

# EU Regulation on Deforestation-Free Products: Operational Guidance for Cocoa Producers and Importers

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# Introduction

In September 2022, the European Union (EU) Parliament voted amendments and adopted its position<sup>1</sup> on the EU Commission proposal<sup>2</sup> for a regulation to prevent products associated with deforestation and forest degradation from being placed on the EU market. The regulation is now undergoing inter-institutional negotiations (Trilogues). In this Operational Guidance, we summarise what cocoa supply chain companies will need to do to meet the upcoming regulation, based on the current state of the proposed regulation and considering that there are still points of uncertainty.

For cocoa placed on the EU market to be considered 'deforestation-free'<sup>3</sup>, it must have been produced on land that has not been subject to deforestation after **31 December 2020**<sup>4</sup>. Thus, to evidence compliance with these requirements, cocoa operators and traders must set up and implement a Deforestation Due Diligence (DDD) process that is summarised in Figure 2.

Additionally, to be compliant with the EU proposed deforestation-free regulation, cocoa must have been produced **in accordance with the relevant legislation of the country of production (both national and international)**. 'Relevant legislation of the country of production' means the "rules applicable in the country of production concerning the legal status of the area of production in terms of land use rights, environmental protection, third parties' rights and relevant trade and customs regulations under legislation framework applicable in the country of production".<sup>5</sup>

Any cocoa or derived cocoa products placed on the EU market are covered by the regulation. It applies to all operators and traders placing cocoa products on the EU market or exporting products from the EU market (regardless of their size, their legal status, or whether they are EU or non-EU companies).

Importantly, implementation of DDD should be accompanied by the adoption and application of the appropriate environmental and social safeguards to mitigate any negative impact on farmers.

It is important to recognise that the EU proposed deforestation-free **product regulation** sits in a wider universe of international and European regulations and voluntary standards. For instance, at international level the [United Nations Guiding Principles on Business and Human Rights](#) and the [Guidelines for Multinational Enterprises from the Organization for Economic Cooperation and Development](#). At the European level, the [EU Corporate Sustainability Due Diligence \(CSDD\)](#), which will require Due Diligence at a corporate level, not product level, and the [Corporate Sustainability Reporting Directive \(CSRD\)](#).

Once the EU deforestation-free regulation is finalised (and the CSDD as well), companies will need to understand how the tools and framework provided by the CSDD and the CSRD should be used in the context of Deforestation Due Diligence.

Even though this operational guidance focuses on the EU proposed deforestation-free regulation, companies should follow all the industry best practices that **go beyond the regulatory minimum standards**.

In addition to this operational guidance, Proforest has developed a complementary [EU Regulation on Deforestation-Free Products: Reference Document for Cocoa Producers and Importers](#). The reference document is more detailed and extensive: please refer to it for additional details and supporting information.

<sup>1</sup> (European Parliament, 2022)

<sup>2</sup> (European Commission, Proposal for a regulation on deforestation-free products, 2021)

<sup>3</sup> Note that the definition of 'deforestation-free' in the regulation proposed by the EU Commission states that degradation only applies to timber, not to commodities like cocoa (Article 2 (8)). However, in the case of incremental deforestation where for instance, natural forest is thinned from a canopy cover of 70% down to 20% (above the FAO threshold) and underplanted with cocoa, our understanding is that this would be considered as deforestation given that the definition of forest proposed by the EU Commission (Article 2 (2)) excludes 'agricultural plantations', and given that 'agricultural plantations' include 'agroforestry systems when crops are grown under tree cover' (Article 2 (3)) and that cocoa is included in Annex I. In reality, such changes will be difficult to monitor using publicly available remote sensing data due to low resolution. Note that these definitions are currently under negotiation in the Trilogues and changes might occur. Once the regulation is enacted, the EU Commission should develop further guidance on this.

<sup>4</sup> 31 December 2020 is the initial cut-off date proposed by the EU Commission (European Commission, Proposal for a regulation on deforestation-free products, 2021), however an amendment was adopted by the EU parliament to set the threshold to 31 December 2019 (European Parliament, 2022), while the EU Council has proposed 31 December 2021

<sup>5</sup> (European Commission, Proposal for a regulation on deforestation-free products, 2021, Article 2 (28))

The primary audience of this operational guidance is cocoa supply chain companies. Figure 1 summarises the roles that the different actors in the supply chain have in meeting EU DDD requirements.

ACTOR	ROLE
<b>Cocoa importers ("operators" in the regulation)</b>	<ul style="list-style-type: none"> <li>Perform DDD for cocoa products imported into or exported from the EU market</li> <li>Establish the appropriate DDD systems (Traceability system, requirements for data collection and verification from producers, supply chain deforestation risk assessment, deforestation monitoring system)</li> <li>Technical and financial support to farmers and their organisations to fulfil their obligations</li> <li>Publish clear Due Diligence methodology</li> </ul>
<b>Downstream retailers or manufacturers</b>	<ul style="list-style-type: none"> <li>Ensure that their suppliers provide products that comply with the regulation requirements</li> </ul>
<b>Suppliers to importers e.g., cooperatives, LBCs</b>	<ul style="list-style-type: none"> <li>Data collection and disclosure to intermediaries and buyers</li> <li>Collaboration with buyers regarding their risk mitigation activities</li> <li>Deforestation monitoring and response systems</li> <li>Direct support to supplying farmers</li> </ul>

Figure 1: Role of the types of companies in the cocoa supply chain in relation to EU DDD

In addition to companies, producer countries, EU stakeholders, certification schemes and many others have important roles to play in supporting compliance and investment and bringing efficiency. Such roles are discussed further throughout this guidance.

