



Cocoa Research

Briefing 3: EU & UK regulations on deforestation and the social and environmental challenges facing the cocoa sector in Côte d'Ivoire.

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0 Executive summary

Cocoa is a crucial sector for Côte d'Ivoire, making a significant contribution to the country's economy and providing income for many producers. However, despite its importance to the Ivorian economy and society, its sustainability is hampered by factors such as producer poverty, child labour and deforestation. However, to ensure the long-term viability of the cocoa sector, it is essential to reconcile production efficiency, social protection and environmental conservation. Existing initiatives and legal frameworks in Côte d'Ivoire have proved inadequate to meet these challenges, and have even partly fuelled them. This third briefing in a series on sustainable cocoa production and trade¹ focuses on the European Union (EU) Deforestation Regulation (EUDR) and the UK Environment Act, the impact these regulations could have on the legal and institutional gaps identified in Côte d'Ivoire and suggested reforms.

The EUDR establishes a mandatory due diligence system for operators and large traders operating in the EU, to guarantee that their products are free from deforestation and that they comply with the local legislation in force in the country of production. It also introduces a benchmarking system to assess the risk of non-compliance in producing countries. The UK Environment Act sets a standard of legality for forest-risk commodities traded in the UK, focusing on compliance with local laws on land use and land rights. These two regulations will have an impact on the cocoa sector in Côte d'Ivoire, which is heavily dependent on the EU and UK markets. To retain access to the European market, Ivorian cocoa operators and traders will have to tackle the problems of deforestation and child labour. For Côte d'Ivoire itself, the regulations represent an opportunity to reform its cocoa sector and remedy some of the shortcomings identified. Issues relating to the environment, prices and child labour will have to be taken into account in this process.

Challenges related to deforestation-free and legality requirements: During workshops with civil society actors in Abidjan, we identified several concerns related to the design of the EUDR and UK environment act. Firstly, the definitions of deforestation and forest degradation in the EUDR are not based on Ivorian legislative definitions, which may imply that legal deforestation, i.e. deforestation permitted under Ivorian law, contravenes the requirements of the EUDR. This risks creating initial confusion among operators and traders in Côte d'Ivoire. In addition, the lack of comprehensive government data on Ivorian forests makes it difficult to assess the real impact of EUDR definitions on any future expansion of Ivorian cocoa farms. Furthermore, as a demand-driven regulation, the EUDR applies a single standard to all products entering the EU market, regardless of where they are produced. In other words, there is no room for tailor-made solutions based on national forestry concerns, unlike the approach used in the FLEGT-VPA.

Secondly, the implementation of the legality criteria in the EUDR and the UK Environment Act may also be difficult, as European companies conducting due diligence may each interpret and apply this legality requirement differently, because local laws are complex and numerous, and may be unclear or contradictory. This could result in an inability to determine whether products from a supply chain comply with all the rules falling within the scope of the legality requirement of the EUDR or the UK Environment Act. In addition, the competent authorities in Member States may not have the capacity and resources to enforce the Regulation effectively in a number of jurisdictions. In Côte d'Ivoire, in particular, the fragmented legal framework for forests and land tenure, as well as the lack of centralised land information and legal knowledge, are creating compliance problems. There is an opportunity here for Ivorian stakeholders in the cocoa sector to improve access to and coherence of legislation, particularly that on land and forestry. Moreover, stakeholders in both Côte d'Ivoire and the EU would benefit from a reference tool for verifying legality criteria, which could take the form of non-exhaustive lists of national and sub-national laws for each of the categories of rules set out in EU and UK regulations. Drawing up such publicly accessible lists of the relevant rules applicable in the country of production could facilitate a common approach between operators and the competent authorities and ensure that no regulation is overlooked. Civil society actors in Côte d'Ivoire could also play a crucial role in identifying the relevant laws and, in so doing, identifying

¹ [A legal pathway to sustainable cocoa in Ghana and Côte d'Ivoire - Introduction | ClientEarth](#)

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areas of legal uncertainty, so as to drive, where appropriate, reforms to improve forest governance beyond EU supply chains.

Environmental concerns: The EUDR and the UK Environment Act have the potential to encourage Côte d'Ivoire to **reform legislation and improve governance** in order to better address the deforestation associated with cocoa production, by tackling forest conversion, land tenure insecurity and the practice of extensive, forest-destroying agriculture. Côte d'Ivoire's cocoa exports to Europe are important to its economy. Côte d'Ivoire may therefore wish to reform its laws to facilitate this trade. And to create an environment conducive to sustainable cocoa production, it is necessary to tackle the factors that drive forest conversion.

In this respect, the EUDR's producer country benchmarking feature could encourage Côte d'Ivoire to address the challenges identified in its legal framework on forest conversion. Indeed, this mechanism will inform the competent EU authorities of the risk associated with the origin of products, which will help to guide operators' due diligence and the competent EU authorities' controls. By improving forest governance and closing legal loopholes, Côte d'Ivoire can aim for a low risk rating, which could provide economic incentives and a competitive advantage in the cocoa market. The benchmarking mechanism could also help identify Côte d'Ivoire's needs and strengthen targeted assistance for improving forest governance through cooperation and partnerships with the EU.

The EUDR also requires a **robust traceability system** for cocoa production to ensure deforestation-free sourcing. Existing certification standards often do not require traceability down to farm level, as the EUDR does, and data sharing between private sector traceability systems is limited. We therefore believe that it would be appropriate for Côte d'Ivoire to implement a centralised national traceability system, guaranteeing transparency, a consistent approach and public ownership of the information flow. With guarantees of credibility and transparency, such a system would benefit Côte d'Ivoire by facilitating compliance with legislation, increasing transparency and security of payments, combating fraud, streamlining and simplifying the system of agricultural cooperatives and improving land tenure security for smallholders. It would also help EU operators to meet their obligations under the EUDR. The main public regulator of cocoa in Côte d'Ivoire, the Conseil Café-Cacao (CCC), has an interest in leading the implementation of such a centralised and robust traceability system, while involving the various stakeholders in the sector, in particular farmers' organisations and civil society organisations.

The EUDR can help to **improve the implementation of the legislation in Côte d'Ivoire** through local channels and through this mechanism allowing third parties to report cases of non-compliance to the competent authorities of the EU Member States, the so-called "substantiated concerns" mechanism. The competent authorities are required to assess the allegations and take action. This mechanism enables local stakeholders to act as a watchdog over errant producers, and to improve transparency and accountability. This is why these regulations are also an opportunity to strengthen the legal framework for Independent Monitoring (IM) activities, which are essential tools for civil society organisations to monitor the implementation of legal texts on sustainable cocoa production and trade. IM can generate a great deal of credible information, useful for benchmarking producer countries and for substantiated concerns procedures. The financial consequences of non-compliance by individual operators on the EU market could also encourage the CCC and other supply chain actors to apply Ivorian legislation more strictly. This context also makes it possible to envisage means and actions to disseminate information and raise awareness among cocoa sector players on sustainability challenges as well as on social and human issues.

The implementation of Ivorian forestry legislation can have a positive impact on deforestation rates and potentially reduce the risk associated with its cocoa production in the eyes of EU buyers and the European Commission. By addressing legal frameworks and improving governance, Côte d'Ivoire can benefit from the impact of the EUDR and strengthen its position in the cocoa market.

Human rights concerns: Neither the EUDR nor the UK Environment Act explicitly provide for the absence of child labour as a criterion for qualifying cocoa beans for their markets. The legality requirement in UK law is not yet clear on whether child labour rules are included, as secondary legislation has yet to be

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presented and adopted. On the other hand, the scope of the EUDR encompasses labour and human rights protected by international law, which includes child labour. Child labour is a violation of human rights, depriving children of their rights to protection, education, health and dignity. Côte d'Ivoire is a party to the international conventions prohibiting child labour. The high rate of child labour in the cocoa sector in Côte d'Ivoire will pose challenges for operators to ensure compliance with the EUDR and international commitments. However, there are concerns that the EUDR will disadvantage small-scale farmers who rely on child labour due to their poverty and lack of resources. Côte d'Ivoire should implement effective policies and programmes to tackle the root causes of child labour, such as poverty, lack of information and training, through education, alternative income-generating activities, monitoring systems, training, capacity-building and awareness-raising efforts. Development partners, including the EU and the UK, could support the implementation of these solutions.

