



Brussels, 15 February 2022
21ENV387

Joint Position on the Commission Proposal for a Regulation for Deforestation-free Supply Chains

Executive Summary

COCERAL, FEDIOL, and FEFAC support the Regulation's objective to ensure that products marketed in Europe are deforestation-free and **stress the importance of designing a framework which also achieves sustainable transformation on the ground and global deforestation reduction**. They consider that the design of the approach and several provisions of the proposed Regulation will have serious negative consequences without any real added value to meeting the objective of deforestation-free supply chains. Such negative impacts include: **1. Supply shortages in the EU leading to high prices** and resulting risks to EU food and feed chain resilience and competitiveness; **2. Lack of impact on deforestation reduction** due to lack of leverage and incentives to transform practices on the ground; **3. Exclusion of the majority of smallholders and certain mills supplied by smallholders** from supply chains, affecting engagement with third countries; and **4. Disproportionate administrative and logistical burdens** for operators and competent authorities and insufficiently differentiated to actual risk.

To address these negative impacts while both ensuring deforestation-free supply chains and tackling deforestation on the ground, **COCERAL, FEDIOL, and FEFAC propose the following adjustments to the Commission's Proposal:**

- 1. Traceability and chain of custody requirements adapted to the specificities of the different commodities and their logistical and market functioning** instead of a one-size-fits-all approach. Taking soy and palm oil alone (not to mention the other commodities targeted in the Regulation), they function in very different ways logistically and depending on where they are sourced, which is why sector-specific EU rules for the implementation of the general principles (traceability, due diligence system, information, and evidence to be used) would be required through guidance and/or secondary legislation.
- 2. Traceability requirements inclusive of smallholder farmers and compatible with local laws**, instead of requiring filing geolocation coordinates, which requires disclosing private data and would entail large data volumes and challenges in data collection, triggering farmers' opposition.
- 3. Operator responsibility for their risk assessment and mitigation, verified by audits and controlled by competent authorities** instead of guided by an inaccurate country benchmarking. Not only would the country benchmarking approach lead to shifting sourcing from high-risk areas to low-risk areas, a trade distortion which penalises sustainable actors in high-risk areas, but it would also imply disengagement from high-risk areas, which need most engagement and sustainable transformation. Operators know their suppliers and reality on the ground better than competent authorities and are able to provide evidence that their suppliers in high-risk areas are not causing deforestation.
- 4. Annual audits on all operators' due diligence systems and compliance with the deforestation-free supply chain requirement** instead of statements per shipment. This approach would avoid the logistical delays and administrative burdens engendered by the processing of daily statements and suspension of consignments for the duration of competent authorities' checks.
- 5. Responsibility for full due diligence on all operators** instead of both operators and large EU traders to avoid duplication of efforts. Requiring all operators to perform their due diligence would close loopholes while avoiding due diligence duplication.



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Remarks on the overall objective of the proposal

Our associations and member companies have long-standing commitments and systems in place to source sustainable, deforestation-free raw materials. They support the production of deforestation-free EU grown oilseeds and soybeans and promote the sustainable transformation of soy and palm oil supply chains in producing countries. Experience has shown that deforestation and forest degradation have multiple drivers which can only be addressed in partnership with producer countries and with actors on the ground.

COCERAL, FEDIOL and FEFAC support **curbing deforestation and forest degradation** provoked by EU consumption as well as improving transparency across the different supply chains. However, they insist on an approach which leads to the sustainable transformation of commodity sectors rather than a simple segregation of supplies. A narrow focus on cleaning EU supply chains without integrating provisions which are conducive to maximising the involvement of actors in deforestation-free supply chains will do little to achieve global deforestation reduction, which ought to be the principal aim of the Regulation.

The **proposed Regulation** does not build on the considerable efforts that have been made and **ignores the substantial changes achieved** over the last decade in the palm and soy supply chains. The proposed provisions of the EU legislation as designed, **without room for commodity or biome/geography specific adjustments**, will have a destructive effect on these efforts.

Furthermore, we anticipate that the insufficient proportionality of the measures, the lack of flexibility to address specific needs and situations in commodity supply chains or in countries of origin, and the exclusionary effect on smallholders will **negatively affect the engagement with a number of producing countries**. This can lead to resumed deforestation for lack of leverage. There is a wrong assumption that the access to the EU market associated with a premium will be a sufficient incentive for farmers to stop deforestation beyond local legal requirements. Practice has shown that the economic incentive to deforest land remains high. It takes other tools and incentives to support the transformation to deforestation-free supply chains.

We therefore urge EU institutions, to maintain the same level of ambition for deforestation-free supply chains but to **consider alternative provisions** for this Regulation that would be much more effective in achieving reduction of global deforestation. As part of a smart mix of measures, we also request to **complement the proposed Regulation with incentives** for non-EU farmers to meet EU requirements.

1. Subject matter and scope (Article 1)

The set purpose is focused on minimising the Union's contribution to deforestation and forest degradation worldwide. The absence of reference to the objective of reducing deforestation may imply that the cleaning up of EU supply chains from products potentially linked to deforestation will be a satisfactory achievement even if it does not contribute to the reduction of deforestation or forest degradation.

If the Regulation maintains its current design, available volumes of the relevant commodities will be drastically reduced, leading to higher prices in the EU. This will likely lead to EU production of processed goods made with the relevant commodities to be replaced by imports of such products due to the lower availability and higher costs of sourcing those commodities in the EU.

Proposal: *While the aim of the proposed Regulation focuses on cleaning EU supply chains, the design of the framework should not lead to an increase of global deforestation due to the EU's disengagement from high-risk areas and small farmers, which is a likely consequence of the Proposal's current design. The proposed Regulation requires several modifications to reach the objective of deforestation-free supply chains whilst ensuring sufficient supplies of the relevant commodities. This would prevent a leakage market resulting from unfair competition between EU processed goods made with sustainably sourced commodities and imports of similar goods which do not comply with the same requirements. Suggested changes to the proposal are outlined in the chapters below.*

2. Definitions (Article 2)

The definition of deforestation-free based on the **31 December 2020 cut-off date** is linked to the European Union's international commitments in the context of the SDGs. As a past date, if not complemented with re-entry criteria, it will make it problematic for some producers to enter the EU system, where they would be excluded from the outset as there is no opportunity provided for redeeming compliance with the deforestation-free requirement.

Proposal: *To ensure that the Proposal is forward-looking, meaning not simply punishing past behaviour but encouraging and rewarding positive behaviour in the future, it should include provisions to allow actors to re-enter supply chains if they meet specific conditions and provide compensation.*

3. Obligations (Article 3-6)

Due to experience and knowledge of their supply base, operators are better equipped than competent authorities to assess risk on the ground and verify compliance with the deforestation-free requirement. Operators' assessment of risk in various geographical areas is also likely to be more finetuned than any country benchmarking mapping which looks at broader geographical trends. However, the proposed Regulation does not give operators real responsibility and space for designing due diligence, traceability, and chain of custody systems adapted to the commodity and geographical origin, based on their expert understanding of their sourcing areas. Instead, it obliges all operators to provide a due diligence statement with geolocalisation data for all specific volumes/quantities every time they are placed on the EU market. In addition, the Regulation requires competent authorities to duplicate the efforts of operators without the resources or means to verify the causes of deforestation on the ground thereby creating logistical delays.

