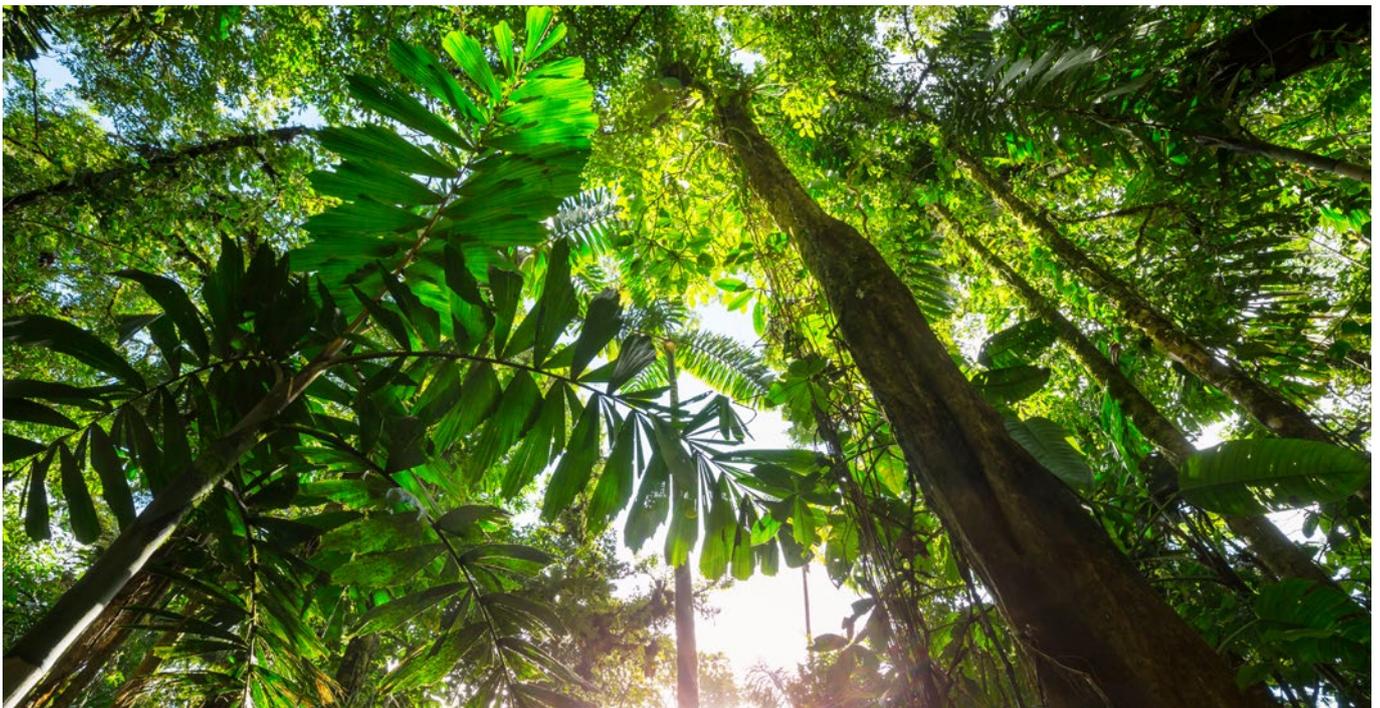




TROPICAL FOREST ALLIANCE ROUNDTABLE DISCUSSIONS ON EU ACTION TO PROTECT FORESTS: SUMMARY OF FINDINGS

22 JULY 2020



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EXECUTIVE SUMMARY

Between January and July 2020, the Tropical Forest Alliance (TFA) and Efeca carried out a programme of engagement with industry and civil society representatives on the priorities of the European Commission's Communication on '*Stepping up EU action to protect and restore the world's forests*'. Through surveys and a series of online roundtable discussions, the programme aimed to create space for these stakeholders, in particular industry representatives, to share their perspectives, experiences and inputs across a range of commodities and sectors to inform the development of evolving EU policies on deforestation and to share these with the European Commission.

This paper is a summary of the points made during the roundtable discussions. It is not a position paper to which all roundtable participants have signed up; rather, it captures the issues on which participants' views converged, and where they diverged – though it should be noted that discussions were characterised by a high degree of consensus.

THE NEED FOR A 'SMART MIX'

While industry has an important role to play in tackling deforestation - and, in many cases has made efforts to do so – there are limits to what it can achieve either through voluntary measures or regulation. A 'smart mix' of measures is needed. Action is needed by a range of different actors in different settings, both to create a supportive framework for actions by industry and to carry out activities which only governments, or civil society or other bodies can do. This includes partnerships on the ground in producer countries; action within the EU, to create a clear market demand for sustainable products; action by other consumer countries; and action by financial institutions and their regulators. All these measures need to be underpinned by robust, consistent and practical systems of verification.

PRODUCER PARTNERSHIPS

The development of various kinds of partnerships with producer countries, including with governments, industry, farmers and civil society, form a critical part of the 'smart mix' of measures. They should rest on open, inclusive dialogue, working collectively and responding to producer-country needs to develop shared solutions delivering shared benefits. These will be necessary to help provide many of the enabling conditions to support the production of commodities in ways that do not drive deforestation or negative impacts on other ecosystems, including improvements in standards of governance and law enforcement and in the provision of basic services and infrastructure and support for farmers. Industry alone generally cannot provide these conditions, though it can play an important role.

The EU should play a key role, through development assistance, in providing support and coordination for existing regional, national and sub-national partnership initiatives, including multi-stakeholder processes and national traceability systems. In general, more assistance should be provided for activities specifically geared at reducing the negative impacts of agricultural commodities.

Priority should be afforded to those regions, countries and sub-national jurisdictions where the greatest impact can be made and where European supply chains can use their associated leverage. It is also important to target assistance for local landscape-driven initiatives, which can often be more ambitious than central or provincial strategies.

European industry, as well as businesses in producer countries, could play a valuable role in some of these initiatives, helping to develop sustainable means of agricultural production.

The Voluntary Partnership Agreement (VPA) model provides a good framework for tackling major challenges and achieving long-lasting change in producer countries, through tackling underlying problems of governance and law enforcement, through placing key decision-making powers in the hands of stakeholders in the producer countries and through establishing incentives, through trade preferences and the provision of capacity-building assistance. It would need some modification in adapting it to agricultural commodities, particularly in basing it on a sustainability rather than a legality standard.

Although the VPA model is in many ways a good one, negotiating such an agreement for other agricultural commodities than cocoa and other countries than Ghana and Côte d'Ivoire is likely to prove challenging. The EU should therefore explore the scope for supporting initiatives which could in time become elements of a VPA-type bilateral agreement, such as the establishment of similar kinds of multi-stakeholder processes, and national traceability systems. These objectives could be better pursued at sub-national or landscape levels, at least in the short term. The EU should also explore the scope for incorporating sustainability conditions in trade and investment agreements, strengthening trade and sustainable development chapters in existing agreements, and improving the sustainability impact assessment process. There is a need for greater coherence between EU policies in different areas, such as trade, agriculture, environment and development.

DEMAND-SIDE MEASURES

Alongside action on the ground in producer countries, action is also needed in the EU to ensure that sustainably produced commodities are favoured or required on the EU market and unsustainably produced commodities are disfavoured or excluded.

Roundtable participants expressed very clear support for the introduction of mandatory EU-wide due diligence legislation covering human rights and environmental impacts, through both a broad 'horizontal' approach to due diligence, and a commodity-specific approach. This should drive a better understanding of supply chains and their exposure to the risks of environmental harm and human rights abuses, drive continual improvement, encouraging the development and evolution of plans to address the risks, and transform global commodity supply chains (not just clean up EU supply chains), through capacity building and supplier engagement. Commodity-specific legislation is needed to define clearly the criteria on which the due diligence obligation for each commodity is based, and to create a level playing field across the EU to ensure that the same criteria are followed by all companies.

Roundtable participants recognised that the UN Guiding Principles and OECD guidance describe a standard of conduct that does not assume that all challenges can be overcome immediately; rather, due diligence is a process of gradual improvement in the analysis and mitigation of risks which leads to a steady reduction in the problems the legislation is designed to tackle. It should reward continued engagement with and support for suppliers who perform less well to start with, acting as an enabler of good practice and future progress rather than an incentive to abandon suppliers.