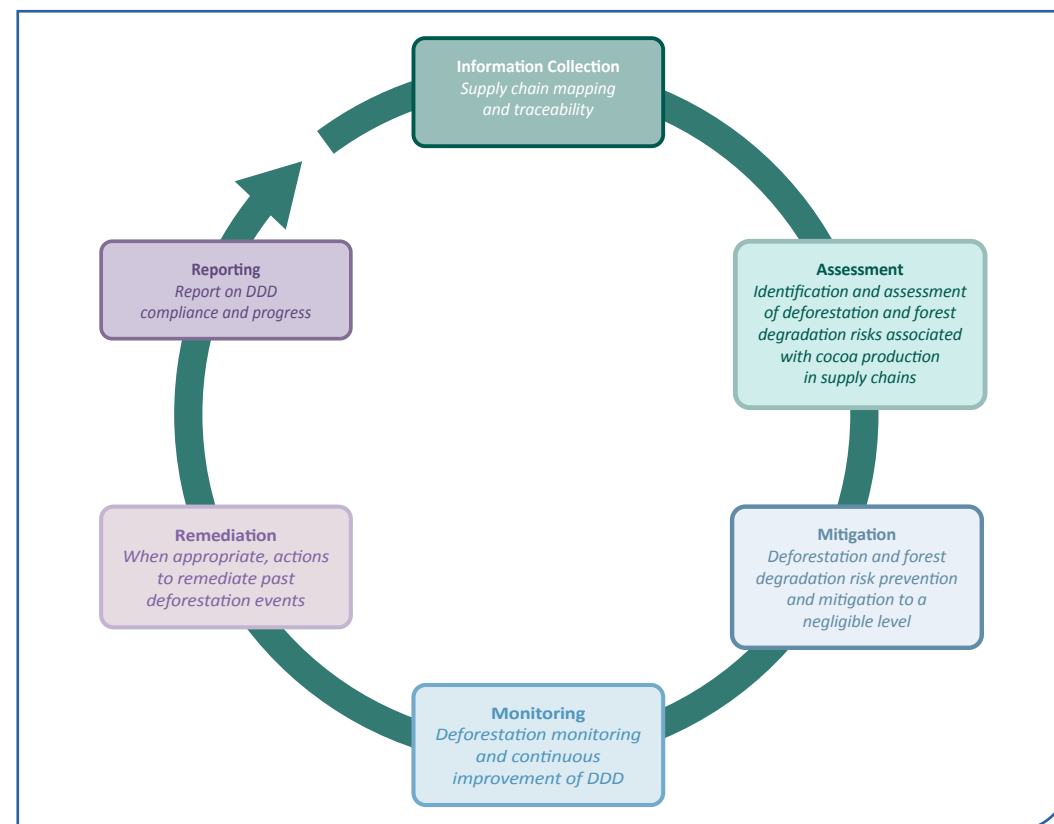


Figure 2: DDD process adapted by Proforest from OECD and the EU proposed deforestation-free regulation

Figure 2 summarises the DDD process that cocoa operators and traders must set up and implement to evidence compliance with the regulation.

Even though the EU proposed deforestation-free regulation **does NOT currently mention remediation**, including remediation in the DDD process should be considered as **industry best practice**.

This Operational Guidance outlines the existing tools and approaches in the cocoa sector which can be used to conform to the upcoming EU regulatory DDD requirements, explaining for each step of the DDD process:

- the related main requirements from the upcoming EU deforestation-free regulation,
- the **capacity of existing tools and approaches to support compliance** with these requirements,
- the **implementation challenges and opportunities** of these requirements.

Existing tools and approaches are categorised in 4 groups, see Table 1.

Capability of the existing tools and approaches is categorised as:

- **Capable of delivering:** Tool/approach alone is likely to be able to meet the specific requirements at present.
- **Potentially capable of delivering:** Tool/approach alone that might be able to meet the specific requirements in the future, depending on further developments.

Then, section 7 proposes practical and actionable steps for cocoa producers and importers to assess and demonstrate compliance with the EU proposed deforestation-free regulation, and that can be integrated in company Deforestation Free (DF) reporting.

Finally, section 8 illustrates how a smart mix of existing tools and approaches can be used to assess and demonstrate compliance with the EU proposed deforestation-free regulation.



**TABLE 1: CATEGORISATION AND DESCRIPTION OF TOOLS AND APPROACHES FOR COMPLIANCE WITH EU DDD REGULATIONS IN THE COCOA SECTOR.**

#### Producer country sustainability programmes and systems

Cocoa producer countries such as Côte d'Ivoire and Ghana, which together represent more than 60% of global cocoa production, have established or are developing systems to trace and certify cocoa, and to monitor cocoa-driven forest degradation and deforestation. They also implement sustainability programmes including cocoa, such as REDD+ programmes or the Roadmap to Deforestation-free Cocoa in Cameroon.

#### International and regional certification schemes

International Certification Schemes certify between 27% and 44% of global cocoa production area, assuming no double certification.<sup>6</sup> They require protection of natural ecosystems and provide systems to trace and verify that standards are met. The two most recognisable cocoa certification schemes are Fairtrade and Rainforest Alliance, with regional schemes emerging in producer countries such as the African Regional Standard for Sustainable Cocoa.

#### Collaborative approaches

Collaborative approaches (multistakeholder, company collaborations or public private collaborations) have been established to address the root causes of deforestation and can bring efficiency to meeting DD requirements by sharing resources, e.g., by supporting producer country systems. They encompass sectoral initiatives, such as the Cocoa & Forests Initiative (CFI), company coalitions such as the Retailer Cocoa Collaboration (RCC) and landscape initiatives like in some REDD+ Hotspot Intervention Areas in Ghana.

#### Company systems and sustainability programmes

Major cocoa traders and chocolate manufacturers use a range of tools, systems, and programmes to implement no deforestation commitments in their supply chains. This includes their own tools and systems such as supplier management systems and company-branded sustainability programmes (e.g., Cocoa Life, Cocoa Promise or Cocoa Horizons, amongst others).

<sup>6</sup> (International Trade Center, 2021)

# 1. Information Collection

## MAIN REQUIREMENTS<sup>7</sup>

<b>Operators<sup>8</sup> &amp; non-SME traders<sup>9</sup></b>	<ul style="list-style-type: none"> <li>o Provide adequate and verifiable information that:           <ul style="list-style-type: none"> <li>– the relevant commodities and products are deforestation-free.</li> <li>– the production has been conducted in accordance with relevant legislation of the country of production, including any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity.</li> </ul> </li> <li>o Provide geo-localisation coordinates, latitude and longitude of all plots of land<sup>10</sup> where the relevant commodities and products were produced.</li> </ul>
<b>SME traders<sup>11</sup></b>	<ul style="list-style-type: none"> <li>o Collect information on suppliers and customers.</li> <li>o Collection of geolocation information is NOT required.</li> </ul>

<sup>7</sup> For more details on the requirements, see Articles 4 and 6 of the proposed regulation by the EU Commission (European Commission, Proposal for a regulation on deforestation-free products, 2021)<sup>7</sup>

<sup>8</sup> ‘Operator’ is defined as “Any natural or legal person who, in the course of a commercial activity, places relevant commodities and products on the Union market or exports them from the Union market” (European Commission, Proposal for a regulation on deforestation-free products, 2021). In the cocoa industry, this refers to companies that import and place cocoa and chocolate products on the EU market (e.g., cocoa trading companies).

<sup>9</sup> ‘Trader’ is defined as “Any natural or legal person in the supply chain other than the operator who, in the course of a commercial activity, makes available on the Union market relevant commodities and products” (European Commission, Proposal for a regulation on deforestation-free products, 2021) In the cocoa industry, this refers to companies selling cocoa and chocolate products in the EU market (e.g., brands, retailers).

<sup>10</sup> ‘Plot of land’ is defined by the proposed regulation as “an extension of land within a single real-estate property, as recognised by the laws of the country of production, and which enjoys sufficiently homogeneous conditions as to allow to evaluate on the aggregate level the risk of deforestation and forest degradation associated with commodities produced on that extension of land” (European Commission, Proposal for a regulation on deforestation-free products, 2021), article 2.

<sup>11</sup> ‘SME’ is defined by the proposed regulation as “micro, small and medium-sized enterprises as defined in Directive 2013/34/EU” (European Commission, Proposal for a regulation on deforestation-free products, 2021), Article 2.

## TOOLS AND APPROACHES

### Producer country sustainability programmes and systems

#### Potentially capable of delivering

Producer country sustainability systems can potentially lead the way in information collection with the development of national traceability and supply chain mapping systems to cover entire sourcing regions. That would avoid duplication of mapping and traceability efforts by importers/exporters. However, it is necessary to align national stakeholders’ expectations and needs with those of importers/exporters, notably regarding compatibility with company management systems, evidence of DDD compliance and data protection. To date this has not happened at scale but should be prioritised for testing at a landscape or jurisdictional level (see below).