This approach is confusing and imposes excessive administrative burdens for both operators and competent authorities. It also ignores the fact that for most of the targeted

commodities, food and feed safety has successfully been achieved through an overall legislative framework (General Food Law) setting general principles and requirements that need to be achieved by all food and feed business operators of the chain but leaving them the primary responsibility to implement the appropriate systems and procedure that will ensure compliance. A similar approach should be used in the proposed Regulation to minimise disproportionate administrative and logistical disruptions.

Proposal: *The legislation should set the objectives (i.e. deforestation-free supply chain, etc.) and provide guidelines for the implementation of the general principles (i.e. traceability, due diligence system, information requirements, and evidence to be used) through guidance and/or secondary legislation with the recognition that sector specific protocols will be necessary. As for the verification of compliance, an annual third-party audit of due diligence systems and proof of deforestation-free supply chains would remove the logistical and administrative problems which would arise from due diligence statements per shipment. This audit would also help ensure that none of the plots in the supply base of operators was deforested or if deforestation was detected that the operator suspended the supplier and eventually, if deemed appropriate, engaged with the supplier to stop deforesting and implement a remedial action plan to be able to re-enter the supply chain. The third-party audit report would support and be part of an annual due diligence statement made by companies to competent authorities. To ensure the robustness of audits, the auditor would have to apply EU approved and standardised auditing rules. Eventually, based on the annual assessment by competent authorities, a list of authorised importers/exporters could be established and updated annually.*

Regarding the responsibility for compliance with the prohibition to market products associated with deforestation, the current Proposal leads to a duplication of efforts by subjecting large traders which are not SMEs to the same obligations as operators.

Proposal: *All market players, including SMEs, that are the first to place products on the EU market, should be responsible for meeting the deforestation-free criteria, i.e. "operators" and not "traders" in the sense of the proposed legislation. This would avoid duplication of efforts as well as any loopholes.*

4. The Due Diligence (Articles 8 – 10)¹

Traceability and Chains of Custody

For COCERAL, FEDIOL and FEFAC, due diligence has demonstrated to be an effective tool supporting companies in enhancing traceability across the supply chains and in implementing their voluntary pledges for more sustainable and deforestation-free supply chains. The proposed due diligence obligations, however, do not take into account the different nature of production and supply chains across commodities.

The implied one-size fits all approach will pose serious issues of implementation in soy and palm supply chains. Each of these commodity sectors functions in a different way due to differences in the nature, harvest, production, and storage of these crops. Requiring a complete restructuring of the chains of custody in both sectors is disproportionate and inefficient, especially when each sector has already developed more efficient ways of verifying compliance with the deforestation-free requirement. Different approaches are therefore needed per commodity supply chain.

¹ The EU Timber regulation has served as model for the current Proposal. However, bulk commodity trading differs substantially from trading wood. The requested physical flow of products in segregated supply chains, that bear the link with the exact plots of production through geolocation coordinates, does not match the way all commodity supply chains are structured and operate.

The proposed Regulation requires a chain of custody that connects commodities to the plot of land where they were produced. While today most of the traders/operators have committed and are working towards full traceability not only to the mill/crush plant level, but also to the farm or plantation level, it does not mean that a commodity can be explicitly linked to a plot of land all the way through the supply chain. Collecting information on geolocation coordinates of all plots of land where the commodities and products were produced, as well as date or time range of production, and moving the data with the physical product is much more challenging than it is assumed by the proposed legislation. Even operators sourcing from low-risk countries, which do not have a history of needing to provide geolocation data throughout the supply chain in a segregated manner, will face difficulties in complying with such requirements for both legal (e.g. data protection) and logistical reasons.

Information requirements

The collection of some of the information required or needed can be **impeded in certain countries**, when for example **concession maps** cannot be released or only in a certain format or when commercially sensitive information cannot be shared. The collection of geolocation coordinates of farmers, including smallholders also raises **data privacy concerns**. This is particularly problematic since smallholders provide a big proportion (40% in the case of palm oil) of supplies of raw materials. In essence, the geolocation requirement would lead to a massive exclusion of smallholders, reducing EU leverage to combat deforestation and the opportunity for smallholders to obtain income from producing sustainably and without deforestation.

Furthermore, the overall **information requirements** would generate such **large volumes of data that the systems** would become unmanageable and generate additional costs for gathering and processing the data. Companies in our sectors can have several thousands of suppliers, meaning hundreds of farmers can be involved in a shipment.

Even the date or **time range of production** will pose problems. For example, palm oil, which is a **liquid commodity**, is stored in tanks at the mill, at the refinery, and at ports. Daily, palm products are added and removed from the tank for shipment to the next operator. It is impossible to indicate the exact time and date of production of a certain palm product, which has been produced in a continuous process. The same issues apply to soybean oil and meal, which are annual crops but sold, processed, and transported 12 months of the year.

Consequences of the current Proposal

From a practical point of view, **implementing segregated supplies** will likely lead to a market concentration of few operators who are able to comply and will accentuate the 2-tier market – one for EU and one for non-EU supplies. Operators will lose the efficiency of the logistical pool they are operating in, which will lead to energy inefficiency, and greater greenhouse gas emissions through multiplication of transport, containers, processing, etc. Ultimately, this will also imply much higher costs for operators down in the chain and finally EU consumers. To take a concrete example, premium paid on non-GMO soybean meal, for which segregation is practiced, has ranged in past from 50% to 75% on top of the standard price, a premium which allows to cover the cost of segregation.

Overall, as such requirements **risk drastically reducing the availability of supplies**, leading to severe shortages in the EU and thereby inflating prices, they will put at risk EU food and feed chain resilience. As for the EU's plant protein plan, increasing EU-produced feed materials with high protein content will not be sufficient to replace all imports and will only partly reduce EU's import dependency for feed material with high-protein.

Furthermore, since information requirements have to apply indifferently to EU and non-EU producers and their supply chains, the administrative burden associated with compliance to the provisions could prove **counterproductive to the continuous increase of EU soy production**.