The due diligence criteria must be wider than simple legality and should build where possible on existing systems and definitions such as the various OECD guidance documents and the Accountability Framework Initiative. Monitoring companies' compliance with the legislation is a task primarily for competent authorities appointed by Member State governments, which must be adequately resourced

and equipped with sufficient enforcement powers and penalties. There could also be a role for a civil liability mechanism through which third parties could pursue legal action. The responsibilities of businesses, and the extent to which their conduct of due diligence provides a defence to claims of liability, will need to be carefully defined.

The due diligence obligation should be implemented by all actors throughout the supply chain, with no threshold by company size or turnover. The legislation should include a requirement to publish a report on a company's due diligence system, its implementing activities and future plans, with the aim of improving transparency and facilitating scrutiny of the evolution of due diligence systems. Systems for complaints and remediation should also be included.

Other potential demand-side measures to support the growth of market share for sustainable commodities should be considered. Options include public procurement, differentiation of import duties and the reform or reinterpretation of EU competition law.

Labelling of products as 'deforestation-free' should not, however, be pursued; roundtable participants felt that governments needed to undertake the responsibility of regulating their own markets, rather than rely on consumers exercising informed choices.

INTERNATIONAL COOPERATION

Engaging in dialogue with other consumer countries is an important part of the 'smart mix', in order to encourage these countries to adopt the same or similar measures, both increasing the chances of scaling up positive outcomes and avoiding the diversion of commodities produced unsustainably away from the EU towards other markets. The EU should promote joint initiatives to develop and implement sustainability standards and policy measures and to share data and examples of best practice, building where possible on existing networks, including industry associations and groupings, reaching both producers and consumers of forest risk commodities to build a sense of shared responsibility and shared interest.

FINANCE

The redirection of 'grey finance' away from unsustainable and towards sustainable activities is essential but will not happen without intervention by EU and global regulators. This includes possible requirements on financial organisations to report specifically on their deforestation risk exposure, and the application of a due diligence obligation. Investment in sustainable activities needs to be scaled up, and made more accessible to smallholders and SMEs, through approaches such as blended finance and specific green finance instruments, such as climate finance, green bonds, REDD+ resources and ecosystem service payments.

VERIFICATION

Industry and governments must be able to have access to and rely on clear, consistent and credible tools for assessing, verifying and mitigating deforestation risk and tracking the movement of products through supply chains. Roundtable participants stressed the importance of the EU building on existing actions and initiatives, including on traceability and transparency, rather than starting from scratch and inventing entirely new systems.

Certification systems provide important tools but have their limits. Recognition for other forms of supply chain assurance, complementary to certification, is likely to be increasingly necessary. The EU should play a role in bringing together and coordinating some of the necessary data and intelligence on deforestation risk into a central point, including through the proposal for an 'EU Observatory' included in the Deforestation Communication.

1. INTRODUCTION

As commodity-driven deforestation continues to increase, the past decade has shown that while voluntary corporate commitments and initiatives have helped to tackle the problems of deforestation, alone they have not been sufficient to drive transformative change; they need to be complemented by additional regulatory and non-regulatory measures.

In July 2019, the European Commission's Communication on 'Stepping up EU action to protect and restore the world's forests' recognised that: 'Despite all efforts so far, conservation and sustainable use of forests cannot be ensured by current policies. Therefore, stepping up action to protect the existing forests, manage forests sustainably and actively and sustainably create new forest coverage, has to play a crucial role in our sustainability policies.'¹

Between January and July 2020, the Tropical Forest Alliance and Efeca carried out a programme of engagement with industry and civil society representatives on the priorities of the European Commission's Communication. Through surveys and a series of online roundtable discussions the programme aimed to create space for these stakeholders – in particular, industry representatives – to share their perspectives, experiences and inputs across a range of commodities and sectors to inform the development of EU policies on deforestation and to share these with the Commission.

The roundtables were organised round the five key priorities identified in the 2019 Deforestation Communication:

- Reduce the EU consumption footprint on land and encourage the consumption of products from deforestation-free supply chains in the EU (in practice the roundtable discussions focused mainly on potential due diligence legislation).
- Work in partnership with producing countries to reduce pressures on forests and to 'deforest-proof' EU development cooperation.
- Strengthen international cooperation to halt deforestation and forest degradation and encourage forest restoration.
- Redirect finance to support more sustainable land-use practices.
- Support the availability of, quality of, and access to information on forests and commodity supply chains; support research and innovation.

In total, 145 companies and organisations (249 individuals) were invited to participate in this series of roundtables. A total of 10 roundtable meetings were held, with 124 participants from industry, civil society and the public sector, with an average industry representation of nearly 60 per cent at each meeting. These numbers are higher when considering that a number of industry participants were associations, representing broad memberships, including SMEs.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Stepping up EU Action to Protect and Restore the World's Forests (COM(2019) 352 final, 23 July 2019), p. 1.

This paper is a summary of the points made during the roundtable discussions, and also during individual conversations with participants and panellists, through written comments provided by participants and interviews with expert panellists. For a full outline of the process, see Annex 1.

During the last few months, a number of industry associations, and other organisations, have produced statements calling for or supporting several of the measures discussed in our roundtables. Key proposals are extracted in Annex 2. This is not a position paper to which all roundtable participants have signed up; rather, it captures the issues on which participants' views converged, and where they diverged – though it should be noted that discussions were characterised by a high degree of consensus. At the end of each section we also identify questions we think are particularly worthy of further consideration.

2. THE NEED FOR A 'SMART MIX' OF MEASURES

While industry has an important role to play in tackling deforestation - and, in many cases has made efforts to do so – there are limits to what it can achieve either through voluntary measures or regulation. A 'smart mix' of measures is needed.

Action is needed by a range of different actors in different settings, both to create a supportive framework for industry action and to carry out activities which only governments, or civil society or other bodies can do.

This includes partnerships on the ground in producer countries; action within the EU, to create a clear market demand for sustainable products; action by other consumer countries; and action by financial institutions and their regulators. All these measures need to be underpinned by robust, consistent and practical systems of verification.

Two of the roundtable discussions focused on the need for a 'smart mix', or package, of measures designed to tackle deforestation.

According to the UN Guiding Principles on Business and Human Rights, a 'smart mix' of measures are 'national and international, mandatory and voluntary measures, to foster business respect for human rights'; this is clearly applicable to environmental aims too.

Roundtable participants felt that industry has an important role to play in tackling deforestation - and, in many cases has made efforts to do so – there are limits to what it can achieve either through voluntary measures or regulation. Action is needed by a range of different actors in different settings, both to create a supportive framework for industry action and to carry out activities which only governments, or civil society, or other bodies (such as certification organisations) can do.

These are explored in more detail in the rest of this paper:

- Through partnerships on the ground in producer countries, for example to improve standards of governance and law enforcement and to put in place many of the enabling conditions necessary to protect forests and improve the standards of production of agricultural commodities, including basic services and infrastructure and support for farmers. This includes the provision of capacity-building assistance and the negotiation of bilateral agreements with the EU. (Section 3)
- Within the EU, to create a clear market demand for sustainable products, through ensuring that all companies placing forest risk commodities on the market face a level playing field in terms of legislation, and to provide favourable market conditions for sustainable products and/or less favourable market conditions for unsustainable products. (Section 4)
- By other consumer countries – in particular, China, the world's largest importer of most forest risk commodities, but also India and others – to ensure that stricter standards in the EU market do not simply divert unsustainably produced products away to other markets. (Section 5)
- By financial institutions and their regulators, to steer flows of finance and investment away from unsustainable activities and supply chains and towards sustainable activities and supply chains – ideally at the global rather than EU-only level. (Section 6)

- All these measures need to be underpinned by robust, consistent and practical systems and approaches for companies to assess, verify and report on risk and risk mitigation within their supply chains. This includes the need to promote greater use of data and technological innovation and to build on existing best practice, including but not limited to certification. (Section 7)

As can be seen, these topics are closely linked to the five key areas identified for discussion in the 2019 Deforestation Communication.

Although individual measures, such as due diligence, may have some impact by themselves, they will be magnified and reinforced through implementing the 'smart mix' of measures.

In the absence of such measures, the risk of the EU becoming an 'island of excellence', sourcing sustainable products but having little impact on the scale of deforestation world-wide, is increased.

Given the wide variations in political, environmental and economic conditions between producer countries and regions, it is possible that the most appropriate mix of measures will vary between regions, or biomes, or commodities, and the appropriate focus may sometimes be at national level, sometimes at sub-national level, and sometimes at both. The speed of action may also vary by commodity and region; the cocoa sector, for example, is clearly readier for action than other sectors.

In general, however, given the urgency of the need to tackle deforestation, there is no case for delaying one measure until another is implemented; all measures should be adopted as soon as feasible (subject of course to the normal practices of consultation and impact assessment) even if the optimum mix is not yet in place.