### International and regional certification schemes

#### Capable of delivering

International certification schemes which have segregated and identity preserved chain of custody (CoC) systems and require farm level traceability (e.g., Rainforest Alliance<sup>12</sup>) are likely to align with the legislative requirements and provide necessary traceability data.

### Collaborative approaches

#### Potentially capable of delivering

Collaborative approaches can set shared traceability/mapping requirements and drive a collaborative process of information collection, or landscape/jurisdictional approaches can provide a more operational scale to implement producer country systems (e.g., sub-national roll out of national traceability systems in Ghana and Côte D’Ivoire). By doing this work at landscape/jurisdictional levels resources can be shared to collect traceability data rather than duplicating efforts, and tools are being developed to enable sharing of data whilst respecting confidential data. Additionally, such approaches can support baseline forest mapping to feed into monitoring systems.

### Company systems and sustainability programmes

#### Potentially capable of delivering

Companies have internal systems to report and record cocoa purchases linked with traceability. Company sustainability programmes collect granular data on traceability to first purchase point and typically map the direct supply chain. Once this shipment/purchase data can be linked up with farm mapping such systems are likely to be capable of deliver.

<sup>12</sup> For instance, Rainforest Alliance has segregated and identity preserved CoC systems and requires farm level traceability. Fairtrade has segregated and identity preserved CoC systems as well, but back to the Producer Organisation.

## CHALLENGES AND OPPORTUNITIES

Nearly 100% of cocoa production is from smallholders who may not have the technical or financial capacity to meet all requirements. If operators pass on costs to smallholders, they will have to absorb the cost which is likely to have negative livelihood impacts or drive farmers to sell to alternative buyers offering better prices. Incentives for intermediaries and farmers should be promoted to engage them in information collection. Moreover, an amendment to the EU proposal for a regulation voted by the Parliament acknowledges and highlights the need for companies to provide guidance, technical and financial support to smallholders.<sup>13</sup>

Challenges specific to the cocoa supply chain are displayed in Figure 3, notably:

- The cocoa supply chain is complex, with many intermediaries and indirect supplies, that makes information collection and data flow along supply chains difficult, especially for geolocation data and for the first mile traceability.
- Cocoa laundering, including from neighbouring countries, can occur at almost every level in the supply chain. However, safeguards that can help prevent cocoa laundering exist, see Figure 3.
- In theory, the EU proposed deforestation-free regulation allows mixed supply chains, provided that DDD requirements can be met for all the covered products.<sup>14</sup> But, that means that Mass Balance supply where a small portion of ‘non-compliant’ volumes is mixed with ‘compliant’ volumes is not permissible. However, cocoa is primarily sold as mass balance or conventional supply. While a segregated and identity preserved market does exist, from both certification schemes and company sustainability programmes, the uptake has historically been limited due to lack of demand and high premium cost.

Safeguards to minimise laundering can mitigate risks but ultimately will only be as good as the coverage of the auditing or verification along each step of the supply chain. Therefore, these challenges reinforce the relevance of approaches considering an entire landscape or jurisdiction to tackle the root causes of deforestation at scale and/or to invest in shared traceability and monitoring outside of current farms/supply chains. One consideration could be to have geolocation information requirements to jurisdictional level for the negligible risk areas, enabling less resources to be spent on segregation and more to be channeled to farmers and forest conservation on the ground. This idea is not accepted by the current EU regulation, but such an approach may be worth future consideration to bring efficiency and deliver greater resources to the ground. See the [position paper](#) by Proforest and IDH for more information.<sup>15</sup>

Additionally, collection of information related to legality poses challenges and questions around what aspects (scope) of legality will be covered, who will provide information, and what evidence will be required. Accuracy of data and information related to legality is also a challenge as, for instance, in some cocoa producer countries there may be multiple conflicting versions of boundaries of protected areas. Data and information related to legality should reflect the prevailing local definition and use proxies where possible (e.g., mandatory national certification schemes).

Regarding certification or other third-party verification tools, even though the EU deforestation-free proposed regulation acknowledges that they might supply valuable complementary information, it is very clear that such tools “should not substitute the operator’s responsibility as regards due diligence”.<sup>16</sup> This is very similar to the provisions in the EU Timber regulation. No framework for recognition of schemes under the proposed EU deforestation-free regulation is proposed so far.

Finally, there are many traceability systems on the market and interoperability of such systems is needed. The [Digital Integration of Agricultural Supply Chains Alliance](#) (DIASCA), led by the Sustainable Agricultural Supply Chains (INA) goes in this direction. It aims at facilitating and supporting the efforts to ensure the compatibility between the systems, the data collection efficiency, and the participation of smallholder organisations in the benefits of DDD legislation, amongst others. Platforms like [Global Forest Watch](#) are also seeking to strengthen alignment of data and secure or anonymise sharing of data where appropriate.

For an explanation of the differences between direct and indirect cocoa supply, see box 2 of the [Proforest EU Regulation on Deforestation-Free products reference document for the cocoa sector](#), and see section 4.1 for more content on challenges and opportunities related to information collection.

<sup>13</sup> (European Parliament, 2022), amendment 46.

<sup>14</sup> For clarification, refer to [this paper](#) from ClientEarth (ClientEarth, 2022)

<sup>15</sup> (Proforest & IDH, 2022)

<sup>16</sup> (European Commission, Proposal for a regulation on deforestation-free products, 2021, p. 29)