Price concerns: Neither the EUDR nor the UK Environment Act specifically aim to improve the price of cocoa beans or farmers' livelihoods. However, the implementation of these regulations could have an indirect impact on producers. The EUDR, in particular, could benefit smallholders in a number of ways. Clearer and more transparent traceability could simplify supply chains, reduce the involvement of intermediaries and allow producers to receive a greater share of the benefits. It could improve the reliability of sustainability premiums and product prices, ensuring consistent and fair payments to producers. Digital services and geolocation could improve farm management and planning. However, the EUDR could also have unintended negative consequences for smallholders if they are excluded from supply chains or face increased compliance costs. EU operators have the option to support smallholders as a mitigation measure in their due diligence process, but this option is not legally binding. A full review of the impact of the EUDR on smallholders will be carried out after five years, but there are no immediate measures to support them. To address these challenges, the EU could establish partnerships and cooperation mechanisms with producer countries, including helping smallholders meet the anticipated requirements of EU buyers who are subject to the regulation, improving and securing ownership of land and trees, and access to credit. Stakeholder participation and assessment of the impact of the EUDR on producers must be taken into account. In any case, focus must be paid to ensuring that smallholders are not adversely affected by the transition to sustainable agricultural production and the fight against deforestation and forest degradation.

Conclusion: The EUDR and the UK Environment Act could encourage legislative reform and improved governance in the cocoa sector in Côte d'Ivoire. In particular, the EUDR producer country benchmarking could provide an incentive for Côte d'Ivoire to improve forest governance. In the interest of Côte d'Ivoire and given that a robust traceability system is necessary to comply with EUDR requirements, Côte d'Ivoire has the opportunity to strengthen its national centralised traceability system, ensuring transparency, a consistent approach, and ownership of the information flow. In addition, drawing up non-exhaustive lists of national and sub-national laws would facilitate due diligence requirements for operators and controls for the competent authorities in the Member States, and would make it possible to initiate legal and institutional reforms where areas of complexity, ambiguity or contradiction are identified. The EUDR is also an opportunity for Côte d'Ivoire to strengthen its strategy to eliminate child labour on cocoa farms, with the support of partners such as the EU and the UK. Although the regulations do not directly affect the price of cocoa beans or producers' livelihoods, their implementation could have indirect repercussions. Partnerships and cooperation mechanisms are essential to support smallholders and assess the impact of regulations. Close collaboration between the EU, Côte d'Ivoire and civil society is essential for effective implementation of regulations and for tackling both consumer-led and national causes of deforestation and poverty in the cocoa supply chain in Côte d'Ivoire.

1 Introduction

The cocoa sector is essential to Côte d'Ivoire. The sector provides 40% of the world's cocoa supply and mobilises nearly 1 million farmers who provide an income to 5 million people, *i.e.* about one fifth of the Ivorian population. Moreover, it is the country's leading foreign exchange earner and a leading contributor to government revenue. Clearly, cocoa occupies a central place in Ivorian society and in many households².

However, despite its importance to the Ivorian economy and society, the cocoa sector is experiencing major difficulties and is not fully playing its role as a driver of economic, social and sustainable development. Firstly, according to the World Bank, more than half of all cocoa farmers live below the **poverty** line, on less than 757 CFA francs (around USD 1.2) a day. They receive only a tiny fraction of the global revenue from the chocolate industry. Secondly, Côte d'Ivoire's share of the profits made along the cocoa-chocolate value chain worldwide is only 5-7%³. Moreover, the expansion of cultivated areas over the last few decades has come at the cost of the **destruction of the country's forests**, and thus the decline of its biodiversity and soil quality. In addition, the use of polluting pesticides on farms is exacerbating environmental degradation. Finally, **child labour** on cocoa farms is a major problem for the sector. A recent report by the National Opinion Research Center at the University of Chicago⁴ (NORC 2020) puts the number of children working in cocoa production in Côte d'Ivoire and Ghana at 1.5 million. 95% of them are said to be exposed to the worst forms of child labour, such as using dangerous tools or harmful pesticides.

The sustainability of cocoa depends on the reconciliation of three factors: the efficiency of cocoa production and trade (for all actors), social protections and environmental preservation. In response to these challenges, there is an urgent need to reform national, regional and international legal and policy instruments. In Ghana and Côte d'Ivoire, the cocoa sector is governed by national legal and institutional frameworks that organise and regulate cocoa production and trade. These countries also host a variety of international and regional initiatives aimed at improving the sustainability of cocoa. However, these initiatives and legal frameworks are inconsistent and incomplete at addressing the three sustainability factors mentioned above. Their gaps and inadequacies partly fuel the problems described above.

This is the third briefing in a series of three publications. In the first two briefings, published in July and October 2022⁵, we listed all the texts that make up the legal and institutional framework for cocoa production and trade in Côte d'Ivoire (first briefing) and then identified the gaps and possible solutions to the sector's major social and environmental challenges (second briefing). This third briefing will focus on the potential impacts of the European Union (EU) and UK deforestation regulations on the legal and institutional gaps identified in Côte d'Ivoire and on the reforms suggested in the second briefing.

In May 2023, the EU adopted a regulation⁶ that aims to create a European legal framework, based on a **mandatory due diligence system**, to regulate the placing on the EU market and export from it of forest-risk products, including cocoa. The regulation seeks to halt deforestation and forest degradation attributable to the EU, by reducing EU consumption of products from supply chains associated with deforestation or forest degradation to a minimum level.

In addition, in 2021, the UK passed the Environment Act, which provides the post-Brexit framework for environmental protection in the country. Among other things, Schedule 17 of the Act prohibits the use of

² Situation économique en Côte d'Ivoire, *Au pays du cacao, comment transformer la Côte d'Ivoire* (Economic situation in Côte d'Ivoire, In the country of cocoa, how to transform Côte d'Ivoire), World Bank Group, 9th ed., July 2019, available : Cote d'Ivoire Economic Update - World Bank Document.

³ *Ibidem*

⁴ NORC Final Report: Assessing progress in reducing child labor in cocoa production in the cocoa-producing areas of Côte d'Ivoire and Ghana. NORC at the University of Chicago, October 2020, p. 10, https://www.norc.org/PDFs/Cocoa%20Report/NORC%202020%20Cocoa%20Report_English.pdf.

⁵ Available at: <https://www.clientearth.fr/actualites/ressources/dossiers-sur-le-cacao-publication-1/>

⁶ Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the 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://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2023.150.01.0206.01.ENG&toc=OJ%3AL%3A2023%3A150%3ATOC.

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illegally produced forest-risk commodities (FRCs) in UK commercial activities. Subsidiary legislation that will flesh out the Act in terms of the scope of commodities, the size of companies and trading volumes subject to the law, details of due diligence requirements, public reporting and enforcement measures has yet to be presented.

2 Scope of the EU and UK regulations

2.1 Description⁷

The **EU Deforestation Regulation (hereafter "EUDR")** establishes a mandatory due diligence system that relies on a supply chain traceability requirement and stand-alone definitions of deforestation and forest degradation combined with a benchmarking system. On its entry into force, due diligence will be the mandatory tool for ascertaining compliance of the products under the regulation. The EUDR prohibits the placement, making available on or export from the EU market of non-compliant products (products made from seven FRCs are covered so far), and imposes a due diligence obligation on operators and large traders to ascertain the compliance of their products before placing them on the EU market or exporting them. The commodities include cattle, cocoa, coffee, oil palm, rubber, soy, and wood. The EUDR introduces two requirements and stipulates that on its enactment, relevant products shall not be placed, made available on or exported from the EU market unless they are **deforestation-free** and have been **produced in accordance with the relevant legislation of the country of production**. Furthermore, operators and large traders are required to submit due diligence statements when placing relevant products on the EU market or when exporting them that confirm the compliance of their products.

