposal does not take differences between commodity sectors into account

Concerns have been raised that the proposed due diligence requirements and specifically the Geolocation Requirement take a 'one-size fits all' approach that fails to consider the differences between commodity sectors in terms of production, harvesting and storage practices, supply chain infrastructure and trading practices.

**Clarification:**

Due diligence is an inherently context-dependent and risk-based approach that allows operators to take the characteristics of their sector, operating context and supply chains into account. The EU Proposal gives operators flexibility in implementing the due diligence obligations – it prescribes minimum procedural requirements and a clear obligation of results, but does not dictate how they must be met.



Similarly, while the EU Proposal requires operators to establish “adequate and proportionate policies, controls and procedures” to mitigate and manage risks of non-compliance (Art. 10(6)) and “a due diligence system” to ensure compliance with the Market Placement Criteria (Art. 11(1)), operators are given a large degree of flexibility in implementation. This essentially allows operators to design their due diligence systems in a way that is tailored to the particular production, harvesting, storage, logistical and trading characteristics of their sector as well as the characteristics of their own supply chains.

In contrast, enacting different requirements for different commodity sectors would likely lead to a cumbersome and unequal regulatory landscape with potentially conflicting obligations for EU operators active in more than one commodity sector or dealing in products containing derivatives of more than one commodity. The Explanatory Memorandum to the EU Proposal confirms that:

*The EU experience in dealing with complex supply-chain issues (e.g. stemming from the illegal logging related legislation) shows that it is instrumental to ensure a level playing field for operators in terms of requirements to be met before placing products (commodities and derived products) on the EU market.<sup>39</sup>*

Uniform Market Placement Criteria and due diligence obligations provide an essential level-playing field and common standard for all EU operators. A results-based due diligence approach to achieving these outcomes provides this uniformity while also allowing operators to tailor their due diligence practices to sector dynamics and their own commercial and sustainability priorities, including on an ongoing basis as circumstances and priorities change over time.

## 6 Industry concern: complying with the Geolocation Requirement will be very expensive and increase costs for EU consumers

Concerns have been raised that compliance with the Geolocation Requirement would require the duplication of existing supply chain infrastructure to develop segregated supply chains for the EU market, would entail excessively large volumes of data and a high administrative burden, and result in lower availability of Covered Products and therefore higher sourcing costs, leading to much higher costs for operators and ultimately for EU consumers. The example of non-GMO soybean meal has been used to suggest that the price premium for segregated supply chains can range from 50% to 70% of the standard market price.

### **Clarification:**

The experience of existing supply chain traceability initiatives suggests that implementation costs, especially when done at scale, are small and *gradually become negligible* compared to the financial flows linked to soft commodity trade.

For example, the costs to implement the EU Proposal within the soy supply chain are likely to be temporary or negligible because the dominant market players representing a majority market share are already investing in full supply chain traceability and deforestation monitoring systems,<sup>40</sup> in some cases also providing training and transferring technology to suppliers free of charge.<sup>41</sup> Similarly, one of the factors that led to the success of the Amazon Soy Moratorium (established in 2004 to reduce soy-driven deforestation in the Amazon from 2008 onwards, including requirements to achieve traceability to the farm-level) was that it covered approximately 90% of the relevant soy market and the costs of

implementing the monitoring system after the transition period became negligible compared to the revenue flowing to the participants.<sup>42</sup>

The example of price premiums for non-GMO soy similarly demonstrate the importance of implementing traceability at scale to reduce implementation costs: because the volume of certified non-GMO soy compared to total soy trade volumes is minimal, a market segregation strategy is relatively expensive due to high adaptation costs of storage facilities and logistics.<sup>43</sup> In contrast to premiums in the order of 50-70%, a 2020 study on the costs of implementing physical traceability and zero-deforestation criteria for soy and palm products in the French animal feed sector found that the additional costs for consumers for a range of animal products would be between 0.09% and 0.6%.<sup>44</sup>

Indeed, if the traceability and monitoring systems already being implemented by major forest-risk commodity traders can remove deforestation from their supply chains at the point of origin, there *would not be any additional costs* for segregated storage or logistics.<sup>45</sup> Their traceability and zero-deforestation requirements, if applied across their supply chains regardless of the destination of their products, could drive improvements in an entire sector and *avoid* risks of distinct deforestation-free and deforestation-risk markets emerging (also known as 'market leakage').