Proposal: *Information requirements should be modified to reflect practical realities in different commodity sectors in different areas, while maintaining unchanged the ambition of achieving deforestation-free supply chains. Geolocation of individual plots of land linked to specific volumes should be replaced by other means to obtain certainty that the due diligence system is delivering deforestation-free products. The requirements should therefore **allow operators to adapt to specific commodity and geographical areas through workable traceability² and chain of custody³ models** as outlined in the **annexes to this** document. We suggest an adaptation period for both soy and palm oil to meet stricter traceability and segregation requirements to prevent supply shortages while businesses restructure their operations and logistics.*

- *For example, in the case of soy the requirements should allow for tightened site-specific mass balance, which is already considered a valid method to prove deforestation-free feedstocks under the Renewable Energy Directive. This tightened site-specific mass balance could include an additional maximum threshold of possible non-compliance [5%] that is reduced by 2030 to reach segregated deforestation-free supplies.*
- *As for palm oil, segregated flows of deforestation-free supply should be required, with traceability to plantation as the ultimate goal but allowing for enhanced traceability to mill as an alternative to traceability to plantation wherever smallholders are concerned for a period of at least 5 years. This temporary traceability to mill would still provide deforestation-free supply chains while allowing smallholders to be included, as traceability to plantation will only be possible for the majority of smallholders once certain challenges have been resolved (i.e. legality of land titles, prohibition to share geolocalisation data in some countries, and the time and investments required to collect this data from smallholders). The EU should work with producing countries to remove the obstacles faced by smallholders and only require of them traceability to plantation once these obstacles have been satisfactorily removed.*

While the Regulation requires operators to collect adequate and verifiable information that the production has been conducted in accordance with relevant legislation of the country of production, it does not specify what type of information would count as adequate.

Proposal: *The **secondary legislation should provide guidance on what constitutes proof of compliance with national legislation.***

Proposal: ***EU Recognised certification standards** and initiatives meeting EU no-deforestation criteria and with a positive track record of compliance and conflict resolution **should be given a more prominent role in the due diligence system**, i.e. be recognised by the EU as evidence for the no-deforestation status of products (see under point 11.).*

² Traceability: The ability to verify the history, location, or application of a good by means of documented recorded identification. The key function of a traceability system is to collect and maintain data on product characteristics and trace data along a supply chain. Traceability is the ability to demonstrate the CoC

³ Chain of custody: The chain of custody is about the sequence of all organisations in the supply chain that take ownership or control of a product during production, processing, shipping and retail in physical and/or administrative manner.

5. Maintenance of due diligence systems (Article 11)

COCERAL, FEDIOL and FEFAC welcome the link made with other EU due diligence reporting obligations to avoid excessive burden and possible inconsistency of multiple reporting exercises for companies. There is a need to ensure consistency of reporting rules as they are an important step in the development of corporate sustainability reporting across the EU and arise in different other pieces of legislation⁴. Standards on reporting rules are also necessary to meet the political ambition and the urgent timetable of the European Green Deal. The importance of coordinating the development of EU sustainability reporting standards with existing and emerging global initiatives has also been highlighted in recent reports⁵.

6. Penalties (Article 23)

The current proposal does not clarify if the liability is strictly procedural or if operators will also be held liable for any deforestation in their supply chains which happens without their knowledge despite their best due diligence efforts. In other words, it draws no distinction between violations which are merely procedural in nature and violations where it is demonstrated that operators placed deforested product on the EU market as a result of their deliberate or grossly negligent violations of the Regulation's requirement.

Proposal: *The **system of penalties** set up by Member States for non-compliance with the provisions of the Regulation **should relate exclusively to infringements to the procedural requirements**. Where deforestation was detected in spite of operators having taken reasonable care, having made significant efforts to collect and submit the appropriate due diligence, operators should not be subject to sanctions if they remediate the situation as soon as they become aware of the deforestation by suspending the non-compliant supplier. Whether the operator made reasonable efforts to comply, or conversely has actively sought to evade the legal requirements or ignored them, is a fair and relevant fact that must be taken into consideration when designing the liability regime.*

7. Controls and checks for compliance (Article 15)

Controls by competent authorities on products coming into the EU or leaving the EU will be based on risk analyses and can lead to a suspension, a temporary suspension or removal from the market. COCERAL, FEDIOL and FEFAC are concerned that all the steps of verification and the amount of data that must be handled will render imports and exports not only burdensome but also contribute to administratively induced disruptions.

Furthermore, competent authorities do not have the knowledge or the understanding, the tools, and the experience on the ground in any way comparable to companies. They will not even be in a position to access all the evidence, because according to local legal legislation it cannot be made available (i.e. concession maps).

Proposal: *It would be more effective, fairer and less prone to bottlenecks in the administration of the system, to **request an annual audit of the due diligence systems of operators**. This would ensure third-party verification (through an external independent auditor) that the due diligence activities are rigorously carried out, from traceability, supplier assessment, satellite monitoring, ground checks, training, grievance procedure, etc. Furthermore, the auditors would need to be accredited through meeting EU approved auditing standards.*

⁴ Notably the Non-Financial Reporting Directive and the upcoming sustainable corporate governance directive

⁵ https://ec.europa.eu/info/publications/210308-efrag-reports_report on « Proposals for a relevant and dynamic EU sustainability reporting standard setting »

Checks on operators (as described under Article 15 1. F). could be interpreted as requesting the knowledge of the exact place where the relevant commodity of product was produced. This would have to be translated into identity preserved chains of custody, which is different than the segregated chains of custody expected according to Article 9 and Article 10.

Proposal: Traceability objectives need to be ambitious, but the way they are implemented and translated into workable chains of custody **needs to be elaborated by the companies themselves with a view to demonstrate compliance with the no-deforestation criteria taking and adapted to the actual risk of deforestation.** Identity preservation would not be the appropriate chain of custody for palm oil and soy.

The current proposal does not envisage any mechanism for allowing suppliers back into EU supply chains if they fail to comply with the Regulation. There should be room for remedial action and reintegration into supply chains under specific conditions to ensure that the Regulation leads to positive transformation in the long run.

Proposal: There needs to be a provision describing under which conditions and how suppliers can re-enter the supply chain and be considered as compliant.

8. Assessment (benchmarking) of countries (Article 27)

The assessment of countries according to their risk profile is meant to help some operators in their due diligence procedure, but it will trigger a number of problems.

- Differentiating countries or parts thereof, even based on scientific evidence, for differentiated due diligence procedures will penalise sustainable actors in the “high risk” regions. It will put them at a competitive disadvantage compared to operators in low-risk regions and potentially disincentivise them from continuing their sustainability commitments.
- Country assessment for differentiated due diligence procedures will entail a form of stigmatisation. Experience has shown that buyers of the relevant commodities prefer avoidance, which leads downstream customers to ask for no longer sourcing from high-risk areas regardless of whether the producers are sustainable or not. If aversion prevails, a country or region categorised as high-risk could potentially mean a no-go area to source from, not only for fear of non-compliance, but also for reputational reasons.
- A high-risk country assessment can lead to divestment and disengagement of operators from those areas in need of transformation, as buyers would shift their sourcing from “high-risk” to “low risk” areas to avoid higher due diligence requirements. Disengagement of operators deciding to abandon high-risk areas could lead to higher levels of deforestation and forest degradation in these areas but could even increase land-use pressure in low-risk countries.
- Given that the due diligence requirements and controls would legally be differentiated based on the risk profile of the country/region, this would create trade distortions and therefore raises doubts about compatibility with WTO rules.

All in all, the proposed risk-based assessment of countries will give rise to a system and to requirements which will be totally disproportionate to the real risk incurred on specific commodities. The classification of countries as high risk will follow a general assessment, which will only marginally take into account commodity-specific commitments and demonstrated achievements to delink certain commodities from deforestation.