As mentioned above, operators and large traders must ensure that their products were produced in accordance with the **"relevant legislation of the country of production"** (Art. 3(b)). However, the definition of "relevant legislation of the country of production" (Art. 2(40)) only includes a limited scope of laws, i.e. "relevant legislation of the country of production" means the laws applicable in the country of production concerning the legal status of the area of production in terms of: (a) land use rights; (b) environmental protection; (c) forest-related rules, including forest management and biodiversity conservation, where directly related to wood harvesting; (d) third parties' rights; (e) labour rights; (f) human rights protected under international law; (g) the principle of free, prior and informed consent (FPIC), including as set out in the UN Declaration on the Rights of Indigenous Peoples; (h) tax, anti-corruption, trade and customs regulations".

In addition to the "legality requirement" described above, operators and large traders will have to verify that their products are **"deforestation-free"** (Art. 2(13)⁸). The innovation of the single "deforestation-free" definition (based on FAO definitions) is expected to increase the effectiveness of the regulation by preventing the loopholes associated with legal deforestation based on the local laws of each country of production and the introduction by producer countries of lower environmental standards to facilitate access for their products to the EU market. The EUDR sets a **cut-off date of 31 December 2020**, after which any deforestation associated with any of the products covered by the regulation would make it illegal to import them into or export them from the EU.

The **due diligence obligation** requires operators and large traders to gather information, conduct a risk assessment of the risk of non-compliance of their products with the deforestation-free and legality

⁷ For a description on key obligations for EU Member States under this Regulation, please refer to ClientEarth's following briefing: Briefing_New EU Deforestation Reg_Implications for Member States_May 2023.pdf

⁸ "Deforestation-free" means that (a) that the relevant products contain, have been fed with or have been made using, relevant commodities that were produced on land that has not been subject to deforestation after 31 December, 2020; and (b) in the case of relevant products that contain or have been made using wood, that the wood has been harvested from the forest without inducing forest degradation after 31 December, 2020;. Article 2(3): "deforestation" is defined as the conversion of forest to agricultural use, whether human-induced or not. Article 2(7): "forest degradation" is defined as structural changes to forest cover, taking the form of the conversion of: (a) primary forests or naturally regenerating forests into plantation forests or into other wooded land; or (b) primary forests into planted forests.

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requirement, and undertake risk mitigation measures where they cannot ascertain that there is no risk or merely a negligible risk that their products do not comply with those criteria.

In addition to the mandatory due diligence requirement for relevant products, the regulation introduces a **country benchmarking system**⁹. Through this system, the European Commission intends to assess the risk that relevant commodities and products produced in a country or parts thereof are not deforestation-free. Criteria for this risk assessment are primarily based on statistical information (such as rate of deforestation and forest degradation, and rate of expansion of agricultural land for relevant commodities and production trends of relevant commodities and of relevant products). Governance information (such as implementation of international agreements, and the implementation and enforcement of a national legal framework to avoid and sanction activities leading to deforestation and forest degradation) may also be included. The mechanism will then assign each country or parts thereof one of three possible risk levels: low, standard, or high. The **obligations for operators and the competent authorities of EU Member States are differentiated according to the risk level** of the producer country, with simplified due diligence for the relevant products sourced from low-risk countries and enhanced scrutiny by competent authorities conducting checks on companies sourcing from high-risk countries and the relevant products.

The implementation of this benchmarking system is meant to achieve three objectives¹⁰:

1. To incentivise countries to guarantee stronger forest protection and governance,
2. To facilitate trade and better calibrate enforcement efforts by helping competent authorities to focus resources where they are most needed (i.e. supply chains from high risk areas), and
3. To reduce companies' compliance costs (through simplified due diligence for products from low risk areas).

Unlike the EUDR, **Schedule 17 of the UK's Environment Act**¹¹ seeks to set only a legality standard for forest-risk commodities traded in the UK in a bid to reduce the UK's global deforestation footprint and to promote the sustainable production of these commodities. The main operative provision in the UK Act is that "a regulated person in relation to a forest risk commodity must not use that commodity or a product derived from that commodity in their UK commercial activities unless relevant local laws were complied with in relation to that commodity". The Act requires regulated persons to establish and implement a due diligence system that gathers information on FRCs, assesses risk and mitigates the identified risk.

Unlike the EUDR, the list of FRCs has not been specified yet but will be listed in upcoming secondary legislation. The scope of laws for the legality standard has been limited to local laws concerning land use and land ownership and there is no sustainability requirement.

Both the EU and the UK are important markets for Ivorian cocoa. It is therefore expected that these regulations will have an impact on cocoa production and trade, as cocoa beans must now be produced without causing deforestation (for the EU) and in accordance with the relevant Ivorian laws (for the EU and UK). Although Côte d'Ivoire could consider transitioning to alternative markets with less demanding regulations, the country's heavy reliance on the EU market makes this a challenging proposition.

Therefore, we believe that the legal and institutional shortcomings that have been identified in our previous briefings must be addressed to create conducive circumstances to produce cocoa beans that will qualify for the EU and UK markets. It is therefore expected that these two regulations will provide Côte d'Ivoire the opportunity to pursue a reform of the cocoa sector that comprehensively and effectively addresses the identified shortcomings. The implications and impacts for environmental, price, and child labour concerns are considered in turn below. **The question is whether these regulations can act as a lever to address the social and environmental concerns of the cocoa sector in Côte d'Ivoire. More specifically, can**

⁹ Article 29 of the EUDR.

¹⁰ Preamble of the proposed Regulation under "Detailed explanation of the specific provisions of the proposal", p. 19.

¹¹ Adopted in November 2021.

these regulations contribute to resolving the shortcomings of national legal and institutional frameworks relating to cocoa?

2.2 Challenges with the deforestation and legality requirements

Prior to delving into the implementation of these regulations, we have taken note of several obstacles and issues raised during our workshops with civil society actors and farmer-based organisations¹². These concerns have provided valuable insight into the contextual factors that will influence the enforcement of these regulations. We consider them below.

Firstly, the **non-negotiable definitions of deforestation and forest degradation**¹³ in the EUDR apply irrespective of policy and legislative definitions in Côte d'Ivoire. Products that don't meet the deforestation and forest degradation-free definition in the EUDR will be non-compliant, even if Ivorian law would determine that their production has been legal. In other words, the EUDR definitions apply to both illegal and legal deforestation. Indeed, the notions of forests used in Côte d'Ivoire do not fully coincide with those proposed by the EU. In the Ivorian context, agriculture and urbanisation are authorised in certain forest areas and do not constitute illegal deforestation. For example, given that Article 2 of the Regulation defines "deforestation" as conversion of forest to agricultural use, whether human-induced or not, it is not certain that agroforestry, when made possible and legal by the necessary Ivorian implementing legislation, will be considered to comply with the "zero deforestation" criterion¹⁴. In addition, certain wooded areas that are not considered as forests under Ivorian policy may meet the requirements of a forest under the EU regulation. In addition, the fallow farming method, which is not considered deforestation in Côte d'Ivoire, may be considered deforestation under the EU regulation, if an area is fully restored to meet the forest definition in the EUDR and then deforested to re-plant agricultural products. The EUDR will have an impact on the cocoa sector in Côte d'Ivoire in that, when agricultural land is extended through deforestation or forest degradation (as defined by the EUDR) for the production of the products covered (after 31 December 2020), the cocoa from it will not be able to enter the EU market. Without careful consideration of how to support producers (whether via companies or via the Ivorian government), such a zero deforestation concept could have a considerable impact on producers' livelihoods and it will be essential to put in place alternative livelihoods for the farming households concerned, to support improvements in cocoa farming practices that do not rely on the expansion of cocoa into forest areas to maintain farmer livelihoods and/or structural reforms in the cocoa sector to enable farming households to generate better income from producing compliant products (e.g. through pricing, improved transparency in the cocoa supply chain etc.).

Another concern is the uncertainty of the current state of Côte d'Ivoire's forests¹⁵. Due to lack of comprehensive government data concerning Ivorian forests, in terms of coverage and scale, it is difficult to determine the extent of the consequences of the definition provided by the EU, without further studies and research.