Improvements in quality and accessibility of deforestation monitoring data in the past decade have also removed the cost of purchasing satellite images - one of the most expensive parts of a deforestation monitoring system. The cost of high quality deforestation data is now negligible for major forest biomes. For example, [Global Forest Watch](#) covers all tropical forests and includes a [map of South American soy-planted areas](#); [INPE](#) and [Mapbiomas](#) monitoring systems cover the entire Brazilian territory; and Imazon releases [monthly satellite monitoring reports](#) on deforestation in the Amazon. All these systems are *publicly available and free to use*.

## 7 Industry concern: the EU Proposal should allow operators to use voluntary certification schemes to complete the due diligence requirements

Comments have been made that the EU Proposal should explicitly state that EU operators can use third party certification schemes and the traceability systems they offer to satisfy the Geolocation Requirement and should recognise certification as evidence that products are "deforestation-free".

### **Clarification:**

The EU Proposal places no restriction on the means and methods operators may use to implement their due diligence obligations, including the Geolocation Requirement. Operators remain free to use voluntary certification schemes, consultants, independent experts etc. The range of options available to operators to implement their obligations do not need to be listed in the EU Proposal.

As noted above, subject to minimum requirements to collect and verify certain information and consider certain criteria when assessing risks of non-compliance (Articles 9 and 10), operators retain discretion in how they complete their due diligence. The EU Proposal even provides that operators may take special account of "complementary information [...] supplied by certification or other third-party-verified schemes" as part of their risk assessment (Art. 10(2)(j)). Nothing prevents operators from using

certification schemes as a tool to help them gather information (including geolocation information), check its credibility or to verify other information they have gathered as part of their due diligence.

However, there are well-documented shortcomings with certification schemes in terms of their independence, governance, transparency, certainty of applicable rules, reliability of monitoring systems, integrity of chain of custody systems, and vulnerability to fraud.<sup>46</sup> A specific study by the Commission confirms these findings.<sup>47</sup> Consequently, certification should not automatically be regarded as evidence of compliance with the Market Placement Criteria or the due diligence requirements and responsibility for the compliance of Covered Products should rest with each operator (Art. 4(3)). Likewise, operators should themselves be able to demonstrate how the information gathered during their due diligence investigations – including information provided by certification schemes – was verified and assessed against the risk assessment criteria (Art 10(5)).

## Conclusion

Many of the concerns raised by industry stakeholders about the EU Proposal seem unfounded and do not present a justifiable basis for weakening the proposed Geolocation Requirement or due diligence obligations. Indeed, there are many examples in each commodity sector where traceability to the extent required by the EU Proposal is already being implemented. We therefore encourage Member States to support the Commission's proposal as it presents a unique opportunity to scale-up existing traceability practices to the sector level, deliver a broad range of benefits for smallholders and local communities in agricultural production areas, and ensure that EU supply chains are deforestation-free.