Proposal: The due diligence system set in place should instead strive to recognise, reward, and promote the integration of complying actors in sustainable supply chains. This

would be best achieved by a more **granulated assessment of risk by operators**, who could still make use of broad data on deforestation-risk provided by the Commission but finetune the information based on their own commitments, engagement, and verification on the ground. This would be part of each operator's due diligence procedures, **annually controlled by third party auditors recognised by the European Commission**.

9. Cooperation with third countries (Article 28)

We strongly welcome the inclusion of the reference to third-country cooperation in this Regulation. The experiences made by COCERAL, FEDIOL and FEFAC members on the ground have confirmed the importance of addressing deforestation and forest degradation in partnership with all actors involved and giving due attention to the specific concerns, needs and capacities of third countries. Partnerships with producing third countries are an essential part of the smart mix of measures, both mandatory and voluntary, that are needed to address deforestation effectively. These should include actions and incentives to improve standards of governance and law enforcement in the producing countries.

Considering the importance of cooperation for the overall success of the Regulation, we are concerned that the overall design of the provisions and their translation into practice lack a minimum flexibility to help overcome and facilitate engagement.

Proposal: *A narrow focus on cleaning EU supply chains misses out on an opportunity to achieve global deforestation reduction by abandoning regions and actors which most need attention, incentives, and support. The EU should instead **ensure that both its Regulation and engagement with third countries are designed to include smallholders and as many actors as possible in sustainable supply chains** by providing them with the right tools and economic incentives to stop deforestation.*

The legislation's aim to ensure traceability to plantation through geolocation would de facto lead to the exclusion of the majority of smallholders, as they face several obstacles including smallholders' land rights not being properly regulated or recognised, inadequate technical expertise as well as lack of financial support to collect geolocation data. These obstacles cannot be resolved without improvement of the governance of land tenure system of producing countries as well as provision of technical and financial assistance to smallholders to enable them to collect this data.

Proposal: *The EU must **work with producing countries to remove existing obstacles for smallholders to be able to comply with the legislation**. Most importantly, the EU should help producing countries better regulate land tenure and work out a way to make the sharing of geolocation data possible under certain conditions (e.g. as long as this data is not publicly shared). Traceability to plantation should only be made mandatory for smallholders once their obstacles for compliance have been properly addressed. To that end, in the Commission's first review of the Regulation, it should analyse whether smallholders are legally and technically able to comply with the information Regulation and only if the conclusion is positive make traceability to plantation mandatory for them. If such obstacles have not been removed by then, the Commission may review the situation for smallholders every two years after until the obstacles have been satisfactorily removed. In addition, the Regulation should include and be complemented by incentives to smallholders to comply with the requirements of the Regulation, e.g. mechanisms to allow farmers, including small farmers, to re-enter supply chains, compensation to farmers for not deforesting land they own, building traceability tools and systems, etc.*

10. Substantiated concerns (Article 29)

For COCERAL, FEDIOL and FEFAC the possibility for any natural or legal person to submit substantiated concerns can easily be misused by any party to voluntarily target a company. If these submissions trigger unjustified investigations, they will be felt negatively not only by competent authorities, but also by all operators/traders down the chain where already tight supplies risk being slowed down and possibly disrupted.

Proposal: *Companies implementing due diligence systems in their operations on a voluntary basis **must have a grievance mechanism** (based on OECD Guidelines for Multinational Enterprises' grievance mechanism) in place to manage claims and follow up on the allegations that are being made by concerned or third parties. Auditors would verify that such grievance mechanisms are robust and properly address legitimate concerns by affected parties.*

11. Reviews (Article 32)

COCERAL, FEDIOL and FEFAC support reviewing the feasibility of extending the scope to other ecosystems in principle, provided it is backed up scientifically, supported by accurate monitoring tools and the system put in place is implementable.

The role of existing voluntary certification schemes in due diligence systems should be reconsidered, with compatible chains of custody, sooner than 5 years after entry into force of the Regulation.

Although we can support the intention to reconsider the impact on smallholders, the fact that the review is only scheduled five years after entry into force, is part of the problem with this Regulation, which does not sufficiently take into account the fact that most smallholders will not be in a position to meet intended traceability and chain of custody requirements.

Proposal: *The Regulation should **already include provisions on the use of existing recognised certification standards** or initiatives **to facilitate compliance with the Proposal**. These standards or initiatives should be strengthened, where needed, to allow EU recognition as evidence for the no-deforestation status of products.*

Proposal: *Instead of simply assessing the impact of the Regulation on smallholders, and the possible need for additional support for the transition to sustainable supply chains, **the EU should, after having worked with producing countries to remove obstacles (explained under point 10) to smallholder compliance with the Regulation, assess whether such obstacles have been sufficiently removed.** If the Commission judges that smallholders have the technical and legal means to comply with the Regulation, the Commission may make traceability to plantation mandatory for smallholders. In the meantime, the Regulation should allow for different systems achieving the same no-deforestation objective to co-exist as a possible stepping stone.*

12. Conclusion

The proposal reflects the absolute sense of urgency and importance for Europe to eliminate any deforestation related to EU consumption. COCERAL, FEDIOL and FEFAC share the objective and the substance of the proposed Regulation whilst believing the objective should go further and include deforestation reduction beyond simply cleaning the EU's supply chain. The design of the prohibition to market products having caused deforestation, with the associated due diligence procedure as well as the risk profiling of countries leaves insufficient room to acknowledge efforts and progress that have been made in specific commodities. It is lacking proportionality and will face serious problems in the implementation of a workable chain of custody. COCERAL, FEDIOL and FEFAC regret

that in its current design, the proposal will not provide leverage for EU companies to continue engaging in high-risk areas with potentially higher impact on deforestation in these areas. The extraterritorial components of the Regulation, trying to impose the EU vision and rules on third countries and their operators in a prohibitive rather than encouraging manner could push important actors to political, commercial or legal counter-reactions.

Annexes:

1. Chain of custody proposal for palm
2. Chain of custody proposal for soy

Joint Position on the Commission proposal for a Regulation for deforestation-free supply chains

Principles for a workable chain of custody for palm oil

The chains of custody presented and described in this document would meet requirements for deforestation-free supply chains⁶ and be adapted to palm oil supply chain structures and functioning when certain adjustments to the Proposed Regulation are included.