As a demand-side regulation, the EUDR restricts the products that can be imported from Côte d'Ivoire to the EU. Unlike the VPA-FLEGT approach, it does not offer room for collaboration between the EU and producer countries to determine tailored solutions to each country context, in accordance with national

¹² In 2020, ClientEarth launched a series of legal workshops on cocoa, in partnership with Dr. Kra and IDEF (Initiatives pour le Développement Communautaire et la Conservation de la Forêt), to share knowledge with civil society organisations and cocoa farmers about the legislative and regulatory frameworks in place for cocoa production and trade in Côte d'Ivoire, as well as the forthcoming EUDR and its implications for Côte d'Ivoire.

¹³ "Deforestation" is defined as "conversion of forest to agricultural use, whether human-induced or not".

"Forest degradation" is defined as "structural changes to forest cover, taking the form of the conversion of: (a) primary forests or naturally regenerating forests into plantation forests or into other wooded land; or (b) primary forests into planted forests".

¹⁴ There is no general answer for this practice: products derived from agroforestry could comply with the no deforestation requirement, particularly if the cocoa has been produced without agroforestry having replaced a forest after 2020.

¹⁵ Arguably, the EUDR will produce more data on forests in Côte d'Ivoire because of the traceability requirement and data collected by the Forest Observatory.

forestry concerns¹⁶. Instead, the EUDR applies a single standard to the entire EU market for all relevant products, regardless of where they were produced.

Secondly, the **legality criteria**, as defined in the EUDR and the UK Environment Act, might also be **difficult to implement**. The task to identify the relevant legislation in the country of production lies primarily with European companies conducting their due diligence. The risk here lies in individual companies developing incomplete lists of relevant legislation which do not identify all applicable laws. Left to European companies alone, there is a risk that they may interpret and apply this legality requirement restrictively – as has been the case under the EU Timber Regulation (EUTR) – and fail to consider whether the commodities and products in the supply chain were produced in accordance with all the rules falling within the scope of the EUDR or UK Environment Act legality requirement. In some cases, requirements imposed by local laws may also be hard to determine because they are complex, unclear or contradictory.

In a scenario where each individual operator and large trader is developing their own list of applicable laws, this also creates a tall order for competent authorities who may lack the capacity and resources to fully undertake legal analysis across many jurisdictions worldwide while conducting the necessary checks to enforce the regulation properly.

Under the EUTR, competent authorities have generally not challenged companies on legal issues relating to environmental conservation or land tenure, because they lack the necessary capacity and resources to investigate and assess the relevant legal frameworks in third countries to the extent necessary to properly enforce the EUTR. In a Forest Trends survey of EUTR competent authorities, 88% said they had sanctioned a company for non-compliance with harvesting laws, but only 13% said they had sanctioned companies for legal issues related to biodiversity conservation or land use¹⁷. Competent authorities report that bringing successful cases on customary land tenure issues is, in practice, close to impossible, as it requires fieldwork at the community level if those rights have not been formally registered.

Operators and traders may also be ill-equipped to identify all the rules applicable in their supply areas and whose compliance they need to verify. If each operator were to create its own interpretation of the legality requirement, there would be duplication of effort and, ultimately, more pressure on the competent authorities to ensure that operators fulfil their obligations under the Regulation.

One option for mitigation of this risk is for publicly available lists of relevant rules applicable in the country of production to be developed. This could be an opportunity for producer country stakeholders: by proactively developing such lists, they could facilitate a common approach among operators and ensure no regulation is overlooked by operators and competent authorities. This would allow them as well to identify areas requiring law reform and to start a national dialogue in this respect.

These lists would serve as non-exhaustive guidance for both operators and competent authorities but would not exempt operators and large traders from identifying additional relevant applicable rules when conducting their due diligence. The guidance could clearly state the points in national laws against which compliance should be systematically established by competent authorities.

In Côte d'Ivoire, some of the legislation governing cocoa production is complex and compliance is sometimes difficult to verify. This is particularly true for cocoa production in an area within a classified forest made available to communities, which is considered to be an “enclave”¹⁸. Today, it is difficult to know whether the area in question can legally be considered as an enclave or not, due to the scattered

¹⁶ Article 30 of the EUDR does offer room for some collaboration between the EU and the producer countries but it does not allow for negotiation on the meaning of ‘deforestation-free’ or on the scope of products covered by the regulation for example.

¹⁷ Saunders, Ten steps towards Enforceable Due Diligence Regulations that protect forests, Forest Trends, septembre 2020, disponible à l'adresse https://www.forest-trends.org/wp-content/uploads/2020/09/10_Steps_Due_Diligence.pdf.

¹⁸ From a legal point of view, an “enclave” is a piece of bare or built-up land surrounded by properties that do not belong to the owner of the enclaved property and which has no exit or insufficient access to the public road. An enclave in a classified forest is not a full-fledged part of the said classified forest, since it is separated from it to enable the beneficiary populations to enjoy all the rights they would not have in the classified forest. The enclave may be constituted when the classified forest is created in the same legal text or after its creation, but in a legal text of the same value. Enclaves are subject to the same legal regime as rural land. Cocoa production in enclaves is therefore authorised.

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nature of the texts governing it. If the area has been duly constituted as an enclave, cocoa production can go ahead, although determining its boundaries remains a major challenge. If not, the production that comes from it is illegal.

This is also the case in rural land tenure, where determining ownership remains difficult due to the complexity of recognising customary ownership. A customary owner is someone who holds the land continuously and peacefully. How long must the land be held for it to be considered continuous? Is the holding material or legal? In Côte d'Ivoire, these are the issues that make legislation on land tenure just as complex as that on the management of classified forests and many others.

These challenges underline the importance for European cocoa buyers to conclusively identify the areas from which they source and to invest in adequate due diligence to identify all relevant laws applicable to cocoa production in each sourcing area.

The breadth and complexity of laws related to cocoa production in Côte d'Ivoire would require a national process to identify those laws and produce a comprehensive list and keep it up to date, which should be informed by all relevant stakeholders. We believe there is an opportunity here for civil society in Côte d'Ivoire and other producer countries to engage in identifying the relevant laws. By confronting experiences and particular interests with other stakeholders in an inclusive and participatory process, civil society can help identify potential inconsistencies and overlaps in legislation. Thereby, civil society would have the potential to drive reforms in countries of production and consequently improve forest governance beyond EU-supply chains.

3 Environmental concerns

3.1 Recap on Gaps and Recommendations

With a view to analysing the extent to which these regulations can contribute to addressing gaps in national legal and institutional frameworks relating to cocoa, we summarise them as follows.

As mentioned above, the expansion of cultivated areas over the last few decades has come at the cost of the destruction of Côte d'Ivoire's forests, and thus the decline of its biodiversity and soil quality. Several factors in Côte d'Ivoire's legal and institutional framework contribute to creating an environment conducive to deforestation in the cocoa sector.

First, there is the **lack of awareness and enforcement of environmental protection legislation**. Many cocoa producers in classified forests and protected areas are unaware of the ban on production in these areas. Similarly, many people are unaware of the existing restrictions and bans on the use of pesticides and deforestation, as well as the related penalties. One of the reasons for violating these rules is ignorance or lack of awareness of their existence or content. This is why, in addition to traditional publicity measures, it is important to disseminate the relevant texts to increase awareness of environmental legislation among all stakeholders. **Information and awareness-raising campaigns** aimed at the general public should help ensure that legal texts are better applied.

In addition, the legal texts enacted to combat deforestation, the use of polluting pesticides and the production of cocoa in prohibited areas are **not enforced to the full extent of the law**. In fact, the relevant authorities are often lax in applying the rules. This is also due to the inadequate material resources provided to enforcement officers to enable them to carry out their duties. For example, pesticide sprayers generally do not have any authorisation to carry out their activities, even though this is required by law. Furthermore, while it is forbidden to produce cocoa in classified forests, national parks and nature reserves, the reality is quite different.