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- <sup>1</sup> European Commission (2021), 'Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010', available at: [https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products\\_en](https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en).
- <sup>2</sup> FAO (2022) State of the World's Forests Report 2022, at pp.5 and 28, available at <https://www.fao.org/3/cb9360en/cb9360en.pdf>. See also the FAO's FRA 2020 Remote Sensing Survey results, available at: <https://www.fao.org/forest-resources-assessment/remote-sensing/fra-2020-remote-sensing-survey/en/>.
- <sup>3</sup> WWF (2021) 'Stepping up? The continuing impact of EU consumption on nature worldwide', at p.5. Available at: [https://wwfeu.awsassets.panda.org/downloads/stepping\\_up\\_the\\_continuing\\_impact\\_of\\_eu\\_consumption\\_on\\_nature\\_worldwide\\_fullreport\\_low\\_res.pdf](https://wwfeu.awsassets.panda.org/downloads/stepping_up_the_continuing_impact_of_eu_consumption_on_nature_worldwide_fullreport_low_res.pdf).
- <sup>4</sup> European Commission (2021) 'Staff Working Document, Impact Assessment related to minimizing the risk of deforestation and forest degradation associated with products placed on the EU market', at p.18. Available at: [https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products\\_en](https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en).
- <sup>5</sup> Meaning that the production of the relevant Covered Product did not occur on land subject to deforestation or forest degradation after a certain cut-off date (proposed as 31 December 2020; Article 2(8)).
- <sup>6</sup> The same due diligence obligations apply to the export of Covered Products from the EU market, however in this briefing we focus on the import of Covered Products into the EU.
- <sup>7</sup> See for example, COCEROL, FEDIOL, FEFAC (15 February 2022), 'Joint Position on the Commission Proposal for a Regulation for Deforestation-free Supply Chains', p.5, available at: [https://fefac.eu/wp-content/uploads/2022/02/22\\_PR\\_5.pdf](https://fefac.eu/wp-content/uploads/2022/02/22_PR_5.pdf); Chocolate, Biscuits and Confectionery of Europe (CAOBISCO), EU Vegetable oil and protein meal industry (FEDIOL), European Margarine Association (IMACE), European Palm Oil Alliance (EPOA), Roundtable on Sustainable Palm Oil (RSPO), Belgian Alliance for Sustainable Palm Oil (BASP), Fundación Española Del Aceite de Palma Sostenible, Unione Italiana per l'Olio di Palma Sostenibile (Unipalm), (18 May 2022), 'Joint Statement of Palm Oil Sector Organisations on the Proposal for a Regulation on Deforestation-free Products', available at: [https://www.fediol.eu/data/ESPOAG%20joint%20statement%2018%20May%202022\\_final.pdf](https://www.fediol.eu/data/ESPOAG%20joint%20statement%2018%20May%202022_final.pdf); Roundtable on Sustainable Palm Oil (RSPO) (29 November 2021), 'Deforestation: Calling for a Holistic Approach', available at: <https://rspo.org/news-and-events/news/deforestation-calling-for-a-holistic-approach>; Wilmar (2022), 'Wilmar Position Proposal for a Regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010', available at: <https://olenex.com/wp-content/uploads/2022/04/Wilmar-Position-Commodities-associated-with-deforestation-short-version-23-feb.pdf>; FoodDrinkEurope (February 2022), 'Position Paper: Deforestation-free products', available at: <https://www.fooddrinkeurope.eu/wp-content/uploads/2022/02/2202-Deforestation-free-products.pdf>; European Coffee Federation, 'An alternative approach to ensure forest protection', available at: [Odd08e\\_9b95637b3d6845fea21c68e6be0a6924.pdf \(internationalcoffeecouncil.com\)](https://www.internationalcoffeecouncil.com); EuroCommerce (4 April 2022), 'Retail and wholesale: supporting an EU market for deforestation-free products', available at: <https://www.eurocommerce.eu/media/205521/2022.04.04%20-%20EuroCommerce%20on%20Deforestation%20Req-%20FINAL%20.pdf>. See also IDH and Proforest (March 2022), 'EU regulation on deforestation-free products', available at: [https://www.idhsustainabletrade.com/uploaded/2022/03/IDH\\_Forest\\_Positive\\_Options\\_Policypaper.pdf](https://www.idhsustainabletrade.com/uploaded/2022/03/IDH_Forest_Positive_Options_Policypaper.pdf).
- <sup>8</sup> See note the industry statements referenced in note 7.
- <sup>9</sup> 16.2% of Brazilian soybean cake imports and 10.5% of Brazilian soybean imports by volume: research commissioned by ClientEarth and conducted by Aidenvironment in April-May 2022 based on 2020 trade data.
- <sup>10</sup> Based on research commissioned by ClientEarth and undertaken by Aidenvironment in April-May 2022 using 2020 Panjiva shipping data.