Firstly, given the differences between commodities in how their supply chains operate, we call for a commodity-specific approach on traceability to origin and chain of custody requirements, to be developed by the European Commission in secondary legislation. Based on our analysis below, we propose enhanced Traceability to Mill (TTM) and Traceability to Plantation (TTP) (as described in point 2. below) as appropriate systems for verifying that palm oil supply chains are deforestation-free. To ensure that smallholders are not largely excluded from supply chains to the EU, we stress that both TTM and TTP must be recognised in the beginning of the implementation of the Regulation, since TTP would lead to the exclusion of many smallholders. Excluding the majority of smallholders, which is the likely result of the Commission's proposed information requirements, would not only make engagement with palm oil producing countries challenging but would also punish smallholders which have already embarked on their sustainable transformation. Furthermore, as smallholders represent 40% of the supply base, the EU would lose an opportunity to use its leverage to reduce global deforestation, which is very likely to continue if smallholders are left out of EU deforestation-free supply chains. For that reason, we would suggest a 5-year period for the EU to engage with producing countries to address the obstacles which currently make it extremely difficult for most smallholders to provide TTP. As part of the Commission's first review of the Regulation, should the Commission conclude that the obstacles for smallholders have been sufficiently addressed and removed, the Commission may make traceability to plantation mandatory for all smallholders.

Secondly, to ensure that the supply chains are deforestation-free under our proposed traceability and chain of custody systems, we suggest replacing the geolocation and other information requirements per shipment with an annual audit of operators' due diligence systems and deforestation-free supply chains. To ensure the robustness of audits, the latter should meet auditing standards recognised by the EU.

1. What is most challenging with the requirements of the proposed Regulation for the palm oil supply chain?

The palm oil sector has put emphasis on compliance with No Deforestation, No Peat and No Exploitation (NDPE) policy since 2013. All palm supply into Europe is already subject to such policy, required by all operators (first importers). These NDPE⁷ commitments are supported by thorough risk assessments, use of satellite monitoring, risk mitigation, multiple verifications including ground checks, but also audits of the processes and suspension of suppliers in case of deforestation.

With the above measures in place the European palm sector is already trading for the largest part deforestation-free palm oil, although some unexpected cases might still flow into the supply chain. Operators are already working to minimise this risk.

⁶ *Deforestation free supply* which is segregated, should not be confused with RSPO segregated

⁷ NDPE IRF: <https://www.ndpe-irf.net/>

The following provisions of the Regulation will prove challenging to implement.

- **Monitoring compliance** - The required **traceability to plantation (TTP)** or plot is not yet mainstream practice, especially for third party suppliers, while Traceability to Mill (TTM) is already fully implemented. Palm fruits need to be processed within 24 hours of harvesting for quality reasons. Therefore, all fruit producers should be located within 50km radius around the mill. Traceability to mill (TTM) for the purpose of **monitoring deforestation-free** supply is currently already globally implemented, with EU importers reaching 100% TTM. Important efforts are still needed to achieve TTP.
- **Geolocalisation** - If TTP is required, it would affect the 40% of palm supplies that originate from **smallholders (+/- 5 million farmers)**. These actors in the supply chain will not be able **to provide consistent GPS coordinates**. In certain areas and regions in Indonesia/Malaysia, the ownership of land is often not correctly regulated by local laws and could change frequently. Even if such information was readily available, given the structure of palm fruit collection in areas with many smallholders, that are providing small amounts of raw material on a regular basis, it would not be practically realistic to feed a system with such a large amount of information. If geolocation to cultivation area would be implemented immediately, one would exclude smallholders from the supply chain, since it is too challenging to capture their location information. Alternative methods exist to monitor and detect deforestation in the supply base, including through satellite monitoring and on the ground verification.
- **Information requirements** - To determine whether deforestation on the ground is actually for palm or for another crop, or to demonstrate that deforestation outside the concession is done by local communities for other purposes, one should overlay the deforested area with palm plantation concession maps. The sharing of **concession maps and plantation level data** has historically been hindered or limited by the government of Indonesia, which has repeatedly refused to make public plantation data and maps, citing various reasons, from intellectual property rights to national security⁸. At the same time in South America, concession maps are considered as commercially sensitive information as they are afraid operators will by-pass them and start buying directly from producers. Even if available, sharing concession maps represents risk for the persons who can become a target for criminal activity (abduction).
- **Chain of custody** - The implied chain of custody requirements do not fully match current mainstream practice. One could say oil is currently traded under mass balance⁹, with the highest portion (estimated 90%-95%) meeting deforestation-free requirements. This leads to sizable volumes of sustainable, deforestation-free palm oil already reaching Europe, but allows also to include smallholder suppliers which may not be 100% verified deforestation-free.

2. Proposal for a workable deforestation-free palm oil supply chain in the EU

The palm oil industry can **commit to 100% deforestation free supply to Europe**, combined with adjusting the traceability criteria in the current proposal in order to include smallholders and allow for transformation on the ground, maintaining the ambition to achieve deforestation-free compliance.

The Regulation should allow for both enhanced Traceability to mill (described below) and the Traceability to plantation (described below) to be accepted as proof of compliance with the traceability and chain of custody requirements

⁸ Mongabay, 2021: <https://bit.ly/3LrHYIm>

⁹ Deforestation-free mass balance, not to be confused with RSPO mass balance

detailed accordingly, with a view to phase out TTM once acknowledged that TTP is workable in different origins and allows to include smallholders.

2.1 Traceability to plantation (TTP) *(based on RSPO Segregated Supply Chain Model)*

Traceability and Verification

- According to this model, geolocation of production plots is collected and referenced in audit documents; the palm oil mills, and their **supply base** are audited against the deforestation-free criteria. The audit reports are made publicly available.
- Deforestation-free segregated volumes from different plantations can be mixed together; deforestation-free segregated volumes from different mills can be mixed together; the deforestation-free supply bases to this consolidated volume are still known.

Chain of custody

All palm oil that is supplied will be meeting the deforestation-free criteria, which allows implementing a chain of custody that is segregated according to following criteria:

- Segregated chain of custody model guarantees traceability to certified supply base, meaning the group of plots of production or plantations.
- According to this model, deforestation-free volumes traceable to multiple certified plots of production can be mixed in the supply chain.
- The operator receives the list of all mills and supply base in their receiving volumes.

Once technology and engagement allow for the implementation of traceability to plantation for smallholders as well to be taken up, this can become the only recognised approach, i.e. by Commission report and adaptation in secondary legislation.

2.2 Enhanced Traceability to Mill (TTM)

We underline that it is currently not realistic to require the whole palm oil supply chain to implement the option of "Traceability to plantation" because of the requirements of geolocalisation of plots. Due to differences in supplier structure and in maturity of supply chain transformation, it is imperative to include Traceability to mill + 50 km radius where smallholders are supplying the mill. This second option is already advancing towards enhanced traceability to plantation but should still be allowed until smallholders are legally and technically able to comply with TTP.

Traceability and Verification

- Operators publish all the mills connected to the oil processed in their refineries, including parent name, address and geo location coordinates (Already done).
- **Operators have their own monitoring system to verify mills in their supply chain to provide deforestation-free palm oil.** The system includes a combination of satellite monitoring, deforestation assessment tools, and on the ground verification within the 50 km radius around each mill. If any deforestation is detected within the 50km radius around the mill, the operator can check if this deforestation is linked to its supply chain or not based on its own monitoring systems including sophisticated technologies based on satellite monitoring platforms. If the operator finds that the verified deforestation is linked to its own supply chain, the supplying mill should be suspended immediately from the operator's supply chain, followed by supplier engagement for remediation. Ultimately, supplier engagement does more to achieve deforestation reduction than cutting off suppliers.
- Operators have their due diligence systems audited once a year. During this audit, operators can prove that they comply with EU due diligence requirements and provide supporting evidence of deforestation-free supply chains. This audit would

also control that none of the plots within concession were deforested or if deforestation was detected¹⁰ that the operator suspended the supplier and optionally then engaged with them to address the deforestation to allow them to re-enter the supply chain¹¹. The palm oil contained in a silo in Europe (or along the supply chain) can be linked back to one or several mills (and hence several plots, plantations, or concessions), but are all deforestation-free.