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Given this situation, non-governmental organisations can provide a remedy, by disclosing irregularities. In this respect, **Independent Monitoring (IM)** should be developed in the cocoa sector. IM can be defined here as a non-governmental mission of observation carried out by a civil society organisation of cocoa production and trade activities to gather and share credible and verifiable information, with a view to improving governance in this sector¹⁹. Legal texts on independent monitoring in the cocoa sector should therefore be drawn up – as it was done in the timber sector – in order to facilitate the exercise of this activity, spread its practice and promote it as a tool to facilitate accountability and transparency in the sector.

Finally, the **introduction of a centralised traceability system** regulated by the Ivorian legal system would make it possible, in practice, to ensure the legal origin of a product. If such a system is designed, implemented and resourced properly, it could provide guarantees of good governance and make it possible to check that the legal conditions for cocoa production and trade have been complied with.

3.2 Impact of EU and UK regulations

3.2.1 Incentivising legal reforms

Given the importance of the European market for the cocoa sector in Côte d'Ivoire to date, the EUDR has the potential to encourage reform of Ivorian legislation. The European cocoa market is a major source of demand for Ivorian cocoa, and cocoa exports to the EU are a significant source of foreign currency and revenue for the country. In order for its cocoa beans to be sold on the European market, Côte d'Ivoire must find a solution to the deforestation associated with cocoa production. It is therefore necessary to tackle the causes identified as encouraging the conversion of forests, in order to create an environment conducive to sustainable cocoa production. In particular, it would be essential to remedy land tenure insecurity and extensive or itinerant agriculture, which are devastating the forests.

It is also an opportunity for Côte d'Ivoire to strengthen the legal framework for **independent monitoring**, with a view to enabling civil society organisations to monitor the enforcement of legal texts on cocoa production and trade in Côte d'Ivoire, and to combat deforestation, child labour and the use of polluting pesticides in particular. IM can play a key role in monitoring unsustainable or illegal practices and should be recognised as a credible source of information for benchmarking producer countries and for "substantiated concerns"²⁰.

The EUDR's **benchmarking** feature²¹ may incentivise Côte d'Ivoire to address the identified challenges in its legal framework. The country benchmarking mechanism will inform the EU competent authorities on the level of risk associated with the origin of certain commodities when conducting checks. The benchmarking mechanism provides a clear and structured way for the European Commission to assess and assign risk ratings to producer countries as well as provide guidance to all parties in performing their duties under the EUDR dependent of the level of risk assigned. While it will guide operators when carrying out due diligence on products from a particular country, it will also guide competent authorities when planning and conducting checks on products entering their jurisdiction, with more checks required on products from high-risk areas.

The mechanism may provide an economic incentive to producer countries, such as Côte d'Ivoire, to improve its forest governance to address the rampant deforestation in the cocoa forest landscape, in anticipation of a low risk rating. As noted above, forest governance will improve if the gaps and constraints identified in the legal framework for cocoa production are addressed. A low

¹⁹ Mandated or internal independent monitoring is carried out with the prior establishment of an agreement between the administration and the independent observer, which specifies the latter's field of action and the procedures guaranteeing its autonomy. Non-mandated or external independent observation is carried out without the prior establishment of an agreement between the administration and the independent observer.

²⁰ Article 31 of the Regulation provides a mechanism whereby natural or legal persons may submit substantiated concerns to competent authorities when they consider that one or more operators or traders are not complying with this Regulation.

²¹ Article 29 of the EUDR.

risk rating indicates lower costs and risks for operators sourcing from Côte d'Ivoire, which will give the country a competitive advantage on the cocoa market. Further, the benchmarking mechanism could provide a basis for identifying and assessing Côte d'Ivoire's needs in this regard, which will strengthen targeted assistance for effective improvement of forest governance through partnerships.

To achieve the considerable benefits that the EUDR portends, the EU must work closely with Côte d'Ivoire to ensure that the EUDR stimulates governance reforms in the cocoa forestry landscape. A close partnership will strengthen the credibility, legitimacy and impact of the EUDR. A multi-stakeholder process bringing together national stakeholders will facilitate the reforms needed to improve forest governance and produce locally-adapted solutions to address the gaps and constraints identified in the legal framework .

3.2.2 Implementing a traceability system

Another implication of the EUDR is the need for a robust traceability system for cocoa production and trade. This system should provide information on the place and time of cultivation. To satisfy the deforestation-free criterion of the EUDR, the **ability to trace commodities and products through the supply chain to the point of origin** will be both necessary and critical to prove that production of the commodity has not caused deforestation. EU operators will be required to identify the geo-location coordinates of the plots of land where the commodities and products in their supply chains were produced, as well as the date or time range of production (Article 9(1)(d)). This will allow EU operators to use available satellite imagery tools to check the land-use history of the relevant area for deforestation. For Côte d'Ivoire, this means that a robust traceability system needs to be put in place for cocoa production, enabling the transmission of the necessary information about the place and time of cultivation from cocoa farmers to the point of export.

It is true that some certification standards already include traceability and independent auditing requirements, but these systems are voluntary and focus mostly on traceability back to the first point of purchase (at cooperative level). Therefore, traceability data to farm level is often unavailable or unreliable²². Proliferation of different company-led systems and standards has led to an increased reporting burden for farmers and cooperatives²³. In addition, access to and ownership of data remains an issue due to unidirectional flow of information and limited cooperation or information sharing between private sector traceability systems²⁴. The Côte d'Ivoire government has started geo-referencing cocoa farmers^{25,26} with a view to setting up a national traceability system²⁷. However, for the time being, there is no national traceability system in place in Côte d'Ivoire.

With the entry into force of this regulation, it could be in Côte d'Ivoire's interest to adopt measures to effectively curb rampant deforestation in their cocoa landscape. The duty to implement **credible and transparent traceability systems** to demonstrate that cocoa beans sourced from Côte d'Ivoire are deforestation-free falls on EU operators; however, Côte d'Ivoire will benefit from facilitating this process to ensure continued export to the EU and for its own benefit in monitoring legal compliance and payments. It will also improve the tenure security of smallholders if records of land use rights are included in the traceability system.

²² IDH, GISCO, C-lever.org, 2021: Technical Brief on Cocoa Traceability. P. Stoop, N. Ramanan, H. Geens, A. Lambrecht and S. Dekeister. Dekeister.

²³ *Ibidem*.

²⁴ *Ibidem*.

²⁵ By April 2022, the Côte d'Ivoire Coffee and Cocoa Board had geo-referenced 993,031 cocoa farmers (which would represent around 76% of family cocoa farms, based on estimates that there are between 800,000 and 1.3 million farm 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>). Based on research commissioned by ClientEarth and undertaken by Aidenvironment in April-May 2022 using 2020 trade data.

²⁶ Based on research commissioned by ClientEarth and undertaken by Aidenvironment in April-May 2022 using 2020 trade data.

²⁷ In November 2017, the governments of Ghana and Côte d'Ivoire and 35 major cocoa and chocolate companies committed to full traceability down to farm level as part of the Cocoa & Forests Initiative (which has since been expanded to include initiatives in Cameroon and Colombia) - see World Cocoa Foundation, "Cocoa & Forests Initiative", available at <https://www.worldcocoafoundation.org/initiative/cocoa-forests-initiative/>.

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Implementing a centralised traceability system in Côte d'Ivoire could **prevent the proliferation of privately-owned systems** and ensure a consistent and robust approach where Côte d'Ivoire has full ownership of the information flow.

The EU regulation is therefore an opportunity for Côte d'Ivoire to work towards implementing the traceability control mechanism in the cocoa sector. This system would need to provide all **guarantees of good governance** and make it possible to verify compliance with the legal conditions. As operators will incur liability on this basis under the EUDR, the traceability system will need to be credible and reliable. In our view, to ensure the effectiveness and reliability of traceability efforts, there is a need to bring **full transparency** to the cocoa supply chain, in particular by publishing the quantities produced and sold at each point in the supply chain, with transport documents indicating their origin and destination. Transparency will also be instrumental in terms of **data management and sharing**, as this could help operators comply with the requirements of the EUDR, support competent authorities in better controlling commodities, and allow interested parties, such as civil society organisations, to analyse data and possibly submit a substantiated concern²⁸ to the competent authorities in cases of non-compliance.