Roundtable participants also drew attention to the need to consider ecosystems other than forests, such as grasslands or savannah – an issue not referred to in the Deforestation Communication. There is a danger that in focusing regulatory measures on the impact of agriculture only on forests, this encourages diversion of production to non-forest areas.

During the last few months, a number of industry associations and other organisations have produced statements calling for or supporting several of the measures discussed in the roundtables; while some of them focus only on due diligence, most of them call for elements of a 'smart mix'. Key proposals are extracted in Annex 2.

3. PRODUCER PARTNERSHIPS

Issues round producer partnerships were discussed at one of the roundtables, though they also featured heavily in both the roundtables devoted to discussing the 'smart mix' of measures.

3.1. AIMS

The development of various kinds of partnerships with producer countries, including with governments, industry, farmers and civil society, form a critical part of the 'smart mix' of measures. They should rest on open, inclusive dialogue, working collectively and responding to producer-country needs to develop shared solutions delivering shared benefits.

These will be necessary to help provide many of the enabling conditions to support the production of commodities in ways that do not drive deforestation or negative impacts on other ecosystems, including improvements in standards of governance and law enforcement and in the provision of basic services and infrastructure and support for farmers. Industry alone generally cannot provide these conditions, though it can play an important role.

Roundtable participants recognised that action on the ground in producer countries is important to help provide many of the enabling conditions that will support the production of commodities in ways that do not drive deforestation, or negative impacts on other ecosystems.

This includes, for example, improvements in standards of governance and law enforcement – including, critically, over land rights and tenure security – and in the provision of basic services and infrastructure and support for farmers. Industry alone generally cannot provide these conditions, though it can play an important role. It therefore follows that the development of various kinds of partnerships with producer countries, including with governments, industry, farmers and civil society, form a critical part of the 'smart mix' of measures.

They can address the root causes of deforestation. They can reinforce demand-side measures such as a due diligence obligation (see Section 4) as it will be much easier to introduce and implement the market signals necessary to drive sustainable consumption in the EU if the right enabling environments are in place throughout the supply chain. In addition, improvements in standards in producer countries affect all their production and exports, not just that portion destined for the EU.

Participants felt that the key features of such partnerships should include:

- Open, inclusive dialogue, working collectively and responding to producer country needs to develop shared solutions delivering shared benefits.
- Measures to provide support directly to farmers, such as agricultural, financial and social services and training and capacity-building.
- Mechanisms for supporting smallholder farmers in particular, to improve standards of production and reduce pressure on forests.
- Recognition for national platforms, frameworks and processes such as national commodity standards (e.g. the Indonesian and Malaysian Sustainable Palm Oil schemes) and, more broadly recognition of national development and environment priorities.

- Measures to address broad issues of governance and law enforcement, including rights of land tenure and access for local communities and indigenous peoples.
- Measures to improve transparency and information, and track the movement of products through supply chains, including traceability and verification systems.
- Trade, capacity-building and other measures to provide incentives for and support sustainable production.
- Efforts to align with ongoing international dialogues and processes, for example on climate change and biodiversity.

Participants felt that the Deforestation Communication provided an opportunity for the EU to demonstrate its commitment to genuine partnerships characterised by these key features. In turn, this could help to improve relationships with key producer countries, some of which have been damaged in recent years by trade and other disputes.

3.2. SUPPORTING PARTNERSHIPS

The EU should play a key role, through development assistance, in providing support and coordination for existing regional, national and sub-national partnership initiatives, including multi-stakeholder processes and national traceability systems. In general, more assistance should be provided for activities specifically geared at reducing the negative impacts of agricultural commodities.

Priority should be afforded to those regions, countries and sub-national jurisdictions where the greatest impact can be made and where European supply chains can use their associated leverage. It is also important to target assistance for local landscape-driven initiatives, which can often be more ambitious than central or provincial strategies.

European industry, as well as businesses in producer countries, could play a valuable role in some of these initiatives, helping to develop sustainable means of agricultural production.

Roundtable participants felt that the EU and its Member States should play a key role in providing support and coordination for existing partnership initiatives. Examples at a regional level include the Cocoa and Forests Initiative² and TFA's Africa Palm Oil Initiative³; at a national level, the Amazon soy and beef moratoriums and the Indonesian palm oil moratorium; and at a sub-national, or jurisdictional, level, the Governors' Climate and Forest Taskforce which aims to address deforestation through access to green finance solutions including REDD+, providing assistance to civil servants, private sector and providing a link to international markets⁴. Many companies also run their own programmes, for example to promote the uptake of certification, in agreement with local governments.

Following the first aim listed above ('open, inclusive dialogue, working collectively'), support could be targeted particularly at establishing or supporting multi-stakeholder processes. This includes, for example, TFA's regional Collective Action Platforms⁵ and the UN Development Programme's national commodity initiatives. Producer platforms in Indonesia and Papua New Guinea (for palm oil), for example, bring government, producers and civil society together to address the requirements for

2 <https://www.worldcocoafoundation.org/initiative/cocoa-forests-initiative/>

3 <https://www.proforest.net/en/programmes/africa/africa-palm-oil-initiative>

4 <https://www.gcfff.org>

5 <https://www.tropicalforestalliance.org>

achieving sustainable (and certified) commodities. Another particular target for support includes the establishment of national traceability systems, and the provision of support for increasing ambition in national certification systems such as the Indonesian and Malaysian Sustainable Palm Oil schemes.

These and other partnership approaches can be supported through the provision of development assistance, through both new and existing development programmes. Many European countries, and the EU institutions, are major development assistance donors, both through bilateral aid and in terms of contributions to international funds such as the World Bank's REDD+ funds or the Green Climate Fund. Many already devote significant sums to forests and agriculture, and Germany, Norway and the UK (some of the largest donors) are increasingly coordinating their activities on forests. Roundtable participants felt that more assistance should be provided for activities specifically geared at reducing the impact of agricultural commodities on forests and other ecosystems.

Priority should be afforded to those regions, countries and sub-national jurisdictions where the greatest impact can be made and where European supply chains can use their associated leverage. It is also important to target assistance on local landscape-driven initiatives, which can often be more ambitious than central or provincial strategies.

Roundtable participants felt that European industry, as well businesses in producer countries, could play a valuable role in some of these initiatives, working together with local governments and communities to help develop sustainable means of agricultural production. There are clearly limits to what companies can achieve, however, particularly in regard to smallholders outside company concessions or supply chains, which underlines the need for a broader systemic approach involving governments, civil society and communities.

3.3. VPA-TYPE AGREEMENTS

The Voluntary Partnership Agreement (VPA) model provides a good framework for tackling major challenges and achieving long-lasting change in producer countries, through tackling underlying problems of governance and law enforcement, through placing key decision-making powers in the hands of stakeholders in the producer countries and through establishing incentives, through trade preferences and the provision of capacity-building assistance. It would need some modification in adapting it to agricultural commodities, particularly in basing it on a sustainability rather than a legality standard.

Although the VPA model is in many ways a good one, negotiating such an agreement for other agricultural commodities than cocoa and other countries than Ghana and Côte d'Ivoire is likely to prove challenging.

The EU should therefore explore the scope for supporting initiatives which could in time become elements of a VPA-type bilateral agreement, such as the establishment of similar kinds of multi-stakeholder processes, and national traceability systems. These objectives could be better pursued at sub-national or landscape levels, at least in the short term.

Most of the roundtable discussions on potential formal bilateral partnership agreements between the EU and producer countries focused on the experience of the Voluntary Partnership Agreement (VPA) model adopted under the EU's Forest Law Enforcement, Governance and Trade (FLEGT) action plan designed to tackle illegal logging and the trade in illegal timber.

Roundtable participants recognised that the timber VPA model provides a useful framework for tackling major challenges and achieving long-lasting change in producer countries. In particular, it was considered advantageous that it seeks to tackle underlying problems of governance and law enforcement, places key decision-making powers in the hands of stakeholders in producer countries and establishes incentives through trade preferences and the provision of capacity-building assistance.

They also recognised, however, that the timber VPA model would need some modification in adapting it to agricultural commodities, particularly in basing it on a sustainability rather than a legality standard.