Chain of custody

All palm oil that is supplied will be meeting the deforestation-free requirement, which allows implementing a chain of custody that is segregated according to following criteria:

- Full list of supplying mills will accompany shipments to Europe (as currently done).
- Mill lists are reported on company websites.
- Palm oil of different supplying mills are mixed in the supply chain, as long as operator can demonstrate that the mill is complying with EU requirements.

2.3 Advantages of maintaining TTM as a stepping stone towards TTP

- No exclusion of smallholders and mills supplied by smallholders who are deforestation-free. Opportunity to continue transformation work on the ground with smallholders.
- Provides incentives for continuing smallholder engagement programmes.
- Sufficient palm supply into Europe of palm products. Around 18% of total palm production is currently RSPO certified. Approximately 50% of that is certified under the segregated chain of custody model and would meet the requirements for palm oil traded under segregated deforestation-free criteria. This supply is too small to supply Europe with all needed fractions. Especially for palm kernel oil, there is hardly any segregated supply available globally.
- It would avoid the creation of a leakage market where products not meeting segregation requirements are sold to markets where sustainability requirements are not required (driving further fragmentation in the sector).

To allow deforestation-free smallholders to supply EU markets without having to share their geolocation data, this traceability option should be permitted by the Regulation where smallholders are concerned until legal and technical obstacles affecting smallholders have been addressed.

3. In brief: What adjustment should be made in the Commission's text?

- Recognition that palm oil supply chain needs commodity-specific adjustments.
- Traceability to Plantation for all non-smallholder plantations: geolocation of mills and their own plantations.
- A transition period allowing traceability to Mill where smallholders are concerned, while still ensuring deforestation-free supply: Replacing the geolocation of plots with a geolocation of the mills + 50 km radius + checking on the ground of supplier base.
- As part of the Commission's first review of the Regulation, no later than 5 years after entry into force of the Regulation, the Commission should assess whether the obstacles preventing most smallholders from complying with TTP requirements have been sufficiently removed. Following a positive assessment that smallholders

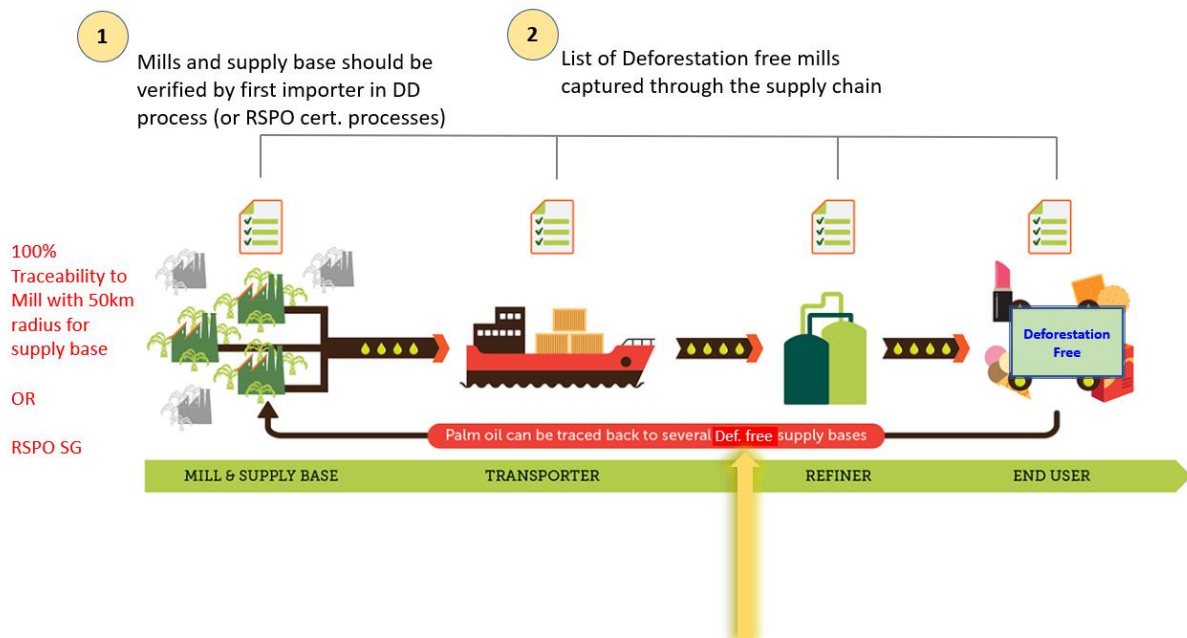
¹⁰ The 50km radius allows to include smallholders, it also presents another challenge which is deforestation happening "outside concession" mainly driven by smallholders. Programmes are in place to help address issues of deforestation, such as The Palm Oil Collaboration Group through the Production and Protection beyond Concession group. This group is set up to look into such initiatives {i.e. a landscape programmes} that will drive continuous improvement in responsible farm development - <https://palmoilcollaborationgroup.net/ppbc>

¹¹ Examples of company sponsored programmes to achieve deforestation avoidance outside their concession supply base include work done by The Palm Oil Collaboration Group: <https://palmoilcollaborationgroup.net/ppbc>

face no significant legal or technical challenges, the Commission may make traceability to plantation mandatory for all smallholders. However, if this first assessment leads to the conclusion that smallholders still face such obstacles, the Commission may undertake a review every two years until the obstacles have been satisfactorily removed. To facilitate a positive outcome, the Commission must engage with producing countries to address the main obstacles for smallholders (i.e. land tenure regulation, data privacy rights impeding sharing of smallholders' geolocation data, logistical and systems challenge of collecting and processing smallholder geolocation data, etc.)

- Allowing importers to address detected deforestation by immediately suspending the supplier that is linked to the detected and verified deforestation.
- Allowing for full annual due diligence compliance audit per operator, instead of per incoming shipment.

Graphic palm oil supply chain



Joint Position on the Commission proposal for a Regulation for deforestation-free supply chains

Principles for a workable chain of custody for soy

1. Soy supply chain: key highlights

Operators supplying the EU market with soy are sourcing the commodity from several origins: US, Canada, Brazil, Argentina, Paraguay but also Ukraine and the EU. The deforestation risk in South America has led operators to set up no-deforestation policies, based on traceability objectives and deforestation-free commitment.