Further, given the leading role of the Conseil Café-Cacao (CCC) in the cocoa sector in Côte d'Ivoire, it seems best-placed to develop such a system. This will ensure the production of credible and useful information for operators to perform the required due diligence. The CCC may have to devise a mechanism to then shift the cost of operating this traceability system to private operators that use the information for their sourcing.

3.2.3 Improving access to land legislation

Another opportunity for Côte d'Ivoire is to use the legality requirement contained in the EUDR and UK Environment Act to make its laws and regulations on land use and land rights accessible and coherent. This will facilitate the due diligence of operators and give Côte d'Ivoire a competitive advantage in the trade of its cocoa beans. Regarding the **legality requirement**, the EUDR provides for the following definition "relevant legislation of the country of production" means the laws applicable in the country of production concerning the legal status of the area of production in terms of: (a) land use rights; (b) environmental protection; (c) forest-related rules, including forest management and biodiversity conservation, where directly related to wood harvesting; (d) third parties' rights; (e) labour rights; (f) human rights protected under international law; (g) the principle of free, prior and informed consent (FPIC), including as set out in the UN Declaration on the Rights of Indigenous Peoples; (h) tax, anti-corruption, trade and customs regulations" (Art. 2(40)).

Fortunately, the regulation recognises previous efforts to improve legality, such as the VPA-FLEGT process, and considers that a FLEGT license satisfies the legality condition of the regulation for timber.

Beyond timber and until the first FLEGT licenses are issued in Côte d'Ivoire, we believe there will be a mutual benefit for stakeholders in Côte d'Ivoire and the EU to have clarity in the form of non-exhaustive lists of national and sub-national laws under each of the categories of rules provided for in the regulation. As mentioned above, this will make the relevant laws and regulations accessible and coherent to facilitate due diligence requirements of operators and this will be an opportunity for Côte d'Ivoire to examine areas of complexity, ambiguity and contradiction and, where necessary, undertake certain legal and institutional reforms to clarify and strengthen the relevant rules.

3.2.4 Improving enforcement of Ivorian legislation

The EUDR can be expected to support law enforcement in cocoa-producing countries such as Côte d'Ivoire. In addition to local avenues of ensuring compliance with and enforcement of laws relating to cocoa

²⁸ Article 29 of the EUDR provides for a mechanism whereby natural or legal persons are entitled to submit substantiated concerns to competent authorities in Member States when they deem that one or more operators or traders are failing to comply with the provisions of the Regulation.

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production in Côte d'Ivoire, interested parties will have the option under the EUDR to ensure compliance by reporting operators that flout the requirements of the regulation through the designated agencies in the EU Member States, the "competent authorities". Article 31 of the EUDR provides for such a mechanism for third parties, such as civil society organisations, natural or legal persons, to submit to the competent authorities "substantiated concerns" which are defined as a "duly reasoned claim based on objective and verifiable information regarding non-compliance with this Regulation and which could require the intervention of competent authorities". On receipt of such concerns, the competent authorities are obliged to assess the claims and carry out the necessary checks and hearings of operators and traders with a view to detecting breaches and to prevent the further placing on and export from the EU market of non-compliant products. In addition, the EUDR obliges EU member states to put in place judicial or administrative review procedures for instances in which competent authorities fail to properly investigate and follow-up on substantiated concerns. This access to justice provision is likely to further strengthen public enforcement of the rules. Operators and traders also have a duty when they become aware of a substantiated concern to immediately inform the relevant competent authority of the EU member state where the product has been placed on the market or exported.

The substantiated concern mechanism allows local stakeholders on the ground to be watchdogs on errant producers supplying the EU market. It also gives stakeholders an alternative when local mechanisms are not effective. This will improve transparency and accountability in the supply chain. The financial implications of malfeasance by operators and traders in the EU market will incentivise them to insist on compliance by the CCC in the sourcing of traded cocoa beans²⁹. As the main regulator of cocoa production and trade in Côte d'Ivoire, it is expected that the CCC will be encouraged to ensure that all actors in the supply chain comply with the relevant Ivorian legislation.

The EUDR's producer country benchmarking feature should also provide an incentive for enforcement of Ivorian forestry laws. It is worth noting that the benchmarking mechanism provides that benchmarking is solely based on risks of listed commodities being produced in a way that does not comply with the 'deforestation-free' requirement. It does not include the risks of commodities that are produced in a way that does not comply with the legality requirement. However, while benchmarking criteria primarily include statistical information such as the rate of deforestation and degradation, governance information, such as the implementation of international agreements and the implementation and enforcement of a national legal framework to avoid and sanction activities leading to deforestation and forest degradation, may also be considered. Although benchmarking is likely to rely mainly on statistical data, Côte d'Ivoire still has a compelling reason to enforce its forest laws. Doing so will have a positive impact on deforestation rates, making it a worthwhile endeavour and potentially reducing its perceived level of risk in the eyes of EU buyers and leading to a lower risk-assessment by the European Commission.

The context of the EU and UK regulations also makes it possible to envisage ways and means of disseminating information and raising awareness among stakeholders in the cocoa sector, both about the challenges of sustainability and social issues, and about the legal texts and mechanisms put in place for the sustainable production and marketing of cocoa in Côte d'Ivoire, with a view to ensuring that they are better understood.

4 Human rights concerns

4.1 Recap on gaps and recommendations

In terms of human rights, there is a real challenge in enforcing the regulations in force to address child labour and women's access to land.

When it comes to **child labour**, players involved find it difficult to grasp the phenomenon. They try to distinguish between children who accompany their parents to the fields and do work to the best of their

²⁹ Provided that the Member States apply sufficiently dissuasive penalties, as they are required to do under Article 25 of the EUDR.

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ability, particularly during holidays, for training purposes, and those who are actually used as workers or slaves. On the ground, it is difficult to make the distinction, which makes it difficult to enforce the regulations.

With regard to **women's right of access to land**, there are customary, social and cultural barriers, as well as favoritism towards men, which limit or annihilate this right in several localities in Côte d'Ivoire, particularly in cocoa-producing areas. However, this practice contrasts with current legislation, which makes no distinction between men and women in terms of access to land, and expressly asserts the equality of men, women, and young people.

The existing regulations must be **rigorously enforced in order to** fight human rights violations more effectively and to reward those who comply with them. **Awareness-raising** and advocacy are also necessary to achieve this goal.

In addition, consideration should be given to setting up a **complaints management mechanism** that would enable supply chain players, particularly producers, to register their complaints with bodies to be created, other than the courts, in order to seek appropriate solutions, without obstructing the path to justice, following the example of the complaints management mechanism set up for the REDD+ mechanism in Côte d'Ivoire. This complaints mechanism would be an alternative to legal proceedings, which are not easily accessible to communities. It is defined as a system for the prevention and resolution of conflicts through dialogue. It enables stakeholders to express their complaints, claims, grievances or any other form of assertion of a right to competent structures.

4.2 Impact of EU and UK regulations

Neither the EUDR nor the UK regulation explicitly reference absence of child labour as a criterion to qualify cocoa beans for their markets. The UK legislation defines its legality requirement as compliance with "*local law (a) which relates to the ownership of the land on which the source organism was grown, raised or cultivated, (b) which relates to the use of that land, or (c) which otherwise relates to that land and is specified in regulations made by the Secretary of State*". Unless specified in the implementing acts in the future, it is not entirely clear and open to interpretation as to whether child labour laws fall within the scope of the UK Act (e.g. as a law that 'relates to the use of land' for cocoa production). However, the EU Regulation's scope entails the "relevant legislation of the country of production", which have been defined to include labour rights and human rights protected by international law.

Child labour is linked to human rights because it typically violates the rights of children to protection and education under international human rights law. The worst forms of child labour, such as slavery, trafficking, debt bondage and forced labour, are considered violations of human rights and are prohibited by the Convention on the Rights of the Child and the Minimum Age Convention of the International Labour Organisation, to which Côte d'Ivoire is a party. Children who are forced to work at a young age are often deprived of the opportunity to attend school and receive an education, which is a fundamental human right. In addition, child labour often involves long working hours, dangerous working conditions and physical, sexual and psychological abuse, all of which violate children's rights to health, safety and dignity.