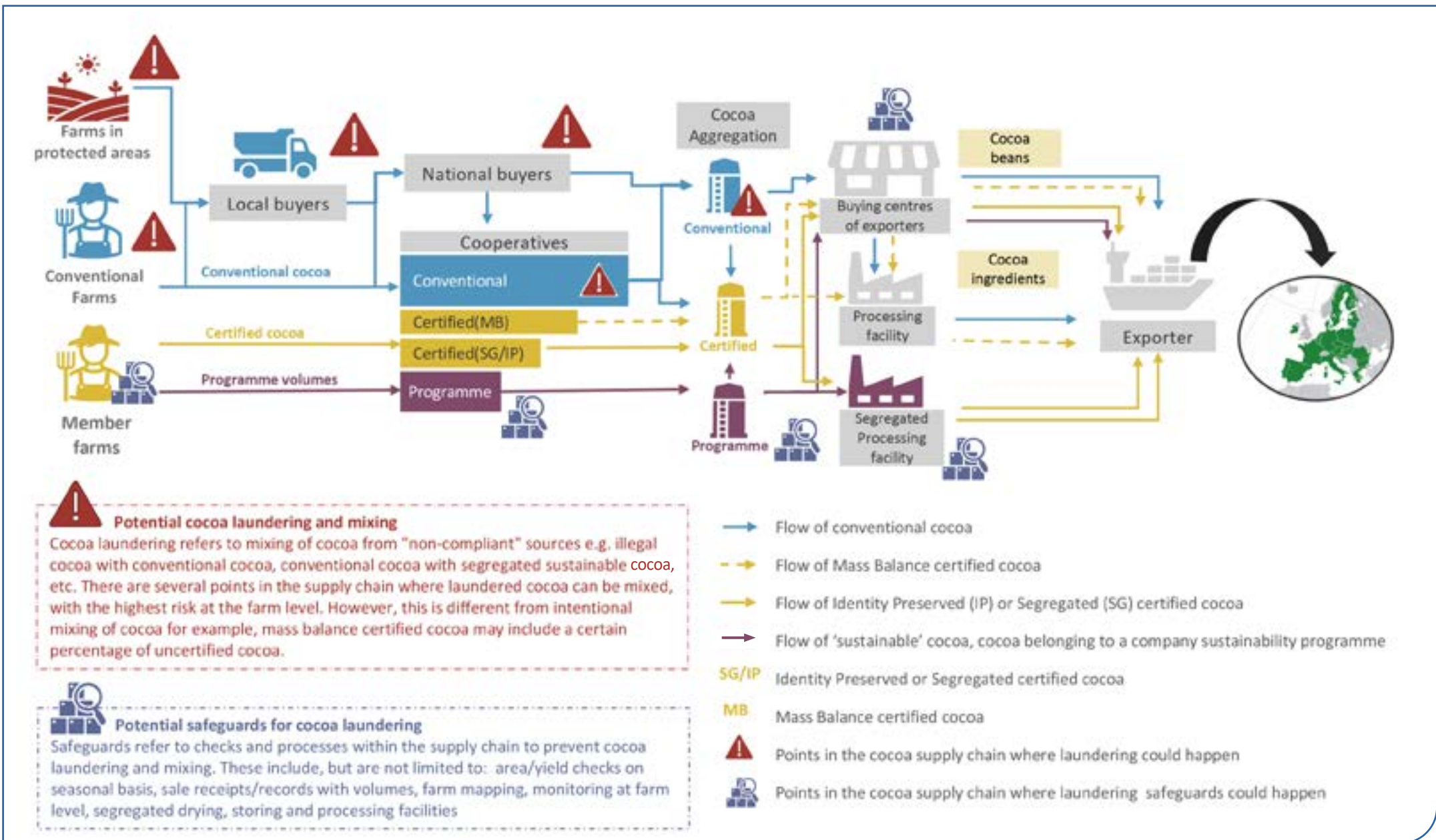


Figure 2: The cocoa supply chain with potential laundering points and safeguards throughout.

## 2. Risk Assessment

### MAIN REQUIREMENTS

#### Operators & non-SME traders

- Verify and analyse information collected and any other relevant documentation. Carry out a risk assessment to establish whether there is a risk that the relevant commodities and products intended to be placed on or exported from the Union market are non-compliant with the requirements of this Regulation.
- Document and review the risk assessment at least on an annual basis and make available to the competent authorities upon request.
- If the operators cannot demonstrate that the risk of non-compliance is negligible<sup>17</sup>, they shall not place the relevant commodity or product on the Union market nor export it.
- Countries classified as low risk by the country benchmarking system are subject to the simplified due diligence procedure, meaning that companies are dispensed from carrying out risk assessment and risk mitigation on cocoa volumes originating from these countries. Cocoa from high-risk countries should be subject to enhanced scrutiny by the competent authorities.

Risk assessment requirements from the EU deforestation-free proposed regulation do not apply to SME traders. However, large traders that are not SMEs are subject to the same DD procedures as operators.<sup>18</sup>

The risk assessment will take account of the following risk assessment criteria (non-exhaustive<sup>19</sup>). It is understood that the EU will produce additional guidance on criteria for risk assessment once the regulation is enacted. The criteria listed below reflect the amendments voted by the EU Parliament in September 2022<sup>20</sup>.

- The presence of forests in the country and area of production of the relevant commodity or product.
- The presence of vulnerable peoples, Indigenous Peoples, local communities and other customary tenure rights holders in the country and part thereof of the relevant commodity or products.
- The existence of claims to or disputes regarding the use of, ownership of, or exercise of customary tenure rights on the area used for the purpose of producing the relevant commodities and products, whether formally registered or not.
- Prevalence of deforestation, forest degradation or forest conversion in the country, region and area of production of the relevant commodity or product.
- Concerns in relation to the country of production or parts thereof in accordance with Article 27, and origin, such as level of corruption, prevalence of document and data falsification, absence, violation or lack of law enforcement of tenure rights and rights of Indigenous Peoples and local communities, armed conflict or presence of sanctions imposed by the United Nations Security Council or the Council of the EU.
- The complexity of the relevant supply chain, in particular difficulties in connecting commodities and/or products to the plot of land where they were produced or national data protection rules which prohibit the transmission of such data.
- The risk of mixing with products of unknown origin or produced in areas where deforestation or forest degradation or forest conversion as well as violations of the relevant law has occurred or is occurring.
- The outcome of multi-stakeholder dialogues where impacted parties, such as smallholders, SMEs, Indigenous Peoples and local communities, have been invited to actively participate.
- Information provided via the rapid alert mechanism

It is important to note that ‘the purpose of risk assessment is to identify possible noncompliance of relevant commodities and products with this Regulation’<sup>21</sup>, meaning that the assessment encompasses deforestation, forest degradation and legality.

<sup>17</sup> Neither the EU regulation proposal or the recently voted amendments define or set threshold for non-negligibility.

<sup>18</sup> (European Commission, Proposal for a regulation on deforestation-free products, 2021, pp. 13-14)

<sup>19</sup> For the exhaustive list, see (European Commission, Proposal for a regulation on deforestation-free products, 2021, pp. 40-41), article 10.

<sup>20</sup> (European Parliament, 2022) Amendments 131 to 138

<sup>21</sup> (European Commission, Proposal for a regulation on deforestation-free products, 2021, p. 14)



## TOOLS AND APPROACHES

### Producer country sustainability programmes and systems

#### Potentially capable of delivering

Producer countries have developed systems (e.g., the Ivorian IMAGES system), with different levels of advancement, to assess current and future deforestation risks and monitor actual deforestation. Having producer country systems providing risk assessment would have the same benefits, in terms of alignment and avoidance of effort duplication, as for information collection (see Information Collection).

### International and regional certification schemes

#### Potentially capable of delivering

Some international certification schemes require their members to conduct risk assessment (e.g., Fairtrade requiring organisations to identify risk areas where members' practices may lead to deforestation, or Rainforest Alliance Farm Risk Assessment Tool for large farms and groups of farms), but not on an annual basis. Furthermore, the EU proposed regulation explicitly states that certification is likely to be considered as a form of risk mitigation under risk assessment.

### Collaborative approaches

#### Potentially capable of delivering

Landscape and jurisdictional initiatives can potentially produce joint supplier risk assessments to reduce the burden on operators, and through management plans to tackle deforestation help to “de-risk” landscapes (via risk mitigation). Additionally, sectoral initiatives can set requirements on deforestation risk assessment for its members' direct sourcing.