There are voluntary initiatives in place that have delivered effective region or biome-wide actions to delink soy production from deforestation in regions of high risk. For example, the Amazon Soy Moratorium dates back to 2006 and excludes from the system all farms that produce soy on land cleared after 2008. In the Brazilian Cerrado, a different approach is under way tackling not only deforestation, but any form of land conversion. Companies engaged in the Soft Commodity Forum since 2018, identify solutions at scale to halt soy-driven conversion of native vegetation and bi-annually report on their progress. These approaches are supported by satellite imagery, monitoring, traceability, checks and third-party audits, farmers' engagement, investments, and standardised reporting. In Europe, certificates' trading¹² have for years been the main tool to support deforestation-free production. Physical flows of responsible soy products have increased, also helped by FEAC Soy Sourcing

Guidelines. With the recent up-date of the Guidelines, the share of deforestation-free product will increase, still taking place through mass balance¹³. There are no sizable volumes of segregated¹⁴ or identity preserved¹⁵ deforestation-free soy reaching the EU market.

Implementing segregated supplies, in a full-scale supply chain with neither logistical nor identity preservation feasibility for such chain of custody, will likely lead to a market concentration of few operators able to comply and will lead to a 2-tier market – one for EU and one for non-EU supplies. Operators will lose the efficiency of the logistical pool they are operating in, which will lead to energy inefficiency and substantially greater GHG emissions through multiplication of transport, storage, containers, processing, etc. Ultimately, this will also imply steep increase of costs for operators down in the chain and finally for EU consumer.

¹² Also referred to as "Book & Claim". Provides tradeable certificates for certified product to the supply chain and allows for the claim to be decoupled from the certified product. Rewards responsible production where the physical supply chains make sourcing the actual product difficult. See ISEAL document on Chain of custody models and definitions, 2016, p 16

¹³ In the mass balance model the volume of certified product entering the operation is controlled and an equivalent volume of product leaving the operations can be sold as certified. The physical mixing of certified and non-certified product is allowed, but not required (i.e. does not define the model to have physical blending) at any stage in the production process provided that the quantities are controlled in documentation. See ISEAL document on Chain of custody models and definitions, 2016, p 9

¹⁴ In segregated models, the certified product is kept physically separate from non-certified product through each stage of the supply chain. Permits mixing of certified product: Different lots/batches/quantities/consignments of certified physical product may be mixed only with other lots (etc) of physical product certified to the same standard, or two standards which recognise equivalence. See ISEAL document on Chain of custody models and definitions, 2016, p 8

¹⁵ In a model of identity preservation, certified physical product and associated product documentation can be traced back to the single point of origin. Each lot, batch, quantity, or consignment of certified product is treated separately and clearly separated in both physical product and in associated documentation from other certified or non-certified product throughout the supply chain. See ISEAL document on Chain of custody models and definitions, 2016, p 7

2. Provisions of the Regulation that will prove problematic to implement in the soy supply chain

- The **traceability** requirements to ensure identity preservation between the commodities and the plot of land where they have been produced, are not compatible with bulk commodity trade and processing, where large volumes of goods are handled and processed in a continuous flow. Even the very limited flows of existing segregated supply chains, such as for non-GMO soy, are designed to preserve the integrity of the product vis-à-vis GMO soy, but they do not provide segregation and identity preservation to the plot level. **With company pledges, traceability to farm has increased in higher risk areas and can be provided for direct supplies but is still in progress for indirect supplies.** Traceability to farm level, thus, should remain as a commercial offer so companies can manage such demand under specific contracts in a scalable approach.
- The required **geolocation**, meaning the GPS identification of the growing plots, will pose problems of implementation. Putting into direct relation exact volumes of soybeans with the plot where they have been harvested may be against local data privacy laws, and it is a considerable burden to carry the information along the many steps in the chain. Assuming farmers are willing to provide the coordinates of plots (polygons) which is private information, it means having a monitoring system in place to manage the polygons. Ultimately, there is no link today available to connect the polygons with delivery notes. From a legal point of view, the EU legislation would require companies to be in breach of local laws (example: Data Protection Laws).
- The **prohibition to mix deforestation-free products with other products** will pose **problems to current logistics capacity** for ensuring segregation at all steps of the supply chain. Infrastructures and logistics are needed to allow this, considering the enormous volumes of commodities that need to be collected, transported, processed, shipped at harvest time in countries of production. Today, mainstream products must meet legality requirements. **With company commitments or pledges, flows of deforestation-free products are increasing, but they use the same installations and logistics and have to be mixed with products that are legally produced but may not provide certainty about their deforestation-free status.** Setting up segregated supply chains where mass balance is current practice, would imply a considerable change with important and long-term investments in dedicated storage, in processing sites and logistics installations, all along the supply chain. This cannot be implemented within a few years. Even if they would take time to establish, there is a lot of risk in making such an investment for a limited export market, which means some origins and supply chains may choose not to serve Europe. If implemented, segregated supply chains for smaller flows of soy will lead to energy inefficiency, greater GHG emissions through multiplication of transport, containers, processing lines, port elevators, silos, for all logistical units along the supply chain.
- It would force **existing land-use and sustainability systems** to make considerable changes to align with EU provisions, without any benefit to the actual deforestation rate or, worse, with negative implications on the achievements so far. If the requirement for segregated supply chains is maintained, **sourcing from regions in transition will either not be possible or will imply considerable and counter-productive changes** of pre-existing systems. Implementing 100% deforestation-free (corridors of deforestation-free) supply chains whereby the collected, transported, stored, processed and exported beans are segregated, may then rely on limited small-scale systems that able to implement the Regulation.
- The **pressure on regions currently deforestation-free** would trigger production imbalances and dislocation of crops to consolidated areas. That could spark new deforestation where it has not happened for years, promote indirect land use change in other areas and cause monoculture in currently consolidated, diverse areas.

3. Traceability and chain of custody requirements: impact on soy producing regions

Today, operators in the soy supply chain are far from being able to supply segregated physical flows of deforestation-free on the European market that can be linked back to the exact production area on the scale desired by the Regulation. Due to logistical flows, storage limitations, and third-party sourcing, the paperwork demanded will not be possible to handle. Implementing EU specific segregated supply chain requirements may only be realistic to consider in a few regions, where there is sufficient knowledge about direct and indirect suppliers and company deforestation-free commitments are already in place (i.e. Amazon Soy Moratorium). One can expect the volumes of soy products available to Europe to drop to <4 million MT from Europe and Ukraine and <5 million MT from South America, and limited supply from North America depending on the incentive to provide farm information and separate supply. Furthermore, implementing segregated supply chains will exclude regions which are in transition, such as the Cerrado or Chaco in Latin America and will reduce the sourcing options, excluding and displacing an estimated 50% of the soy sourced today from Brazil. This will increase costs substantially and put at risk EU food and feed chain resilience, while promoting social and environmental problems in other parts of the world, mainly in developing countries.

For low-risk regions, such as most EU producing countries, the information flow implied by the traceability requirements could discourage farmers from continuing to increase EU soy production. In other low risk countries, such as USA, Canada and Ukraine, it will also be difficult to provide farm plot information due to many of the same fundamental realities as South America, e.g. logistics constraints, physical trading markets, in port swaps of products between exporters and data security.