- <sup>11</sup> Bunge (3 March 2021), 'Bunge Launches Unprecedented Program to Monitor Soybean Crops from its Indirect Supply Chain in the Brazilian Cerrado', available at: <https://www.bunge.com/news/bunge-launches-unprecedented-program-monitor-soybean-crops-its-indirect-supply-chain-brazilian>; Bunge (2021), '021 Global Sustainability Report', available at: [https://www.bunge.com.br/sustentabilidade/2020/eng/downloads/Bunge\\_RA20.pdf#page=26&zoom=100,0,0](https://www.bunge.com.br/sustentabilidade/2020/eng/downloads/Bunge_RA20.pdf#page=26&zoom=100,0,0).
- <sup>12</sup> Micah Scudder et. al. (2022), 'Smallholder cocoa agroforestry systems: is increased yield worth the labour and capital inputs?', *Agricultural Systems*, Volume 196, ISSN 0308-521X, available at: <https://doi.org/10.1016/j.agsy.2021.103350>.
- <sup>13</sup> Bakhtary, H., Matson, E., Mikulcak, F., Streck, C. and Thomson, A. (2020), 'Company progress in engaging smallholders to implement zero-deforestation commitments in cocoa and palm oil', *Climate Focus*, available at: [http://gurg.de/climatefocus/sites/default/files/20200312%20Smallholder%20Cocoa%20%26%20Palm%20Report%20Edited\\_FINAL\\_0.pdf](http://gurg.de/climatefocus/sites/default/files/20200312%20Smallholder%20Cocoa%20%26%20Palm%20Report%20Edited_FINAL_0.pdf).
- <sup>14</sup> Direktorat Jenderal Perkebunan, "Statistik perkebunan unggulan nasional 2019–2021" (Statistical of National Leading Estate Crops Commodity, Direktorat Jenderal Perkebunan Kementerian Pertanian, 2021), 1056 pp, cited in Erasmus K. H. J. zu Ermgassen et. al. (2022), 'Addressing indirect sourcing in zero deforestation commodity supply chains', *Science Advances*, Volume 8(17), at p. 15, available at: <https://doi.org/10.1126/sciadv.abn3132>.
- <sup>15</sup> In February 2022, 30 Ivorian civil society organisations and 35 Ivorian farmers' organisations representing more than 34,700 cocoa smallholders wrote an open letter to the members of the European Council and Parliament advocating for "the inclusion of a clear traceability requirement in the European regulation": IDEF (28 February 2022), 'RE: Support for the geolocation requirement in the draft EU regulation on deforestation free supply chains', available at: [https://ongidef.org/wp-content/uploads/2022/02/Lettre-aux-membres-du-conseil-et-du-parlement-europeen\\_Finale.pdf?utm\\_source=Fern+Global+List&utm\\_campaign=22e093729a-EMAIL\\_CAMPAIGN\\_4\\_10\\_2019\\_9\\_12\\_COPY\\_02&utm\\_medium=email&utm\\_term=0\\_a3733965c2-22e093729a](https://ongidef.org/wp-content/uploads/2022/02/Lettre-aux-membres-du-conseil-et-du-parlement-europeen_Finale.pdf?utm_source=Fern+Global+List&utm_campaign=22e093729a-EMAIL_CAMPAIGN_4_10_2019_9_12_COPY_02&utm_medium=email&utm_term=0_a3733965c2-22e093729a).
- <sup>16</sup> In March 2022 the largest independent oil palm smallholders' association in Indonesia, representing more than 58,000 farmers, published a statement in support of an EU traceability requirement for palm oil imports, noting that "No-deforestation and traceability are the keystones in our sustainability vision to make palm oil products sellable in the market": SPKS (24 March 2022), 'Position of the Union of Oil Palm Smallholders (SPKS), An independent oil palm smallholders in Indonesia: Submission to the European Commission on the proposal for the regulation regarding commodities associated with deforestation and forest degradation', available at: <https://spks.or.id/detail-sikap-position-of-the-spks-an-independent-oil-palm-smallholders-in-indonesia-submission-to-the-european-commission-on-the-proposal-for-the-regulation-regarding-commodities-associated-with-deforestation-and-forest-degradation>.
- <sup>17</sup> Nitidae (2021), 'Sustainability initiatives in Ivorian and Ghanaian cocoa supply chains: benchmarking and analysis', at p.13, available at: [https://www.nitidae.org/files/766bab9/sustainability\\_initiatives\\_in\\_ivorian\\_and\\_ghanaian\\_cocoa\\_supply\\_chains\\_benchmarking\\_and\\_analys\\_is.pdf](https://www.nitidae.org/files/766bab9/sustainability_initiatives_in_ivorian_and_ghanaian_cocoa_supply_chains_benchmarking_and_analys_is.pdf).
- <sup>18</sup> World Cocoa Foundation, 'Cocoa & Forests Initiative', available at: <https://www.worldcocoafoundation.org/initiative/cocoa-forests-initiative/>.
- <sup>19</sup> Based on estimates that there are between 800,000 to 1.3 million farming households involved in cocoa production in Côte d'Ivoire: Itohan-Osa Abu, Zoltan Szantoi, Andreas Brink, Marine Robuchon, Michael Thiel (2021), 'Detecting cocoa plantations in Côte d'Ivoire and Ghana and their implications on protected areas', *Ecological Indicators* Vol. 129, p.1, available at: <https://doi.org/10.1016/j.ecolind.2021.107863>.