### Company systems and sustainability programmes

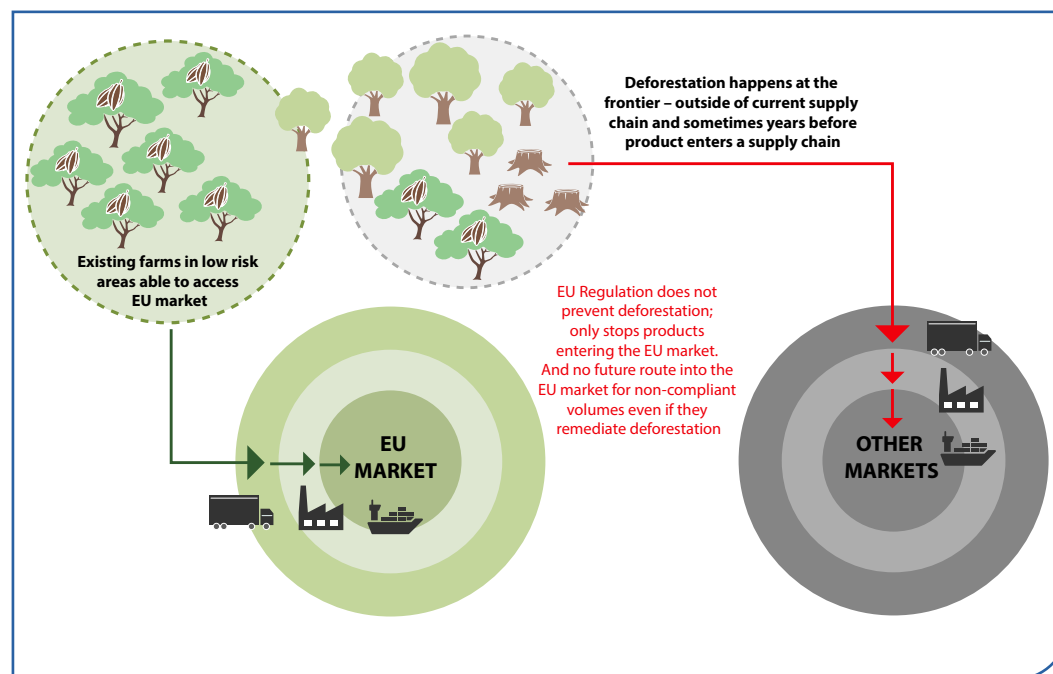
#### Capable of delivering

Companies conduct deforestation risk assessments on their sourcing regions through 3<sup>rd</sup> party systems or using their own systems. Usually, risk assessments are conducted across the supply chain as a one-off exercise before transitioning into monitoring (where traceability data exists), and then risk assessment is repeated only for new suppliers/origins.

## CHALLENGES AND OPPORTUNITIES

Risk assessment of individual supply chains as required by the EU proposed regulation appear to do little to assess the risk of further deforestation beyond the current supply base. Jurisdictional/landscape risk-based approaches offer a more effective way to assess risk of future deforestation beyond the supply base at a jurisdictional or landscape level, to understand deforestation risk hotspots and then work to engage farmers or communities to mitigate future risk of deforestation. Without this, risk assessment will focus only on risks of deforestation/degradation on farm, where there may be shade trees, but this is not where most remaining forest is found. See Figure 4.

For risk assessment best practices and for further information on jurisdictional/landscape risk-based approaches, see section 4.2 of the Proforest [EU Regulation on Deforestation-Free products reference document](#) for the cocoa sector.



**Figure 4:** Jurisdictional/landscape risk-based approach, indicating the importance of assessing risk beyond individual supply chains and existing farms.

## 3. Mitigation

In the EU deforestation-free proposed regulation, mitigation refers to mitigating the risk of non-compliant products entering the EU market. Hence, the regulation is not necessarily about mitigating deforestation on the ground, but rather mainly about supply chain control. This means that most "mitigation" measures are likely to focus on safeguards to reduce mixing (of compliant volumes with non-compliant ones) and to verify supply chains, and procedures to avoid on farm deforestation or felling of shade trees.

Article 10 of the proposed regulation indicates in general terms what mitigation procedures should be implemented, but the EU Commission should develop further guidance when the regulation is finalised.

### MAIN REQUIREMENT

<b>Operators &amp; non-SME traders</b>	<p>If the conclusion of the risk assessment is that the risk of non-compliant commodities or products entering the EU market is non-negligible, the operator needs to take risk mitigation measures that are adequate to lower the risk to a negligible level of non-compliant products entering the EU market.</p> <p>If there is no access to the applicable legislation or other relevant information, the risk cannot be fully assessed and thus not mitigated to a negligible level. If the risk cannot be mitigated to a negligible level, the operator shall not place the relevant commodities or products on the EU market.</p>
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Mitigation requirements from the EU deforestation-free proposed regulation do not apply to SME traders. However, large traders that are not SMEs are subject to the same DD procedures as operators.<sup>22</sup>

### TOOLS AND APPROACHES

#### Producer country sustainability programmes and systems

##### Potentially capable of delivering

National traceability systems developed by producer countries can mitigate the risk of non-compliant product entering the EU market, provided that they set safeguards mitigating the risk of cocoa mixing.

Moreover, producer countries can be effective in setting up deforestation mitigation approaches on the ground via their sustainability programmes, such as the REDD+ programmes. For instance, in Ghana, Hotspot Intervention Areas are adopted as implementation areas for the CFI and prioritised for landscape programmes that include planting of shade trees, support for farmers to register/protect existing shade trees and establish landscape management and monitoring plans mitigating deforestation and forest degradation (amongst other social and environmental issues) in the cocoa landscapes.

### International and regional certification schemes

#### Capable of delivering

The main international cocoa certification schemes have safeguards in their segregated and identity preserved models to mitigate the risk of cocoa mixing, and therefore, of non-compliant product entering the EU market.

In addition, the standards require their members to set mitigation measures, notably via farm management plans developed from farm level risk assessment tools. Additionally, there is an opportunity for regional certification schemes to set deforestation cut-off dates which align with the EU requirements, and to set requirements for deforestation and forest degradation mitigation.

#### Collaborative approaches

##### Potentially capable of delivering

Collaborative approaches can drive a collaborative process and collective effort of setting traceability systems and safeguards mitigating the risk of cocoa mixing, and thus, of non-compliant product entering the EU market.

Furthermore, collaborative approaches can set comprehensive deforestation mitigation approaches at national level, such as the CFI "Country Action Plans", for companies to commit to over a certain period, and monitor the progress. Landscape/jurisdictional initiatives that set up landscape level management and monitoring plans have the potential to establish mitigation measures that cover all areas in a landscape and focusing on where remaining forest is found, not just current farmers where forest was already cleared in the past. This enables them to work to mitigate deforestation before it happens.

### Company systems and sustainability programmes

#### Capable of delivering

Company systems and sustainability programmes having segregated and identity preserved models in place, accompanied by safeguards mitigating the risk of cocoa mixing, can mitigate the risk of non-compliant product entering the EU market.

Additionally, companies with sustainability programmes may have systems and tools in place to mitigate the risk of deforestation within their direct supply chain, notably via supplier management systems that cascade commitments and policies along the supply chain.