The key elements of such agreements for forest risk commodities could therefore include:

- A national deliberative process to open up sector-wide decision-making (e.g. for cocoa, palm oil, or a wider range of commodities), involving farmers and cooperatives, local communities, civil society, and the private sector, alongside government, in a framework in which all stakeholders respect, argue, build trust, decide and collaborate on an equal level. A strong commitment to transparency and access to data is an essential part of this process.
- Development, through this process, of a standard for sustainable production which the agreement would aim to guarantee. Unlike the timber VPAs, the standard should rest on a wider definition than simply legality of production. Issues to be covered could include, for example (and depending on the sector), the protection and restoration of forests and other ecosystems, land and tree tenure, land use planning and local land and forest management, child labour, forced labour, rules on pesticide, herbicide and fertiliser use, transparency and access to information and standards of law enforcement. Many international and national standards already exist which should be built on where appropriate.
- Possible inclusion of a price element aimed at increasing the incomes of farmers; this is particularly relevant to cocoa, where most smallholder farmers live in poverty, and could build on the 'Living Income Differential' export tax applied by the governments of Ghana and Côte d'Ivoire in 2019. This could also encourage companies trading in the commodity to review how futures markets operate, and the prices paid to producers. Participants noted, however, that many factors other than prices affect incomes, including improvements in productivity, strengthening farmer organisations and crop diversification.
- A trade preference on the part of the EU. Following the timber VPA model, this would require the establishment of a national traceability and export scheme in the producer country, and a due diligence requirement for the commodity placed on the EU market.
- An implementation roadmap setting out time-bound deliverables for elements such as the development of traceability systems, improvements in transparency, and the delivery of capacity-building, technical and financial assistance to enable farmers to reach the standards set under the agreement.

Roundtable participants commented in particular on the potential interaction of this type of agreement with a due diligence regulation (discussed in Section 4), both in providing a process for the development of the national standard, which could feed into the criteria for the due diligence obligation (if the timing of negotiations and legislation permits) and in offering an incentive for the producer country. Following the model of the EU Timber Regulation, commodities exported from the partner country would be automatically considered in compliance with the due diligence requirements of the regulation. Roundtable participants agreed that the VPA model is particularly well suited for cocoa, as the two main cocoa-producing countries already have a VPA for timber in place (Ghana) or are negotiating one (Côte d'Ivoire).

Furthermore, as the EU is the world's largest cocoa importer, there are some existing frameworks on which to build (such as the Cocoa and Forests Initiative) and many European-based companies in the sector have already called for such bilateral agreements (see Annex 2). Negotiating and implementing VPA-type agreements, however, is likely to be a long and resource-intensive process and sustained political commitment will be necessary on both sides to make the process work.

Participants felt, however, that negotiating a VPA-style agreement for agricultural commodities other than cocoa and countries other than Ghana and Côte d'Ivoire was likely to prove challenging. At the time of our roundtable discussions, Brazil, a major exporter of soy and beef, and Malaysia, a leading exporter of palm oil, had either expressed no interest in a timber VPA or had made little progress in agreeing on one.

Argentina, the other major South American soy exporter, seemed unlikely to be different. There may be more scope, however, with other countries in Latin America, such as Colombia, which is an exporter of cocoa, coffee and palm oil, and where TFA helped to facilitate the government's zero-deforestation commitment.

Other possibilities may arise in Africa, where Cameroon and Nigeria both export cocoa and palm oil, and in Indonesia, a major exporter of several tropical commodities, including palm oil, coffee, cocoa and rubber (though relations with the EU are complicated by the EU's decision to phase out regulatory support for the use of palm oil for bioenergy).

However, participants felt that the EU could usefully explore the scope for supporting initiatives which could in time become elements of a VPA-type bilateral agreement. This includes many of the activities mentioned above in Section 3.2, for example putting in place the kinds of multi-stakeholder processes that the VPAs envisage, even if they cannot be linked to legally binding commitments, and the establishment of national traceability systems.

Some of these objectives could be better pursued at sub-national or landscape levels, at least in the short term, though in the longer term national frameworks will be necessary to avoid problems of leakage and for the establishment of effective traceability and export licensing systems.

3.4. TRADE AND INVESTMENT AGREEMENTS

The EU should explore the scope for incorporating sustainability conditions in trade and investment agreements, strengthening trade and sustainable development chapters in existing agreements, and improving the sustainability impact assessment process. There is a need for greater coherence between EU policies in different areas, such as trade, agriculture, environment and development.

Considerable interest was expressed by roundtable participants in incorporating sustainability conditions in trade and investment agreements. While trade and sustainable development chapters in existing EU trade agreements have had relatively little impact, participants noted that the Commission has now agreed to establish the position of Chief Trade Policy Enforcer to, among other things, ensure their effective implementation. In its May 2020 Communication on the EU Biodiversity Strategy for 2030, it also committed to: 'better assess the impact of trade agreements on biodiversity, with follow-up action to strengthen the biodiversity provisions of existing and new agreements if relevant'⁶.

⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Biodiversity Strategy for 2030 – Bringing nature back into our lives (COM(2020) 380 final, 20 May 2020), section 4.2.2.

This was not a topic discussed in much detail – as it is clearly an area in which the EU and its Member States governments lead, and industry has a much more limited role – but the point was made that such agreements at least provide a framework in which to conduct dialogue and discuss potential measures to support sustainable development while providing fair terms of competition.

Options include strengthening trade and sustainable development chapters, making them enforceable, and improving the sustainability impact assessment process, including the need for comprehensive assessments before agreements are concluded, and monitoring their impact on implementation. The need for greater coherence between EU policies in different areas, such as trade, agriculture, environment and development, was also noted.

SECTION 3: QUESTIONS FOR FURTHER DISCUSSION

What role could industry play in jurisdictional and national initiatives to promote sustainable agricultural production?

How could trade and investment agreements provide an effective framework to promote sustainable, or deforestation-free, agricultural production and consumption, and work together with demand-side measures such as due diligence legislation?

4. DEMAND-SIDE MEASURES

Alongside action on the ground in producer countries, action is also needed in consumer countries –for the purposes of this section, the EU – to ensure that sustainably produced commodities are favoured or required on the EU market and unsustainably produced commodities are disfavoured or excluded. This aim can be achieved in a number of different ways.

A range of possible demand-side measures were discussed at three roundtables: at a general introductory discussion on regulatory and non-regulatory measures and at two discussions on due diligence. Due diligence was also discussed at some length in both the roundtables devoted to discussing the ‘smart mix’ of measures.

4.1. DUE DILIGENCE: THE NEED FOR HORIZONTAL AND COMMODITY-SPECIFIC LEGISLATION

Roundtable participants expressed very clear support for the introduction of mandatory EU-wide due diligence legislation covering human rights and environmental impacts, through both a broad ‘horizontal’ approach to due diligence, and a commodity-specific approach.

This should drive a better understanding of supply chains and their exposure to the risks of environmental harm and human rights abuses, drive continual improvement, encouraging the development and evolution of plans to address the risks, and transform global commodity supply chains (not just clean up EU supply chains), through capacity building and supplier engagement. Commodity-specific legislation is needed to clearly define the criteria on which the due diligence obligation for each commodity is based, and to create a level playing field across the EU to ensure that the same criteria are followed by all companies.

Roundtable participants recognised that the UN Guiding Principles and OECD guidance describe a standard of conduct that does not assume that all challenges can be overcome immediately; rather, due diligence is a process of gradual improvement in the analysis and mitigation of risks which leads to a steady reduction in the problems the legislation is designed to tackle. It should reward continued engagement with and support for suppliers who perform less well to start with, acting as an enabler of good practice and future progress rather than an incentive to abandon suppliers.

The introduction of due diligence legislation proved to be the main demand-side measure of interest to roundtable participants. Momentum for the introduction of due diligence legislation has been developing for several years, and the roundtables discussed lessons that could be drawn from existing legislation, including the EU Timber Regulation and the French Devoir de Vigilance law. We also noted the calls issued over recent months, by several EU trade associations and groupings, for the introduction of mandatory EU-wide due diligence; see Annex 2.

Within the EU, two processes are under way. Following the Deforestation Communication, an impact assessment of potential demand-side measures to minimise the risk of deforestation and forest degradation associated with products and commodities placed on the EU market started in May 2020 and is due to lead to legislation in 2021. Due diligence is included in the impact assessment, though whether it will feature in the legislation is of course not yet certain.

In April 2020, in the middle of our roundtable series, Didier Reynders, the European Commissioner for Justice, announced his intention to develop a legislative proposal by 2021 requiring businesses to carry out due diligence in relation to the potential human rights and environmental impacts of their operations and supply chains – the so-called ‘horizontal’ approach, not specific to any products or supply chains. This has since been supported by other Commission statements. No formal impact assessment process has yet begun, though the announcement followed the publication of a comprehensive study of existing business due diligence systems, views and options⁷. How these two processes, each potentially leading to due diligence legislation, might interact with each other is not yet clear.