Implementing the Regulation as proposed, without ability to develop tailor-made enhanced traceability and chain of custody requirements could mean that not only will Europe no longer have the freedom to buy from Global commodity markets but will also struggle to buy from any market. This means that the EU protein deficiency will be amplified, food prices will be heightened, EU meat producers will be disadvantaged, and meat imports will increase. EU Livestock and meat producers targeting the export market will lose competitiveness and exports markets.

For the soy supply chain, mass balance but with tighter rules can be a stepping-stone to mainstreaming and segregated supplies. It will remain the most feasible, efficient and transition-supportive approach to provide availability, security of supply, cost-efficiency, and sustainability and comply with specific criteria of the physical flows of commodities across the supply chain during such transition. Incentivising farmers to improve their production practices can only succeed if the product can easily reach the market. Segregation does not support such transition, as it increases transition costs and acts as a disincentive, notably for supply chains with many smallholders. A restrictive mass balance sourcing approach supports change and can accommodate new sustainability requirements without the need to build a totally new logistical system. The tighter mass balance approach will significantly increase the EU demand for deforestation-free product which is limited today to a low number of markets, such as the Netherlands, and supported by only a few retailers. Bringing mass balance into the mainstream will still require a huge amount of capacity building from around 10 million metric tonnes (MT) available today globally to over 30 million MT.

4. Proposals of due diligence system, traceability, and chain of custody, feasible for soy

As explained above, the operator's responsibility for assessing the risk and carrying out due diligence should be redefined, and the role of mass balance should be reconsidered.

Responsibility:

The importer/first placer on the market (“operator”) must set up and carry out due diligence. He bears responsibility for meeting the compliance with no-deforestation goals. There is no point in asking downstream players to do the same due diligence again; this would unnecessarily duplicate efforts and make the system unworkable. This responsibility should apply to large, medium, and small importers/first placers on the market alike.

Company due diligence:

The obligation to set up a due diligence system and to assess and act on deforestation risks, includes getting knowledge about upstream direct and indirect suppliers up to soy producers/farmers and assessing the risk of deforestation across the supplier base.

Risk assessments are used to prioritise further traceability and supply chain management activities. Supplies of soy are assessed for non-compliance or risk of non-compliance with no-deforestation requirements, based on enhanced knowledge of the location, of the product and of the supplier. Effective monitoring or control systems may be used to identify supplies that are higher or lower risk. This should include recognised forest monitoring data (such as Copernicus satellite data on **Forest Degradation Monitoring**) and verification of satellite imagery with available information and on the ground assessment.

Traceability:

Enhancing traceability is important. Different approaches for traceability should be considered and should coexist depending on the origin, the complexity of the supply chain structure and the logistics available in a region:

1. traceability to the plot with GPS coordinates
2. traceability to the farm or municipality
3. traceability to province or state

Unless traceability includes GPS coordinates (in the cases 2. And 3.), companies would have to carry out an annual land mapping of production areas as part of their risk assessment implementation. These geo-mapping analyses of the origination areas (at appropriate levels of granularity) together with satellite imagery (and on-the-ground-checks if necessary) are part of the evidence considered by auditors in their verification of the deforestation-free criteria and can be shared with competent authorities.

Information requirements:

The importer or first placer of a product on the EU market collects information as part of the traceability requirements mentioned above from all direct and from indirect suppliers with a view to accurately inform the verification process.

Building on the principles for mass balance under the biofuels sustainability documentation, the product and traceability information should include : product name; volume or weight of the consignment; location of the farm or plantation with parcel geo-localisation when available and contractually defined by the company as a requirement; suppliers’ company name and address; buyer company name and address; date of (physical loading); place of (physical) loading and delivery; report on the due diligence and risk assessment by the company; and evidence confirming that the supply meets the no-deforestation requirement.

Third-party audit:

The due diligence system (risk assessment and mitigation), the collected evidence and the resulting analysis and verification on the ground must be subject to an annual third-party audit, carried out per each country of origin. There must be EU commodity-specific protocols on how auditors carry out verification of all aspects of the due diligence systems and assess compliance with the Regulation’s requirements, notably with regard to deforestation-free criteria, based on collected evidence. The auditor must apply EU approved and standardised auditing rules. The operator keeps all information and evidence on the due diligence system, direct and indirect supplier information, risk assessment, production mapping, chain of custody, etc., and makes it available to the auditor. This

information is also made available to the competent authorities for their respective checks. The third-party audit gives rise to a comprehensive report describing whether and how the provisions of the Regulation have been met.

Registered or Authorised EU Operator:

The third-party audit report is the basis for the qualification as registered or authorised EU operator (importer) and is submitted to competent authorities.

Approach recommended for the soy chain of custody:

Deforestation-free soy should be traded under mass balance, provided it meets the following criteria:

- Tightened Mass balance is applied at site level, meaning segregation is maintained until the first collection of soy in the supply chain. At this stage the compliant product can then be mixed with other products with a known deforestation risk. The proportions of known compliant soy will be recorded and reconciled over a predetermined period.
- A maximum acceptable level of potentially non-compliant product should be set at the beginning of the Regulation's implementation. This tightened site specific mass balance could include an additional maximum threshold of possible non-compliance [5%] that is reduced over a set timeframe (up to 2030) to reach segregated deforestation-free supplies. Until then, it is important to underline that the supply chains will still be deforestation-free in the sense of the EU only purchasing the value/proportion of the product which is deforestation-free.
- Period of reconciliation considered for mass balance of incoming and outgoing material at farm level and first gathering point: 1 year to allow farmers time to sell their crop.
- Period of reconciliation considered for mass balance of incoming and outgoing material at all other levels (after first gathering point): 3 months

5. Advantages of using tightened mass balance to transition to 100% deforestation-free soy

- The system can deliver deforestation-free soy from the beginning of the implementation in sizable volumes with a max percentage of tolerance to be reduced by 2030.
- No loophole to the system, as all operators/first placers on the EU market have to comply with this approach, but without an unnecessary burden of administration and data reconciliation.
- It is compatible with existing due diligence systems, although companies will have to substantially increase their efforts on information provision to demonstrate compliance with deforestation-free requirements.
- It avoids pushing operators out of existing sourcing regions and allows to continue engagement on the ground with farmers and local authorities in favour of no-deforestation requirements.
- No stigmatization of countries or regions as it allows treating operators based on their actual compliance with deforestation-free requirements.
- Competent authorities do not verify information they do not have the resources on the ground to determine. As satellite imagery can only be interpreted accurately in specific scenarios, on many occasions field visits are necessary to understand the deforestation circumstances e.g. commercial forestry felled and replaced with crops. Soy grown on previously degraded pasture land which could be mistaken for deforestation using only satellite images.
- Increasing costs across the supply chain will be unavoidable and hence also the price for EU consumers, but it will be more affordable than the current proposal, where availability of supplies and resilience of EU food supply chains would be greatly impacted.