<sup>22</sup> (European Commission, Proposal for a regulation on deforestation-free products, 2021, pp. 13-14)

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## CHALLENGES AND OPPORTUNITIES

Mitigation of non-compliant product entering the EU market, is not the same as mitigating deforestation happening on the ground.

A focus on mitigating entry of non-compliant volumes is not going to mitigate the risk of future or new suppliers deforesting, because they will never enter a supply chain or be engaged by sourcing companies. Yet this is where most deforestation happens. Mitigation of future deforestation risk is most effectively done through proactive and often collaborative approaches that engage with communities and farmers in high-risk areas to address root causes of deforestation.

There are challenges remaining in the implementation of government regulations and enforcement, for example, with lack of alignment between agencies or limited resources at a local level for implementation. Support is crucial to close these gaps and public- private collaboration will be vital. This means sourcing companies need to continue supporting change in risky origins.

Supplier engagement is central to mitigation as suppliers need to be part of the solution (see the [Proforest guidance on supplier engagement for responsible sourcing](#) for further information). Operators and traders should be encouraged to maintain the business relationship with their suppliers as much as possible and avoid excluding them. Disengagement should be considered as a last resort and take into account potential social and economic adverse impacts. This approach is consistent with the amended regulation which states exclusion should be a last resort for smallholders. For more guidance on business relationship disengagement, refer to the [OECD Due Diligence Guidance For Responsible Business Conduct](#).

For mitigation best practices and for further information on at-scale collaborative approaches to mitigation, see section 4.3 of the [Proforest EU Regulation on Deforestation-Free products reference document for the cocoa sector](#).

## 4. Monitoring

Currently the EU proposed DDD regulation does not include requirements for companies related to monitoring, however both progress monitoring of DDD systems, and monitoring of deforestation in the cocoa production areas should be considered as best practice. Monitoring of the regulation compliance is the responsibility of member states.

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### PROGRESS MONITORING AND CONTINUOUS IMPROVEMENT OF OPERATORS' DDD SYSTEMS

Due Diligence systems in general should be embedded in a continuous improvement process. Robust monitoring of DD requirements and sustainability policies relies on verification of results and reported progress, to build trust amongst stakeholders and demonstrate impact.

In that sense, companies use 2nd or 3rd party verification to provide partial or full assurance on the effectiveness of their cocoa sustainability programmes, including claims on traceability, tackling deforestation or reforestation. Certification schemes also have auditing and assurance measures in place.

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### DEFORESTATION MONITORING IN COCOA PRODUCTION AREAS

The DDD regulation information collection requires geographic coordinates of the plot of land allowing for adequate and verifiable information that cocoa has been produced on land that has not been subject to deforestation after 31 December 2020. One mandatory adequate and verifiable information to provide is the geographic coordinates of the plot of land where cocoa was produced, allowing for the use of satellite images and positioning to check whether a product or commodity is compliant or not.

Therefore, remote deforestation monitoring is a key process for operators to ensure that their supply chains are compliant with the regulation, and deforestation monitoring should be an essential component of any DDD process.

## MONITORING COMPLIANCE

In terms of compliance checks, member states and their competent authorities are in charge of monitoring and enforcing regulation compliance.<sup>23</sup> The checks of operators and traders by competent authorities should cover the due diligence systems and the compliance of the relevant commodities and products with the provisions of the regulation.

Annual checks carried out by competent authorities should cover at least 5% of the operators placing, making available on or exporting from the Union market each of the relevant commodities as well as 5% of the quantity of each of the relevant commodities placed or made available on or exported from their market.<sup>24</sup> For commodities or products categorised in the benchmarking system as high risk, Member States should increase the checks coverage to 15%.<sup>25</sup> Additionally, custom authorities will have to check the volumes being the most at risk and establish a 'risk-based plan of checks' to inform the decisions on checks.

Member states and their competent authorities are requested to use any technical and scientific means adequate, including via the EU's own satellite Positioning, Navigation and Timing (PNT) technology (EGNOS/Galileo) and its own Earth observation and monitoring system (Copernicus). This will be supported by the EU Observatory on deforestation, forest degradation, changes in the world's forest cover and associated drivers launched by the Commission and will facilitate access to information on supply chains for public entities, consumers and business. The EU Commission will be in charge of analysing the quality of Member States' monitoring activity.

<sup>23</sup> Competent authorities are designated by Member States: "Member States shall designate one or more competent authorities responsible for carrying out the obligations arising from this Regulation." (European Commission, Proposal for a regulation on deforestation-free products, 2021), article 13.1.

<sup>24</sup> (European Commission, Proposal for a regulation on deforestation-free products, 2021), article 14. Amendment 161 voted by the EU Parliament sets this threshold to 10% and adds that "For commodities or products from countries or parts thereof categorised as low-risk as referred to Article 27, Member States may reduce the annual checks to 5%" (European Parliament, 2022)

<sup>25</sup> (European Commission, Proposal for a regulation on deforestation-free products, 2021), article 20. Amendment 180 voted by the EU Parliament sets this threshold to 20% (European Parliament, 2022)

## TOOLS AND APPROACHES

In this table we focus only on tools available for deforestation monitoring (not for DDD system monitoring).

### Producer country sustainability programmes and systems

#### Potentially capable of delivering

Producer country government agencies own and manage national deforestation and forest monitoring systems that can provide real-time assessments of production areas/ plots of land and have the key advantage of covering all land and forest not only the isolated "islands" of farms in company supply chains. The largest cocoa producer countries are developing such systems (e.g., the Ivorian IMAGES system), with different levels of advancement. However, key questions around such platforms still have to be resolved, such as a platforms' ownership, accessibility to companies, long term financing, responsibilities and capacities.

### International and regional certification schemes

#### Potentially capable of delivering

International certification schemes which have deforestation monitoring systems in place are likely to align with the legislative requirements (e.g., Fairtrade partnership with Starling in Ghana and Côte d'Ivoire). Additionally, international certification schemes encourage or require farmer groups to collect farm geodata and to monitor these using freely available tools.

### Collaborative approaches

#### Capable of delivering

Sectoral initiatives, such as the CFI, might include commitments in action plans to strengthen monitoring on the ground. Whereas landscape/jurisdictional initiatives either already have monitoring systems in or have plans to establish these systems as part of their management and monitoring plans (e.g., the Cavally forest reserve in Côte d'Ivoire where the Ivorian government and Nestlé partner to restore the forest, and use Starling to establish forest base maps and monitor deforestation).

### Company systems and sustainability programmes

#### Capable of delivering

Most companies conduct deforestation monitoring through service providers or public data providers that will be able to deliver once the systems are revised to align with the EU DDD regulation definitions and thresholds.

## CHALLENGES AND OPPORTUNITIES

In the case of deforestation monitoring as part of a company's management system, deforestation is monitored in the company's supply area, where, in most cases, deforestation already occurred some time ago. Forest and deforestation monitoring systems established by producer countries monitor the whole national territory, making them more efficient to monitor forest dynamics and deforestation leakage at the scale of a specific country. This would enable mitigation actions to be targeted at locations where deforestation is highest, rather than monitoring shade trees or very limited remaining forest on farms. Additionally, such systems have the benefit of being able to be linked to responses on the ground by government agencies or other local actors. Landscape/ jurisdictional initiatives also have strong advantages in bringing efficiency and including monitoring of all forest in the landscape, and community-led board initiatives facilitate participatory governance that allows stakeholders in the landscape to own and implement monitoring.