Roundtable participants expressed very clear support for the introduction of mandatory EU-wide due diligence legislation, through both a broad ‘horizontal’ approach to due diligence (as in the *Devoir de Vigilance* law, which places companies under an obligation to exercise due diligence with regard to human rights abuses and environmental harm across their entire operations and supply chains), and a commodity-specific approach (which applies to companies handling a defined category of products, as in the EU Timber Regulation and Conflict Minerals Regulation).

Participants felt that this combination of approaches should aim:

- To require companies to exercise due diligence covering human rights and environmental impacts (not just illegality, as in the Timber Regulation), focusing as a priority on commodities which are associated with the risk of deforestation and forest degradation.
- To place a due diligence obligation on all companies that source, trade and process forest risk commodities.
- To promote a better understanding of supply chains and their exposure to the risks of environmental harm and human rights abuses.
- To drive continual improvement, encouraging the development and evolution of plans to address the risks.
- To transform global commodity supply chains (not just clean up EU supply chains), through capacity building and supplier engagement.
- To build where possible on existing industry due diligence systems and voluntary initiatives, and relevant national and international programmes and processes.
- To encourage the use of new technologies and data-sharing systems (in a similar way in which the Timber Regulation has helped to spur the uptake of DNA and isotopic testing to determine the origin of timber products).

Given these aims, roundtable participants believed that legislation would be necessary for both the horizontal and the commodity-specific approaches to due diligence. Commodity-specific guidance will be needed to clearly define the criteria on which the due diligence obligation for each commodity is based. It was felt that it is unlikely that a broad corporate due diligence obligation could set out the criteria in sufficient detail to generate the certainty that businesses need to fulfil their obligations. The French *Devoir de Vigilance* law, for example, does not define what is meant by ‘human rights’ or ‘environmental harm’, and while ‘human rights’ is usually taken to mean the internationally recognised human rights definition set out in the UN International Bill of Human Rights, ‘environmental harm’ is

⁷ Lise Smit et al (British Institute of International and Comparative Law, Civic Consulting and London School of Economics and Political Science, Study on Due Diligence Requirements Through the Supply Chain (European Commission, January 2020).

a much looser term and there is no real environmental equivalent in the UN documents. Even for human rights, key issues such as the rights of land tenure and access may not be clear without further detail.

Second, commodity-specific guidance will be needed to create a level playing field across the EU. The EU does not have exclusive competence over corporate law, so the legislation announced by Commissioner Reynders seems likely to take the form of a directive, to be incorporated into national law by each Member State.⁸ This increases the likelihood of variations in the way the due diligence requirement is imposed, which will undermine the level playing field. A regulation, in contrast, applies uniformly across the EU.

Given these aims, participants felt strongly that commodity-specific legislation was needed – and not, as sometimes suggested, non-legally-binding guidelines; it is essential that the requirements have legal force. The legislative process would be more straightforward if this could be achieved through a single legislative instrument, but it might need two. The possibility of phasing the introduction of the due diligence obligation by commodity, rather than introducing it simultaneously for all forest risk commodities was suggested. It is clear that many companies in the cocoa supply chain are ready for such legislation, while others – for example, soy – may be less well prepared. However, the introduction of the due diligence requirement for all forest risk commodities should not be too long delayed, in order to retain the benefits of the cross-commodity approach.

Roundtable participants also recognised that the UN Guiding Principles and OECD guidance describe a standard of conduct that does not assume that all challenges can be overcome immediately. Rather, due diligence is a process of gradual improvement in the analysis and mitigation of risks which leads to a steady reduction in the problems the legislation is designed to tackle (human rights abuses, environmental harms, etc.).

The due diligence obligation could be combined with a requirement that products placed on the market meet specified standards based on the due diligence criteria. Effectively, this is a prohibition, similar to that included in the EU Timber Regulation for timber produced illegally, though the possibility also exists of establishing the exercise of adequate due diligence as a defence by the company placing the products on the market.

It was acknowledged there could be unintended consequences from a due diligence obligation, such as companies abandoning high-risk suppliers or possibly switching to commodities that are perceived as of lower risk to forests (though the production of all commodities has environmental and often social impacts – which is one reason not to restrict the due diligence criteria to deforestation alone). The due diligence approach should reward continued engagement with and support for suppliers who perform less well to start with, acting as an enabler of good practice and future progress rather than an incentive to abandon suppliers. Accordingly, most roundtable participants felt that a prohibition on products not meeting a set standard should not be included in the legislation.

Finally, many participants observed that a due diligence obligation would prove far more effective if it formed part of a broader package of measures – as outlined above in Section 2 – including in particular action on the ground in producer countries. Due diligence legislation could play a mutually reinforcing role with VPA-type bilateral agreements (see Section 3), with the due diligence legislation offering a ‘green lane’ for commodities produced to the national standard in the partner countries.

⁸ As suggested in the DG Justice study (though this is not, of course, conclusive); see *ibid.*, Part IV, sections 3.1 and 7.3.

4.2. DUE DILIGENCE: IMPLEMENTATION

The due diligence criteria must be wider than simple legality and should build where possible on existing systems and definitions such as the various OECD guidance documents and the Accountability Framework Initiative.

Monitoring companies' compliance with the legislation is a task primarily for competent authorities appointed by Member State governments, which must be adequately resourced and equipped with sufficient enforcement powers and penalties. There could also be a role for a civil liability mechanism through which third parties could pursue legal action. The responsibilities of businesses, and the extent to which their conduct of due diligence provides a defence to claims of liability, will need to be carefully defined.

The due diligence obligation should be implemented by all actors throughout the supply chain, with no threshold by company size or turnover. The legislation should include a requirement to publish a report on a company's due diligence system, its implementing activities and future plans, with the aim of improving transparency and facilitating scrutiny of the evolution of due diligence systems. Systems for complaints and remediation should also be included.

The criteria on which the due diligence obligation should be based were not discussed in detail, though roundtable participants recognised that this will be a key element in the development of the legislation. As noted above, however, it was agreed that the criteria should be wider than simple legality, as in the Timber Regulation.

Existing frameworks, such as the various OECD guidance documents, and the Accountability Framework Initiative, were mentioned as potential sources. It was noted that the joint position paper issued by the cocoa and chocolate companies and others in December 2019 suggested the following criteria for the cocoa supply chain:⁹

1. Respect for the laws of the producer country, including in particular laws relating to: human rights; forced labour and child labour; employment conditions, such as working hours and health and safety conditions; rights of ownership and access to land; and environmental protection, including in particular the protection of forests.
2. Respect for internationally recognised human rights, including the ILO core conventions, and respect for land rights consistent with the principles in the Voluntary Guidelines on the Responsible Governance of Tenure.
3. Respect for high standards of environmental sustainability, particularly relating to the protection of forests, such as a prohibition on deforestation, the protection of high conservation value and high carbon stock forests, and requirements for new planting.

Roundtable participants clearly felt that the task of monitoring companies' compliance with the legislation was a task for competent authorities appointed by Member State governments. This is particularly true in the context of a due diligence approach which focuses on the gradual improvement in companies' application of due diligence. Someone has to monitor companies' behaviour across the board and decide whether they possess adequate due diligence systems and are making sufficiently fast progress. This is clearly a role in the first instance for an enforcement agency with knowledge of the supply chain in question, with the power to take companies to court where necessary.

⁹ See Annex 2.

This would also benefit from the ability to access data from within the producer countries themselves, reinforcing the case for engagement with producer country governments and stakeholders, as explored in Section 3.

The competent authorities will have to be adequately resourced to be able to carry out these functions, including providing guidance and monitoring uptake. They should also be equipped with sufficient enforcement powers and penalties and should issue transparent and detailed reports on their compliance activities. Roundtable participants were aware of weaknesses in the enforcement of the Timber Regulation across Member States which undermined its effectiveness and felt that the Commission could play a role in providing guidelines and ensuring effective enforcement.

Participants also recognised that there could be a role in addition for a civil liability mechanism through which third parties, including stakeholders such as local communities directly affected in the countries of production, could pursue legal action. This would provide a kind of 'backstop' to the main enforcement process. Clearly, however compliance with the due diligence obligation is monitored and enforced, the responsibilities of businesses, and the extent to which their conduct of due diligence provides a defence to claims of liability will need to be carefully defined.