Therefore, child labour issues fall within the scope of the EUDR legality requirement if reflected in national laws of producer countries. As for Côte d'Ivoire, it is a party to International Labour Organisation (ILO) Convention 138 concerning Minimum Age for Admission to Employment and ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, both of which set the minimum age for employment at 18 years³⁰ and prohibit the worst forms of child

³⁰ The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years (article 3 (1) of Convention No. 138 of the ILO). Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition

labour respectively. As a State Party to these Conventions, Côte d'Ivoire has an obligation under international law to enforce these provisions within its jurisdiction and to take measures to eliminate child labour. The child labour standards of these conventions thus form a part of Ivorian national law, making them relevant to the application of the EUDR legality requirement to Ivorian cocoa.

Accordingly, Côte d'Ivoire's high child labour statistics in cocoa production are likely to pose problems for operators who need to ensure that cocoa beans have been produced without breaching Ivorian legislation and international commitments on child labour.

In theory, the EUDR might help clear child labour from the cocoa sector, but there is a fear the new EU regulation will effectively exclude smallholder farmers who tend to rely on their children for labour because they are unable to afford to hire adult labourers. The poverty of many smallholders in the sector is seen as a factor that encourages child labour. Poverty perpetuates child labour in cocoa production by creating a cycle of exploitation in which families living in poverty are forced to send their children to work to earn a living. The demand for cheap cocoa beans has driven prices down, leading farmers to cut costs by employing children instead of paying adult wages. Children are often paid less than adults and made to work longer hours. Long hours of work on cocoa farms limits access to education, meaning that children are pulled out of school to work. This further perpetuates the cycle of poverty, as these children are denied the opportunity to receive an education and are more likely to remain in poverty as adults.

Côte d'Ivoire must implement effective policies and programmes to tackle the root causes of child labour, such as poverty (to which low cocoa prices are a significant contributing factor). This could involve setting up educational programs and alternative income-generating activities for families, which would reduce their reliance on child labour in the cocoa industry. Additionally, the creation of child labour monitoring and reporting systems could ensure effective enforcement of laws and regulations against child labour. Furthermore, it would be essential to provide training and capacity-building support for farmers, cooperatives, and other actors in the cocoa sector to help them understand their obligations and responsibilities under local and international law and to promote ethical practices, including the elimination of the worst forms of child labour. Finally, there should be advocacy and awareness-raising efforts aimed at improving the public's understanding of child labour, including the reasons why it persists and what can be done to prevent it. To effectively implement these solutions, Côte d'Ivoire could request support from development partners such as the EU.

5 Price concerns

5.1 Recap on gaps and recommendations

The legal framework for setting the price to be paid to producers and the sale of cocoa production is inadequate. The regulations are deficient in several respects.

Firstly, the framework does not cover the **advance sale of cocoa**. There is no guarantee of subsistence income for producers in the event of a fall in world prices, as the implementation of the Living Income Differential (LID) is not governed by any legal text. In addition, there are no regulations on compensation for exporting co-operatives if they are forced to sell below the expected price. This results in a revenue shortfall and provides no guarantee that producers will actually be paid a full certification premium, which depends on the value of the sale.

Secondly, there is a **lack of participation by cocoa sector players in setting the farm-gate price** paid to producers. The price is set by the regulatory body, the Conseil Café-Cacao (CCC), which takes into

that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity (article 3 (3) of Convention No. 138 of the ILO). In any case, the minimum age specified shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. It is also provided that a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years (article 2 (3) and (4) of Convention No. 138 of the ILO).

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account influencing factors. These include supply and demand, which cause world prices to fluctuate, as well as climate and pests, which affect harvest volumes.

Finally, in practice, there is **no permanent minimum price guaranteed**. In fact, the so-called guarantee only covers one season (one year). At the end of the year, producers are left in a state of uncertainty. Even when the price is fixed for one season, in practice it is not always guaranteed to producers, due to intermediaries who buy at a price lower than the price fixed by the CCC, often citing the difficulties of access to the production zones.

Despite these factors influencing prices, **the price-setting mechanism could be better managed by putting forward clear, objective criteria. A minimum price must be set** to protect producers from fluctuations. Prices must be set in a way that reflects the efforts made by producers, by sufficiently rewarding those who are committed to sustainability. It must be done in a participatory way, with the other stakeholders in the cocoa sector. This would require the drafting of a legal text on producers' participation and information.

5.2 Impact of EU and UK regulations

Neither the EUDR nor the UK regulation are expressly targeted at improving the price of cocoa beans or improving farmers' livelihoods. However, the implementation of both regulations may have indirect effects on farmers' livelihoods. Whereas the indirect effects of the UK Act cannot be described with certainty, as subsidiary legislation that elaborate on the Act with respect to the range of goods covered, the quantity thresholds for exemption, the specifics of due diligence obligations, measures for public reporting and enforcement are still pending, the mandatory requirements of the EUDR may have the consequences described below.

The EUDR could create opportunities for smallholder farmers to improve their earnings. For example, the introduction of a **traceability system** would enable social measures to be put in place, in addition to identifying the origin of the cocoa and its legal and deforestation-free nature. A digitised system could reduce the complexity of the supply chain and improve living conditions for producers. The complexity of the cocoa supply chain is the source of many difficulties for the sector: the non-payment of promised sustainability premiums and of the official cocoa price set by the government, the existence of illegal cooperatives that buy cocoa produced in protected forests, the lack of control over the number of farmers, the government's lack of knowledge of the number of cocoa plots, the existence of numerous intermediaries along the supply chain.

For smallholder farmers, the introduction of a geolocation obligation offers a number of advantages. Geolocation is a prerequisite for the introduction of electronic payments to producers. The introduction of electronic payments makes it possible to **secure payments** and guarantee a credible and sustainable source of supply. This would make it easier to **combat the fraud** to which many producers fall victim. In the future, the introduction of electronic payments could even enable farmers to receive payments for environmental services.

In addition, the geolocation of plots and producers makes it possible to **clean up and simplify the system of agricultural cooperatives** insofar as each producer, thanks to a unique identifier, can belong to only one cooperative. And those who do not respect the rules, by buying cocoa from protected forest areas, can be easily identified. This system allows for the zoning of growing areas, as has already been done in the cotton and timber sectors. It also eliminates intermediaries, making the supply chain less complex.

Finally, the creation of geolocation of farms using digitised services would improve the location of farmers in cooperatives and generate better information on land tenure. This could improve national mapping, planning and monitoring of farms.

Although the intended cause of the EU regulation is to reduce EU-driven deforestation in producer countries, the policy may also result in unintended consequences on smallholders if their EU buyers decide to exclude them from their supply chains and if safeguards and measures are not put in place. Almost all of Côte d'Ivoire's cocoa beans are produced by smallholders who have little or no access to credit and receive very low returns for their production. The adoption of the EUDR creates new obligations for EU operators and traders in the global cocoa supply chain, the requirements of which are likely to be passed on to smallholders, resulting in potential increases in compliance and record-keeping costs. Smallholders may see these costs as a burden, given the difficulties they face in obtaining financing, developing their skills, or obtaining legal proof of compliance. These additional expenses will create barriers for smallholders trying to enter the EU market, such as administrative costs for obtaining legal documents, including land tenure, ownership and record keeping. In addition, to maintain or improve agricultural yields without resorting to deforestation, smallholders need to acquire new skills, undergo training and update their production methods and inputs, which can be financially costly. European operators could also bear these costs, upskilling their smallholder supply chains to ensure that smallholders are not excluded. Currently, they are under no legally binding obligation to do so under either European or Ivorian law.