For a monitoring system to be effective it requires a clear "response protocol" with resources and responsibility to take action on the ground to prevent further clearance whilst working together with farmers or community members to provide support or incentives where needed. This should link to remediation protocols (see section 5).

Satellite monitoring of farm plots has been proposed as a central assurance pillar of the EU's proposed regulation, but there are lessons to be learned from the voluntary sector on the pros and cons of satellite monitoring for smallholder commodities like cocoa.

Regulatory DD tools will not be without their own assurance challenges, especially as enforcement is only done remotely from the EU, and must learn from certification. Hence, the reality of deforestation or forest degradation in the field is very complex with multiple crops, many different drivers and stakeholders. Auditing of deforestation from the EU by competent authorities will require the authorities to have access to appropriate data and a nuanced understanding of land tenure and farm contexts which is often lacking outside of the producer countries themselves. There is a risk that unless developed to be participatory and more bottom-up, such top-down auditing becomes a screening tool for exclusion rather than one to address the deforestation. Once the regulation is finalised, the EU Commission should provide guidance on criteria and process for confirming / refuting deforestation alerts taking into account common scenarios, e.g., replanting of new cocoa trees, harvesting of planted shade trees, illegal timber harvesting of shade trees by illegal loggers encroaching onto cocoa farms.

The monitoring of cocoa farms faces technological challenges. However, advances in machine learning and artificial intelligence, along with images with greater resolution, are proving helpful, particularly with private monitoring service providers being used by government and the private sector.

For examples of national monitor systems established by producer countries and for monitoring best practices, see the [Proforest EU Regulation on Deforestation-Free products reference document for the cocoa sector](#).

## 5. Remediation

### NOT REQUIRED BY THE REGULATION

Even though the regulation **does NOT include remediation of past deforestation events** in re-entry requirements, remediation of past harms linked to supply chains – including deforestation - should be considered as **industry best practice**. This is an especially important point of equity for the cocoa sector, where permanent exclusion of smallholder farmers may have direct negative impacts on the livelihoods of farmers.

- Existing DD guidance and processes such as the OECD-FAO guidance on Responsible Agricultural Supply Chains include remediation of negative environmental impacts as a principle.<sup>26</sup>
- International buyers and supply chain companies are increasingly requiring suppliers to put in place recovery plans for non-compliant deforestation, to ensure positive outcomes for forests rather than simply excluding suppliers permanently without a means to address the harm done. See e.g. Forest Positive Coalition palm deforestation monitoring and response framework.<sup>27</sup>
- Remediation of harms is a central tenet of the UN Guiding Principles on Business and Human Rights<sup>28</sup>

Currently the EU proposed deforestation-free regulation does NOT mention remedial actions for operators and traders to be removed from the non-compliant list. However, voted amendments by the EU parliament in September 2022 consider the possibility for operators and traders that were included in the non-compliant list to be reintegrated when "sufficient remedial action was taken"<sup>29</sup>. In the proposed amendments, sufficient remedial action that should be taken by operators and traders includes "have made full payment of penalties or carried out improvements to its due diligence system, and no other penalty or procedure concerning an alleged infringement has been reported"<sup>30</sup>. However, the regulation is silent on equivalent remedial actions for **farmers**.

<sup>26</sup> E.g. The OECD-FAO guidance on Responsible Agricultural Supply Chains states that companies should improve their environmental performance by "remediating pollution and negative impacts on air, land, soil, water, forests and biodiversity, and reducing greenhouse gas emissions" (OECD-FAO, 2016)

<sup>27</sup> (The Consumer Goods Forum FPC, 2022).

<sup>28</sup> (United Nations, 2011)

<sup>29</sup> (European Parliament, 2022), amendments 194 & 195

<sup>30</sup> (European Parliament, 2022), amendment 194

## Producer country sustainability programmes and systems

### Capable of delivering

Producer country can set systems for some remediation scenarios such as the Modified Taungya System in Ghana. In some cases, the remediation costs can be supported by results based REDD+ payments.

## International and regional certification schemes

### Potentially capable of delivering

Certification schemes can set corrective action requirements, and therefore potentially have leverage for implementing remediation actions. This varies according to each scheme.

## Collaborative approaches

### Capable of delivering

Sectoral initiatives, such as the CFI, can support remediation actions, such as shade tree planting, while landscape initiatives can implement these remediation actions.

## Company systems and sustainability programmes

### Capable of delivering

Companies can implement their no deforestation commitments, including remediation, via actions made through their sustainability programmes. This remediation may also support delivery of SBTi Scope 3 commitments.

## CHALLENGES AND OPPORTUNITIES

Remediation, rehabilitation or recovery for non-compliant deforestation, if managed with the right safeguards and used in the right circumstances, is an important tool to move towards deforestation-free production and to maximise forest protection outcomes on the ground, whilst not causing undue negative livelihood impacts for farmers.

For examples of scenarios where remediation can be important and for some principles of good practices, see the [Proforest EU Regulation on Deforestation-Free products reference document for the cocoa sector](#).

# 6. Reporting

## MAIN REQUIREMENT

### Operators & non-SME traders

- Conduct DD process and submit a DD statement to the information system confirming that DD was carried out and that no or only negligible risk was found.
- Keep records of DD statements for five years.
- Inform the Member States' competent authorities if new information and concerns regarding non-conformity of cocoa placed on the market are found.

### SME traders

- Collect a record of suppliers and customers and keep it for at least five years.
- Make such information available to competent authorities upon request.
- Take action and inform the competent authorities if new information becomes available regarding the non-compliance of cocoa.

Annex II of the EU deforestation-free proposed regulation lists the information to be contained in the DD statement.

Examples of information to be provided to demonstrate compliance with the regulation are given in Figure 5. However, note that the regulation is not finalised yet, and further guidance should be provided by the EU Commission on what will be considered as verifiable and sufficient information.