The legislation should include a requirement to publish a report on a company's due diligence system, its implementing activities and future plans, with the aim of improving transparency and facilitating scrutiny of the evolution of due diligence systems. While roundtable participants supported this aim in principle, some felt that some reporting obligations currently in force had merely created a 'tick box' exercise which did not drive real change within supply chains. This outcome should be avoided, however, if combined with the requirements to exercise due diligence and to have in place a system of due diligence.

Roundtable participants were strongly of the view that the due diligence obligation should be implemented by all actors throughout the supply chain, with no threshold by company size or turnover. It was also felt, however, that the responsibility of different supply chain actors needs to be proportionate to their ability to influence conditions in the supply chain. The solution reached in the Dutch Child Labour Due Diligence law is a possible way in which to satisfy these objectives. This requires companies either to conduct due diligence themselves or to obtain a declaration from their suppliers stating that they have themselves conducted due diligence – though some participants felt that this might still become a simple tick-box exercise for companies further down the supply chain, not requiring them to change behaviour in any meaningful way.

Roundtable participants supported the inclusion of complaints and remediation systems in the due diligence legislation. This helps to support continued engagement with producers who do not initially satisfy the due diligence criteria and provides a route back into the system, through a compensation or restoration pathway.

Although the topic was not discussed in much detail, the point was made that complaints might be better handled through a centralised state system rather than requiring every company to set up its own system; the National Contact Points established under the OECD Guidelines for Multinational Enterprises might provide a possible route.

However, clearly each company must possess a mechanism for responding to grievances and providing remediation where appropriate.

4.3. OTHER DEMAND-SIDE MEASURES

Other potential demand-side measures to support the growth of market share for sustainable commodities should be considered. Options include public procurement, differentiation of import duties and the reform or reinterpretation of EU competition law.

Labelling of products as ‘deforestation-free’ should not, however, be pursued. Roundtable participants felt that governments needed to undertake the responsibility of regulating their own markets, rather than rely on consumers exercising informed choices.

Compared to due diligence, other potential demand-side measures were not discussed in much detail, though it was felt important that the EU clearly demonstrated that it is taking action to support the growth of market share for sustainable commodities.

Roundtable participants noted, however, that the range of possibilities included:

- Public procurement policies requiring public buyers to purchase forest risk commodities produced to specified standards. All EU Member States already possess frameworks for sustainable procurement, and they often include criteria for food, including organic, healthy or seasonal. Some countries are beginning to introduce criteria related to deforestation. In practice, suppliers’ ability to meet the criteria would probably rely on certification schemes (see Section 7).
- Differentiation of import duties according to the means of production. While this option could not realistically be applied to imports from low income countries (since the vast majority of their exports enter the EU duty-free), it could apply to imports from middle-income countries. This measure could be a feature of bilateral trade agreements rather than be applied to all imports.
- The reform or reinterpretation of EU competition law to permit companies to collaborate in the pursuit of public goods. In practice, competition law devised – rightly – to prevent companies from colluding to the detriment of consumers can act as a barrier to their collaboration in achieving common objectives, such as better protection of forests or establishing supply chain controls.

The subject of labelling of products as ‘deforestation-free’, which is mentioned in the 2019 Deforestation Communication, did not generate support. Roundtable participants felt that governments needed to undertake the responsibility of regulating their own markets, rather than rely on consumers exercising informed choices. There is also the practical question of confusion between a new ‘deforestation-free’ label and existing certification schemes.

SECTION 4: QUESTIONS FOR FURTHER DISCUSSION

What criteria for due diligence should be included in a commodity-specific obligation?
How can the due diligence obligation be shared by all actors throughout the supply chain, with no threshold by company size or turnover, while at the same time recognising that the responsibility of different supply chain actors needed to be proportionate to their ability to influence conditions in the supply chain? What other measures should be adopted to grow the market share of sustainably produced commodities on EU markets?

5. INTERNATIONAL COOPERATION

Engaging in dialogue with other consumer countries is an important part of the ‘smart mix’, in order to encourage these countries to adopt the same or similar measures, both increasing the chances of scaling up positive outcomes and avoiding the diversion of commodities produced unsustainably away from the EU towards other markets.

The EU should promote joint initiatives to develop and implement sustainability standards and policy measures and to share data and examples of best practice, building where possible on existing networks, including industry associations and groupings, reaching both producers and consumers of forest risk commodities to build a sense of shared responsibility and shared interest.

While the EU imports most of the world’s cocoa and coffee, other countries are larger importers of other forest risk commodities (although the EU is generally in the top three). Engaging in dialogue with other consumer countries – most importantly, China, the largest global importer of these commodities overall, but also India and other major consumer countries – is therefore an important part of the ‘smart mix’, in order to encourage these countries to adopt the same or similar measures. This will both increase the chances of scaling up positive outcomes and help avoid the diversion of commodities produced unsustainably away from the EU towards other markets. This topic was discussed during one of the roundtables, and was raised again during the two roundtable discussions on the ‘smart mix’.

Compared to the discussions on producer partnerships and due diligence, the exchange of views was less extensive and less detailed, in recognition of the fact that this is an area in which EU institutions and Member State governments are the key actors. Nevertheless, roundtable participants felt that industry could play an important supporting role. Points made by participants included the following:

- The EU should promote joint initiatives to develop and implement sustainability standards and policy measures and to share data and examples of best practice.
- These efforts should recognise roles for existing institutions and processes (e.g. the FAO) in developing standards, e.g. for deforestation or land rights.
- They should build where possible on existing networks, including industry associations and groupings, reaching both producers and consumers of forest risk commodities to build a sense of shared responsibility and shared interest.
- They should take opportunity of existing international processes – e.g. on climate change or biodiversity (with key conferences for both now scheduled for 2021) or through the EU–China summits – and other narratives, e.g. on food security as an objective. In some circumstances these may offer more fruitful opportunities for progress than issue-specific discussions on deforestation.

SECTION 5: QUESTIONS FOR FURTHER DISCUSSION

What role can industry and industry associations play in promoting dialogue and engagement with other consumer countries?

6. FINANCE

The redirection of 'grey finance' away from unsustainable and towards sustainable activities is essential but will not happen without intervention by EU and global regulators. This includes possible requirements on financial organisations to report specifically on their deforestation risk exposure, and the application of a due diligence obligation.

Investment in sustainable activities needs to be scaled up, and made more accessible to small-holders and SMEs, through approaches such as blended finance and specific green finance instruments, such as climate finance, green bonds, REDD+ resources and ecosystem service payments

European banks and financial institutions continue to provide significant loans and investments to companies whose activities are associated with deforestation. At the same time, public and private money devoted to tackling deforestation, for example from climate funds, is far smaller in scale than the challenge requires.

The New York Declaration on Forests Assessment Partners reported in 2017 that while total public and private support for the development and implementation of strategies to reduce forest emissions had reached roughly USD 20 billion since 2010, this amount was marginal compared to the USD 777 billion in 'grey finance' for the land sector that influenced forests and was not clearly aligned with forest and climate goals. While this is not a measure of financial support or investment, the production value of palm oil, soy, beef, pulp and paper in tropical countries exceeded USD 1 trillion, illustrating the large economic incentives in the sectors that drive deforestation.¹⁰

Accordingly, action needs to be taken, by governments, financial institutions and their regulators, in two areas: steering flows of grey finance and investment away from unsustainable activities and supply chains; and steering flows of finance and investment towards sustainable activities and supply chains – both ideally at the global rather than EU-only level. This topic was discussed at two roundtables.

6.1 STEERING FINANCE AWAY FROM UNSUSTAINABLE ACTIVITIES

Given the scale of the financial flows involved, this is the area with the greatest potential for positive outcomes.

While participants were not drawn from the finance sector, the experience of business in interacting with investors is important. In general, roundtable participants observed an increasing awareness among their investors of the risk of climate impacts, but their awareness of deforestation risks was far more limited. In general, ESG (environmental, social and governance) risks tended to be framed too broadly, which risked steering companies away completely from sourcing from perceived high-risk areas. Participants were clear that the redirection of finance away from unsustainable and towards sustainable activities would not happen without further intervention by EU and global regulators.

¹⁰ Progress on the New York Declaration on Forests: Finance for Forests – Goals 8 and 9 Assessment Report (Climate Focus in cooperation with the New York Declaration on Forest Assessment Partners, October 2017)

This included possible requirements on financial organisations to report specifically on their deforestation risk exposure and the progress they were making in mitigating risk. Roundtable participants observed that voluntary reporting is happening but is not yet sufficient. It was suggested that the EU Taxonomy just about to be introduced – a common classification system to encourage private investment in sustainable growth and contribute to a climate-neutral economy – could contribute to this aim. This would require the inclusion of criteria related to avoided deforestation in the technical screening elements, most obviously in those for the protection and restoration of biodiversity and ecosystems, and possibly also those for climate mitigation. The current review of the EU Non-Financial Reporting Directive also provides opportunities for the inclusion of requirements for reporting deforestation risk.