Indeed, the livelihoods of these smallholders are highly vulnerable and often dependent on their integration into global supply chains³¹. **Consequently, the global approaches for food system transformation that aim at environmental and climate change outcomes must put livelihoods at the centre of such approaches or else there is a risk of reaching these objectives “on the back of the rural poor”³².**

The EUDR attempts to provide concrete measures or safeguards to avoid unintended negative impacts on smallholders as a result of the new requirements imposed on EU buyers and cocoa products entering the EU. Article 11(1) of the EUDR suggests to operators the option of mitigating the risk by "*supporting compliance with this Regulation by that operator's suppliers, in particular smallholders, through capacity building and investment*". It is important to note that the choice of mitigation measures is left to the discretion of operators, who may well decide not to invest in smallholders, which would not be considered a breach of the law. Also, the disadvantages for smallholders are mentioned both in the impact assessment report³³ and in the introductory text of the regulation³⁴, with the cut-off date and a comprehensive review in Article 34(6)³⁵ after 5 years of implementation as measures to address these challenges.

However, the provision for a comprehensive review of the implementation of the Regulation (to assess the impact on smallholders, indigenous peoples and local communities, and for their transition to sustainable supply chains consistent with the Regulation's requirements) is not satisfactory because it will take place after five (5) years of entry into force with no clear indication, at the time of writing, on support measures to assist smallholders, both financially and structurally, to deal with any difficulties in the meantime. This gap increases the risk of negative consequences for smallholder livelihoods and may derail significant achievements in relation to Sustainable Development Goals such as SDG 1 (No Poverty), SDG 2 (Zero Hunger) and SDG 10 (Reduced Inequalities).

In order to avoid unintended impacts on farmers' livelihoods, the EU, using the provision of Article 30 of the EUDR, could also establish partnerships and cooperation mechanisms that will enable

³¹ Grabs, J (2021) Designing effective and equitable zero-deforestation supply chain policies Glob. Environ. Chang.

³² Davis (2022). Do not transform food systems on the backs of the rural poor. Food Secur.

³³ Staff Working Document – Impact Assessment “Minimising the risk of deforestation and forest degradation associated with products placed on the EU market” available on Proposal for a regulation on deforestation-free products (europa.eu)

³⁴ Recitals 29 and 50 of the Introductory text of the EUDR.

³⁵ “By 30 June 2028 and at least every five years thereafter, the Commission shall carry out a general review of this Regulation, and shall present a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal. The first of the reports shall include in particular, based on specific studies, an evaluation of: (...) the impact of this Regulation on farmers, in particular smallholders, indigenous peoples and local communities and the possible need for additional support for the transition towards sustainable supply chains and for smallholders to meet the requirements of this Regulation.”

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smallholder farmers to meet the anticipated requirements of European buyers who are subject to the Regulation. As set out in Article 30, the Commission, on behalf of the EU, and interested Member States, should engage in a coordinated approach with producer countries concerned by the Regulation to jointly address the local causes of deforestation and forest degradation. This includes supporting smallholders to produce cocoa in effective compliance with the requirements of the EUDR, improving and securing land and tree tenure and access to credit. This can be achieved through existing and future partnerships and other relevant cooperation mechanisms, such as structured dialogues, administrative arrangements, and joint roadmaps. These mechanisms should enable the transition to an agricultural production that facilitates compliance with the requirements of the Regulation while paying particular attention to the needs of indigenous peoples, local communities, and smallholder farmers. They should also provide for support for systematic assessments of the impact of the Regulation on farmers.

Any design and implementation of a solution should involve the full participation of all stakeholders, including smallholder farmers, to ensure that their needs are taken into account in the development and implementation of such processes. Civil society should be involved in these assessments as they are well placed to inform government and the EU on impacts on farmers, particularly given that the limited availability of environmental data in Côte d'Ivoire. Overall, the solution should focus on ensuring that smallholders are not negatively impacted as a result of the EUDR, through partnerships and cooperation mechanisms that enable the transition to sustainable agricultural production while ensuring the participation of all stakeholders and addressing the local causes of deforestation and forest degradation.

6 Conclusion and thoughts

The EUDR and the UK Environment Act have the **potential to encourage legislative reform and improved forest governance**, particularly in the cocoa sector in Côte d'Ivoire.

The EUDR **producer country benchmarking** mechanism could encourage Côte d'Ivoire to address the local causes of deforestation by providing economic incentives to improve forest governance to achieve a low-risk assessment. However, to realise these benefits, the **EU needs to work closely with Côte d'Ivoire to improve cocoa sector governance** to strengthen the credibility, legitimacy and impact of the benchmarking process.

The EUDR also requires a robust traceability system for cocoa production, from cultivation to export. Although some certification standards include traceability and auditing requirements, traceability data down to farm level is often unavailable, and there are multiple company-led systems and standards, adding to the reporting burden. Setting up a **centralised traceability system in Côte d'Ivoire** would avoid the proliferation of private systems and ensure a consistent and robust approach in which Côte d'Ivoire holds the information and regulates its flow. Transparency is crucial for data sharing and management, as it enables stakeholders to comply with EUDR requirements, monitor goods and analyse data.

In addition, it is also an opportunity for Côte d'Ivoire to **strengthen the legal framework for Independent Monitoring**, with a view to enabling civil society organisations to monitor the enforcement of legal texts on cocoa production and trade in Côte d'Ivoire, and to combat deforestation and the use of polluting pesticides in particular.

Another opportunity for Côte d'Ivoire is to use the legal requirement contained in the EUDR and in the UK Act to **make its laws and regulations on land use and land rights accessible and coherent**. This will facilitate the due diligence of operators and give Côte d'Ivoire a competitive advantage in the trade of its cocoa beans. Stakeholders in both Côte d'Ivoire and the EU would also benefit from a reference framework for verifying legality criteria. This reference framework could take the form of non-exhaustive lists of national and sub-national laws for each of the categories of rules set out in the Regulation. This will make the relevant laws and regulations accessible and coherent to facilitate due diligence requirements of operators and enforcement by EU competent authorities. It is crucial that civil society, Indigenous Peoples,

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local communities and smallholders, as well as experts, practitioners and businesses in Côte d'Ivoire, participate in the development of this list of laws, as they are best placed to understand the complexities of their legal frameworks. Moreover, this would be an opportunity for Côte d'Ivoire to examine areas of complexity, ambiguity and contradiction in its own legal frameworks and, where appropriate, undertake certain legal and institutional reforms to clarify and strengthen the relevant rules.

Furthermore, as the scope of the EUDR includes labour and human rights protected under international law, the high rate of child labour in the cocoa sector in Côte d'Ivoire will pose challenges for operators in ensuring compliance with the EUDR and international commitments. There are concerns that the EUDR will disadvantage smallholder farmers who use child labour because of their poverty and lack of resources. Côte d'Ivoire should implement effective policies and programmes to address the root causes of child labour, such as poverty, lack of information and training, through education, alternative income-generating activities, monitoring systems, training, capacity-building and awareness-raising efforts. Development partners, including the EU and the UK, could support the implementation of these solutions.

Although neither the EUDR nor the UK Act specifically aim to improve cocoa bean prices or farmers' livelihoods, the implementation of both regulations may have an indirect impact on smallholder farmers' livelihoods. The indirect impacts of the UK regulation cannot be determined with certainty, as the subsidiary legislation developing the Act has not yet been passed. The EUDR does, however, create opportunities for farmers to improve their incomes and contribute to the fight against fraud. However, **safeguards and measures must be put in place to avoid unforeseen consequences. Partnerships and cooperation mechanisms** are essential to ensure smallholder farmers are not excluded from the EU market as a result of the EUDR requirements. The EU should also work with civil society to carry out systematic assessments of the impact of the regulation on farmers and inform the government and the EU of any negative effects; in particular the risks of breaching the regulation in force.

In conclusion, the EUDR provides an **opportunity to encourage the reform of legislation** relating to the cocoa sector in Côte d'Ivoire which also needs to be more widely disseminated. However, effective implementation of the EUDR requires close partnership and cooperation between the EU and Côte d'Ivoire. To ensure the transition to sustainable agricultural production and tackle the causes of deforestation and forest degradation in the cocoa supply chain, smallholders must be helped to improve their practices through partnerships and cooperation mechanisms involving all stakeholders.

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