- <sup>20</sup> Based on research commissioned by ClientEarth and undertaken by Aidenvironment in April-May 2022 using 2020 trade data.
- <sup>21</sup> Chain Reaction Research (May 2020), 'NDPE Policies Cover 83% of Palm Oil Refineries; Implementation at 78%', available at: <https://chainreactionresearch.com/wp-content/uploads/2020/04/NDPE-Policies-Cover-83-of-Palm-Oil-Refining-Market.pdf>.
- <sup>22</sup> European Palm Oil Alliance (2021), 'Sustainable Palm Oil for Europe in 2020', available at: [https://palmoilalliance.eu/wp-content/uploads/2021/11/2021-Palm-Oil-Report-21.1s\\_6-scaled.jpg](https://palmoilalliance.eu/wp-content/uploads/2021/11/2021-Palm-Oil-Report-21.1s_6-scaled.jpg).
- <sup>23</sup> Chain Reaction Research (May 2020), 'NDPE Policies Cover 83% of Palm Oil Refineries; Implementation at 78%', available at: <https://chainreactionresearch.com/wp-content/uploads/2020/04/NDPE-Policies-Cover-83-of-Palm-Oil-Refining-Market.pdf>.
- <sup>24</sup> See figure 17 in IDH (2021), 'State of play: role of Europe in driving sustainable palm oil, 2020 Palm Oil Report', available at p. 25, available at: <https://www.idhsustainabletrade.com/uploaded/2021/11/2021-Palm-Oil-Report-21.6-Small.pdf>.
- <sup>25</sup> Estimated by the Roundtable for Sustainable Palm Oil in March 2022 at 19.3%, slightly down compared to previous years: <https://rspo.org/impact>.
- <sup>26</sup> Global Forest Watch (2019), 'Improved universal mill list expands partnerships, improves transparency in palm oil industry', available at: <https://www.globalforestwatch.org/blog/commodities/improved-universal-mill-list-expands-partnerships-improves-transparency-in-palm-oil-industry/>.
- <sup>27</sup> Kehati (May 2020), 'Information Brief: The Government Needs To Accelerate the Data Collection, Mapping and Issuance of Cultivation Registration Letter (STD-B) for Smallholders' Palm Oil', available at: [https://sposindonesia.org/wp-content/uploads/2020/05/Information-Brief\\_-\\_Datacollection-Mapping-and-STDB-Issuance.pdf](https://sposindonesia.org/wp-content/uploads/2020/05/Information-Brief_-_Datacollection-Mapping-and-STDB-Issuance.pdf); FoKSBI (30 May 2021), 'Experiences Sharing to Accelerate STD-B Issuance', available at: <http://foksbi.id/en/news/read/05-30-2021-experiences-sharing-to-accelerate-std-b-issuance>.
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- <sup>29</sup> Through their membership of the Roundtable on Sustainable Palm Oil; RSPO Principle 5, available at: [https://www.rspo.org/library/lib\\_files/preview/1079](https://www.rspo.org/library/lib_files/preview/1079).
- <sup>30</sup> Mars has called for GPS polygon mapping for the cocoa sector: Politico (18 April 2022), 'Polygon mapping is critical to a deforestation-free cocoa supply chain', available at: <https://www.politico.eu/sponsored-content/polygon-mapping-is-critical-to-a-deforestation-free-cocoa-supply-chain/>; Nestle has committed to achieve full traceability and segregation of its cocoa products by as early as 2023: Nestle (27 January 2022), 'Nestlé announces innovative plan to tackle child labor risks, increase farmer income and achieve full traceability in cocoa', available at: <https://www.nestle.com/media/pressreleases/allpressreleases/tackle-child-labor-risks-farmer-income-cocoa-traceability>; the European Cocoa Association "strongly advocate[s] for the comprehensive application of digital GPS polygon mapping for all cocoa farms thus providing uniquely identified farms for deforestation monitoring": ECA (15 April 2022), 'ECA statement on traceability through polygon mapping', available at: <https://www.eurococoa.com/wp-content/uploads/2022/04/15-ECA-statement-on-traceability-through-polygon-mapping-5.pdf>; Ferrero has stated that "we are able to trace all our relevant raw materials back to origin and palm oil and cocoa are mostly traceable back to plantation/farmer": Confectionarynews.com (7 March 2022), 'African cocoa farmers warn EC over industry pressure on deforestation', available at: <https://www.confectionerynews.com/Article/2022/03/07/African-cocoa-farmers-warn-EC-proposals-over-deforestation>.
- <sup>31</sup> European Commission (2019) 'Stepping up EU action to protect and restore the world's forests', p. 11, available at: [https://ec.europa.eu/info/publications/eu-communication-2019-stepping-up-eu-action-protect-and-restore-worlds-forests\\_en](https://ec.europa.eu/info/publications/eu-communication-2019-stepping-up-eu-action-protect-and-restore-worlds-forests_en).
- <sup>32</sup> See Article 18(2) and (3) of the EU General Food Law: Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32002R0178>.
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- <sup>39</sup> Explanatory Memorandum to the EU Proposal, p. 5, available at: [https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products\\_en](https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en).
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