The possibility of applying the due diligence approach to financial institutions was also raised in discussion. This would require financial bodies to exercise due diligence with respect to their lending and investment activities, using the same criteria discussed in Section 4. In cases where the criteria were not met immediately, it is hoped that this would drive continued engagement and steady progress in mitigating the risk of negative impacts, in the same way as the due diligence approach can for companies.

6.2 STEERING FINANCE TOWARDS SUSTAINABLE ACTIVITIES

In terms of scaling up investment in sustainable activities, participants observed that the cost of capital for investment in sustainable land use and commodity production needed to be reduced to enable take-up at a much greater scale. The possibility of blended finance using public sector funds to reduce financial risk could help. The comment was also made, however, that where finance (both public and private) was already available for large-scale landscape projects it often proved difficult to channel this money into smaller ‘pots’ to support smallholders, and often came with extensive lending criteria and conditions that proved a disincentive to take-up.

It was felt that specific green finance instruments, such as climate finance, green bonds, REDD+ resources and ecosystem service payments, could be used to support sustainable agriculture and reduce pressures on forests. Existing institutions tend to regard such activities as riskier – and probably longer-term, which is often not attractive – partly because of a lack of knowledge, ending up with them either walking away or imposing unrealistic conditions. There may accordingly be a role for publicly funded institutions to accept the first slice of perceived risk on investments in sustainable agriculture, helping to drive down interest rates on loans or investments to acceptable levels. There should also be more effort devoted to channelling finance through local banks and financial institutions, which are often the dominant source of funding at the producer level.

While many of these initiatives are already under way, roundtable participants felt that the pace of development, implementation and scaling-up of these measures in no way matched the urgency of current rates of forest loss.

SECTION 6: QUESTIONS FOR FURTHER DISCUSSION

How could a due diligence obligation be applied to financial institutions in order to steer investment away from unsustainable activities such as commodity-driven deforestation?

How can greater lending and investment in sustainable agricultural production be supported, at the scale and pace required?

How can all actors in the supply chain, including especially SMEs and smallholders, enjoy access to finance for sustainable agricultural production?

7. VERIFICATION

Industry and governments must be able to have access to and rely on clear, consistent and credible tools for assessing, verifying and mitigating deforestation risk and tracking the movement of products through supply chains. Roundtable participants stressed the importance of the EU building on existing actions and initiatives, including on traceability and transparency, rather than starting from scratch and inventing entirely new systems.

Certification systems provide important tools but have their limits. Recognition for other forms of supply chain assurance, complementary to certification, is likely to be increasingly necessary.

The EU should play a role in bringing together and coordinating some of the necessary data and intelligence on deforestation risk into a central point, including through the proposal for an 'EU Observatory' included in the Deforestation Communication.

Underlying most of the policies and measures discussed above – including due diligence, public procurement, transparency and stakeholder communication – are effective means of verification. Industry and governments must be able to have access to and rely on clear, consistent and credible tools for assessing, verifying and mitigating deforestation risk and tracking the movement of products through supply chains. Many such sources of data and systems of verification already exist.

This topic was discussed at two roundtables and was referred to during discussions on the 'smart mix'. In general, roundtable participants stressed the importance of the EU building on existing actions and initiatives, including on traceability and transparency, rather than starting from scratch and inventing entirely new systems.

Participants recognised that certification schemes provided important tools, but were only one in a broader toolbox of measures. Certification can provide a useful stepping-off point for businesses in complex supply chains, as part of an 'improvement pathway'. Having put considerable effort into developing sustainability standards, they are an important source of expertise for industry and can help inform policy development. They should play a role in helping companies meet their due diligence obligations, but this needs to be carefully defined, and is not likely to be sufficient for high-risk sources. But certification has its limits. It acts only at the point of production; it can be costly to implement (a particular barrier for smallholders); it has difficulties recognising sources that are 'progressing towards' sustainability but have not yet achieved it; and, perhaps most importantly, it has had limited market uptake, even in those commodities which have been the most exposed to initiatives, such as palm oil (RSPO-certified palm oil accounts for about 20 per cent of global volumes) and cocoa (Fairtrade, Rainforest Alliance and organic cocoa account for about 25 per cent of global supply chains.)

Participants felt that the EU needed to recognise the importance of existing national schemes, even where these fall short of international standards, since they can help to build capacity and lay the foundations for further ambition. Examples include the Indonesian and Malaysian Sustainable Palm Oil schemes (ISPO and MSPO.) This is likely to be of particular importance in the context of new producer partnership agreements (see Section 3).

Similarly, participants felt that recognition for other forms of supply chain assurance, complementary to certification, is likely to be increasingly necessary, reflecting the need for different approaches to suit specific commodities. Examples include the no-deforestation no-peat no-exploitation (NDPE) policies adopted by many palm oil companies and in particular the Implementation Reporting Framework currently being developed and tested as a way to improve consistency and information-sharing across the sector, and to show and monitor progress, allowing companies to stay engaged and gain positive recognition for making progress. Existing international frameworks, such as the OECD due diligence guidance, and the Accountability Framework Initiative, should be built on to ensure consistency in the development of sustainability criteria and guidelines.

Whatever the verification system, the more it can involve local mechanisms and local monitoring the better. Questions of the ownership of data – how it is collected, stored and used – and its consistency and alignment with other sources need to be addressed. This reinforces again the need for effective engagement with governments and stakeholders in producer countries – a point made in almost every section in this paper.

Participants also felt that new technologies could be used more extensively to assess risk, monitor compliance and support change. Examples include isotopic analysis, earth observation, blockchain and worker voice tools, but in practice using these in real-life situations on the ground is often complex and is likely to require support.

Finally, information on deforestation risk is currently provided across a range of different platforms. Participants felt that the EU could play a role in bringing together and coordinating some of the necessary data and intelligence on deforestation risk into a central point, including through the proposal for an 'EU Observatory' included in the Deforestation Communication, which was a welcome initiative. It was hoped that it would be established speedily.

SECTION 7: QUESTIONS FOR FURTHER DISCUSSION

How can certification schemes play a role in the measures examined in the rest of this paper, including in particular due diligence?

How can other forms of supply chain assurance be recognised and verified?

ANNEX 1: THE EFECA / TFA ROUNDTABLE PROCESS

Between April and July 2020, the Tropical Forest Alliance (TFA) tasked Efeca to organise and facilitate a series of roundtable discussions to gather industry views on themes emerging from the EU Deforestation Communication. These roundtables created a space for industry stakeholders to share their perspectives, experiences and inputs across a range of commodities and sectors in order to inform EU policies on deforestation and support constructive dialogue, in line with ongoing efforts in EU policy processes.

These TFA roundtables aimed to complement and support the formal EU consultation by capturing the voice of business, and their inputs in this discussion paper. The roundtables did not seek to drive consensus or alignment across industry, but rather to capture points where stakeholders' views converged and where they diverged, for the European Commission to consider when evaluating different policy options.

In order to achieve these objectives, ahead of the roundtable series, Efeca conducted an extensive cross-sector and cross-commodity stakeholder engagement operation, reaching out to over 200 people from over 100 organisations between January and July 2020. Efeca also reached out to European national initiatives on soy and palm oil using stakeholder surveys and questionnaires, in order to gather feedback from a broad range of actors, from large multinational companies to SMEs.

This stakeholder engagement exercise informed the roundtable process and the themes discussed in the roundtables, which were held in two 'waves'. The first wave explored the five priorities set out in the Deforestation Communication – including discussions on regulatory and non-regulatory measures, producer partnerships, certification and labelling, due diligence, international cooperation, and finance. Building on insights from the first wave, the second wave of roundtables provided the opportunity to 'deep dive' on the topics industry identified as those on which they could best add value to the EU discussions. This wave focused on the role of due diligence, verification and claims, and finance, focusing on the interlinkages between different policy options.

Throughout the discussions, it was felt that each of these areas could not work alone, and that therefore there was a need to create a 'smart mix' of measures. This suggested 'smart mix' of measures was developed through the roundtable series and 'tested' in the context of Southeast Asia in a dedicated roundtable, exploring how the mix could tackle deforestation, forest degradation and land conversion while avoiding unintended consequences.

In total, 145 companies and organisations (249 individuals) were invited to participate in this series of roundtables. A total of 10 roundtable meetings were held, with 124 participants from industry, civil society and the public sector, with an average industry representation of nearly 60 per cent at each meeting. These numbers are higher when considering that a number of industry participants were associations, representing broad memberships, including SMEs.

We would like to thank everyone who has been involved in this process, and particularly members of our core and architect groups, who provided strategic oversight and, in many cases, steered these discussions towards concrete and constructive suggestions.

ANNEX 2: INDUSTRY STATEMENTS

During the last few months, a number of industry associations and organisations including industry have produced statements calling for or supporting several of the measures discussed in our roundtables. Key proposals are extracted here.¹

Cocoa coalition (Barry Callebaut, Fairtrade International, Mars Wrigley, Mondelēz International, Rainforest Alliance, VOICE Network) – December 2019 (later endorsed by Nestle, Tony’s Chocolonely and Unilever)

- As essential parts of the overall strategy, the EU should: Aim to negotiate bilateral agreements with cocoa origin governments to create the frameworks necessary to achieve this aim, and provide financial support to those governments to do so; establish a regulatory and policy framework within the EU to encourage sustainable cocoa production, support consumer trust and help sustain market demand for cocoa from West Africa over the long term.
- An essential component of the regulatory and policy framework designed to secure the long-term sustainability of the cocoa supply chain is an EU regulation placing a due diligence obligation on all companies that place cocoa or cocoa products on the EU market.
- We recognise that, in isolation, a due diligence system will only be effective if it is coupled with a wider EU strategy that creates the enabling environment required to make progress on sustainable cocoa farming within cocoa-producing countries.
- Therefore, as a prerequisite for the effectiveness of any due diligence system and legislation in creating impact on the ground in cocoa-producing countries, the EU will need to negotiate framework agreements with the governments of relevant cocoa-producing countries, including time-bound deliverables ... [details not included here]

European Cocoa Association – December 2019

- ECA believes that an EU Due Diligence Regulation can add value to the functioning of the cocoa supply chain by creating a level playing field among companies importing into the EU market – notably through harmonized information requirements – and by driving the demand for sustainably sourced raw materials.
- However, for it to be meaningful, any EU due diligence system should include a clear strategy to create the above-mentioned enabling environment in cocoa origin countries. That includes a framework which allows for continuous improvements to identify and tackle the obstacles encountered, while taking into account the high level of complexity and the high number of intermediaries in the cocoa supply chain.
- Issues related to law enforcement, land and forest governance, as well as labour policies and educational infrastructure are first and foremost local governments’ sovereign responsibility. Hence, EU authorities need to reach an agreement on a framework for action and commitments with cocoa producing countries, including strong audit measures and time-bound deliverables ... [details not included here]

¹ Several of these statements are quite long and detailed; the selection of proposals presented above is the responsibility of the authors of this paper alone. Only text relating directly to specific measures considered in this paper is included.

- Therefore, in order to be properly implemented, Due Diligence must be preceded by a series of negotiated supply and demand side measures such as the ones that could be envisaged through the Voluntary Partnership Agreements (VPAs) under the EU Forest Law Enforcement Governance and Trade (FLEGT) Action Plan.
- While multi-commodity EU Due Diligence Regulation would appear to be the preferred policy option, one could envisage that its application be phased by commodity, based on sectorial risk and implementation preparedness.
- For all the above reasons, we consider that an EU Due Diligence Regulation applying to all companies that place cocoa or cocoa products on the EU market could be a necessary and positive step forward to a sustainable cocoa supply chain, under the right conditions and with the correct framework.

French Association of Private Enterprises (AFEP) (February 2020)

- The French Law on the Duty of Vigilance creates considerable legal uncertainty. The vagueness and extremely broad scope of the law may be a source of numerous, lengthy and costly judicial proceedings which would create a climate of distrust and rarely change the situation of local populations.
- Before envisaging any new due diligence measures, a thorough assessment of the effectiveness of already implemented rules (including the advanced Non-financial Reporting Directive n° 2014/95/EU and relevant national legislation) should be conducted. At this stage, it is clearly premature to envisage another layer, for example with a European mandatory due diligence coupled with civil liability.
- The EU templates for the Trade and Sustainable Development (TSD) chapters under bilateral Free Trade Agreements should be upgraded to incentivise our trading partners to improve responsible business conduct (RBC) and CSR practices by their domestic companies and foreign-invested companies. AFEP supports the use of sanctions in the event of non-compliance with FTAs, in particular with TSD chapters, subject to competitiveness edge test before deciding on sanctions. This is the only way to ensure full-fledged enforcement of RBC and CSR over the supply chain, without undermining EU companies' competitiveness and EU jobs.

Roundtable on Sustainable Palm Oil (RSPO) – April 2020

- Voluntary initiatives such as the RSPO can only go so far, the backing of governments is urgently needed to tip the scale for deforestation-free supply chains and for sustainable palm oil to become the norm.
- The RSPO calls on [the EU] to implement binding rules to ensure companies follow high standards to act responsibly and address social and environmental issues and can support this initiative.
- To scale the efforts of RSPO members, we welcome legislative action from governments to include our standards in their policies, from national interpretations of the RSPO's standards for growers, to public procurement policies encouraging the purchase of RSPO Certified Sustainable Palm Oil.

European Palm Oil Alliance (EPOA) – 11 May 2020

- EPOA supports the introduction of sustainable and deforestation-free principles and criteria within regulatory measures to create a level-playing field in the EU market for all vegetable oils.
- EPOA believes that a mandatory due diligence for European companies using palm oil should be one of the regulatory measures.

- EPOA supports the idea of further investigating the opportunities for inclusion of deforestation-free conditions in EU bilateral Free Trade Agreements, Voluntary Partnership Agreements or EU-wide regulations.
- EPOA acknowledges that sustainable deforestation-free production can only be achieved when good governance in the (palm oil) producing countries is in place.

COCERAL / FEDIOL / FEFAC – 29 May 2020

(European trade associations representing trade in cereals, rice, feedstuffs, oilseeds, olive oil, oils and fats and agrosupply (COCERAL), vegetable oil processors (FEDIOL) and feed manufacturers (FEFAC))

- It is of vital importance to pursue partnerships with producer countries requiring the EU and Member States to engage in a coordinated manner with authorities at federal, state or provincial level. Such engagement can lead to: address deforestation as part of a wider dialogue or partnership through existing or new frameworks, such as trade agreements or development cooperation; cooperate and exchange best practices at regulatory or technical level; fuel support (financial or capacity building) to authorities in their efforts to reconcile different objectives, such as environmental protection and socio-economic concerns.
- COCERAL, FEDIOL and FEFAC support an EU regulatory framework aimed at accelerating, strengthening and mainstreaming already ongoing voluntary efforts towards no-deforestation and enhanced sustainability.
- The responsibility of private actors translates already today in the implementation of voluntary due diligence, which could be used as a basis for a mandatory system, provided a number of key components are considered.
- Due diligence should be seen as a means to mainstream supply chain transformation, rather than in isolation from other mechanisms, because on its own it will not be transformative at scale.

Alliance for the Preservation of Forests – May 2020

- We support a European legislation to fight against imported deforestation. This EU legislation should be based on a mandatory due diligence approach, aiming to ensure that products imported into Europe are free from deforestation and human rights violations.
- Such an EU legal framework should be in line with the United Nations Guiding Principles on Business and Human Rights, as well as OECD Due Diligence Guidance for Responsible Business Conduct.
- This regulation must apply to all operators bringing products on the European market, allowing alignment of standards and avoid unfair competition between companies.
- We also call for enhancing the implementation of no-deforestation commitments by businesses while supporting partner countries to strengthen governance, regulation and enable economic development and rural livelihoods.
- In this regard, we encourage the European Commission to draw from the model of the French Duty of Vigilance Law, which together with the French Strategy to stop imported deforestation, represents a big step forward for industry and society. Concerted public-private action has the potential to enhance sustainability in supply chains and promote the effective preservation of the planet's resources.

Retail Soy Group – not dated

- Definition of deforestation – there are many different definitions that already exist regarding what is considered ‘deforestation free’. The most common one currently achieving consensus between non-governmental organisations and industry is put forward by the Accountability Framework Initiative, which includes both deforestation and land conversion.
- It is important that the Commission consider the use of existing certification standards as evidence of responsible practices and that the definition of deforestation is harmonised with existing standards where they are deemed to sufficiently demonstrate evidence of achieving the Commission’s aims of achieving deforestation free products.