Information that should be included in EU DDD statement <sup>31</sup>	Mitigation procedures that should be implemented as part of EU DDD <sup>32</sup>
<ul style="list-style-type: none"> <li>Country of production and all plots of land of production, including geo-localisation coordinates, latitude and longitude. Where a product or commodity contains materials, ingredients or components produced in different plots of land, the geo-location coordinates of all different plots of land shall be included;</li> <li>The text: “By submitting this due diligence statement the operator confirms that due diligence according to the provisions of Regulation XXXX/XX was carried out and no or only negligible risk was found. The operator hereby confirms the compliance of the commodity/product with the requirements specified in Article 3 of Regulation XXXX/XX.</li> </ul>	<ul style="list-style-type: none"> <li>(a) model risk management practices, reporting, record-keeping, internal control and compliance management, including for operators that are not SMEs, the appointment of a compliance officer at management level, specifying the contact details or an up-to-date contact email address;<sup>33</sup></li> <li>(b) an independent audit function to check the internal policies, controls and procedures referred to in point (a) for all operators that are not SMEs.</li> </ul>
<p><b>Consequently, operators and non-SME traders might have to provide the information below</b></p>	
<ul style="list-style-type: none"> <li>A list of all plots of land that the product may originate from [NB: identity preserved not required]</li> <li>All plots of land have been mapped to geolocation accuracy required in the regulation</li> <li>Evidence that there is no or negligible risk a) of deforestation on all plots of land, b) that the shipment could include non-compliant products <ul style="list-style-type: none"> <li><b>a)</b> Evidence may include up-to-date, sufficiently high-resolution land use change analysis for all plots of land showing no deforestation since the cut-off date; For farms/plots where satellite imagery is inconclusive additional justification may be needed, e.g., ground-truthing evidence that any trees cleared were planted by the farmer</li> <li><b>b)</b> Mitigation procedures are implemented: <ul style="list-style-type: none"> <li>➔ Standard Operating Procedures for on-boarding farmers (e.g., farm mapping) and for existing suppliers (e.g., no expansion in protected areas)</li> <li>➔ Anti-laundering systems: segregated drying facilities, area/yields check on seasonal basis etc.</li> <li>➔ Prevention of mixing compliant volumes with non-compliant volumes</li> </ul> </li> </ul> </li> </ul>	

Figure 5: Information to demonstrate compliance with the EU DDD proposed regulation

<sup>31</sup> (European Commission, Annexes to the proposal for a regulation of the European Parliament and of the Council, 2021)

<sup>32</sup> (European Commission, Proposal for a regulation on deforestation-free products, 2021) Article 10

<sup>33</sup> The text in bold is an addition that was voted by the EU Parliament (European Parliament, Amendments adopted by the European Parliament on 13 September 2022 on the proposal for a regulation of the European Parliament and of the Council, 2022)

## 7. EU DDD and DCF Compliance claims process flow

Figure 6 displays practical and actionable steps for cocoa producers and importers to assess and demonstrate compliance with the EU proposed deforestation-free regulation, and that can be integrated in Deforestation Free (DF) reporting.

The full process is only relevant to countries benchmarked as high risk, as for low-risk countries only information collection is required as part of DDD.

The figure also highlights several questions that need to be resolved, and criteria to be defined are highlighted in the figure.

Key definitions such as plot of land, forest, deforestation, forest degradation, deforestation-free can be found in Article 2 of the deforestation free regulation proposed by the EU Commission.

Note that the definition of ‘deforestation-free’ in the regulation proposed by the EU Commission states that degradation only applies to timber, not to commodities like cocoa (Article 2 (8)). However, in the case of incremental deforestation where for instance, natural forest is thinned from a canopy cover of 70% down to 20% (above the FAO threshold) and underplanted with cocoa, our understanding is that this would be considered as deforestation given that the definition of forest proposed by the EU Commission (Article 2 (2)) excludes ‘agricultural plantations’, and given that ‘agricultural plantations’ include ‘agroforestry systems when crops are grown under tree cover’ (Article 2 (3)) and that cocoa is included in Annex I. In reality, such changes will be difficult to monitor using publicly available remote sensing data due to low resolution. Note that these definitions are currently under negotiation in the Trilogues and changes might occur. Once the regulation is enacted, the EU Commission should develop further guidance on this.

For more information on Verified Deforestation and Conversion Free (V-DCF) that Proforest has developed, see the [generic methodology and approach to V-DCF that Proforest developed](#).

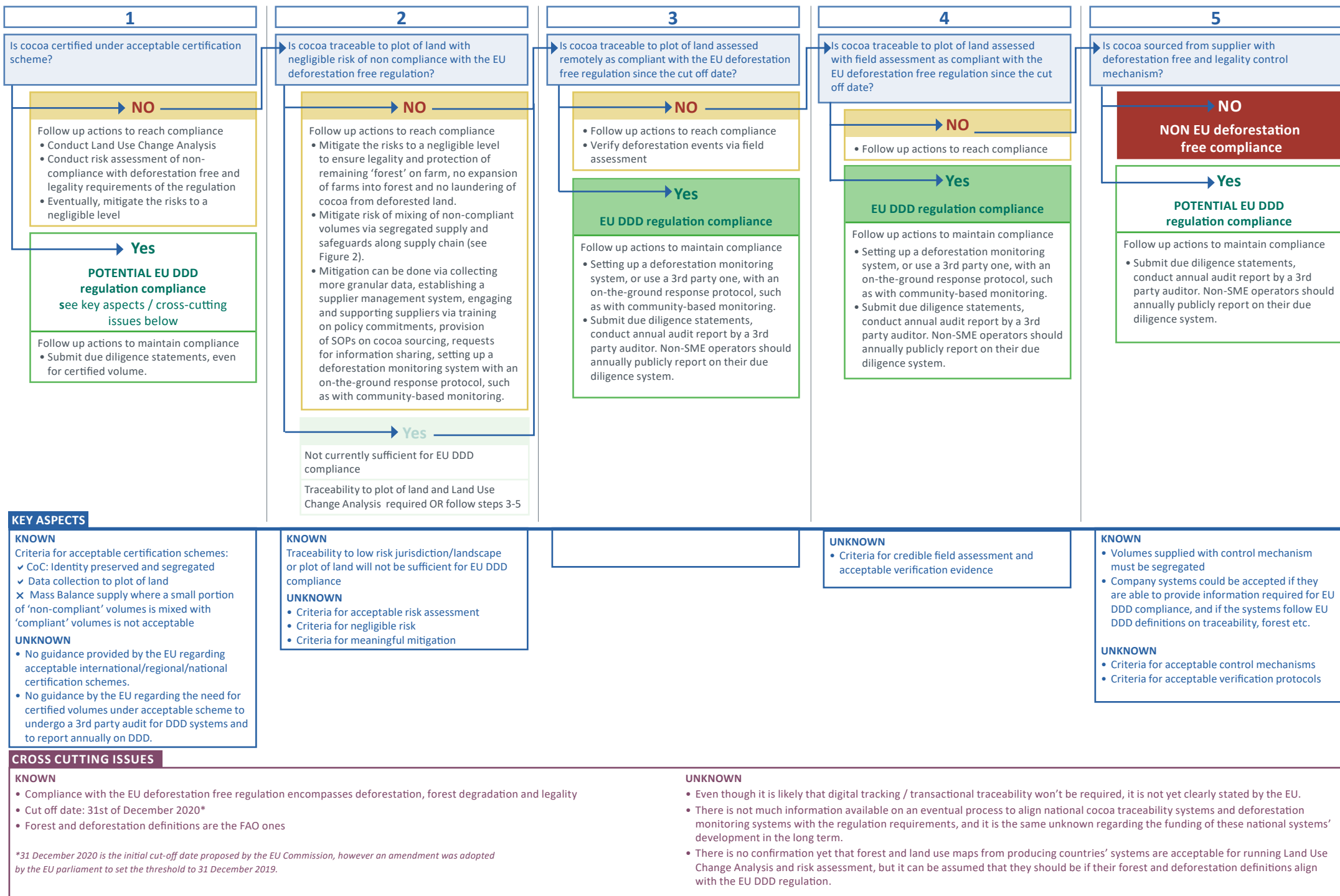


Figure 4: EU DDD and DCF compliance claims process flow



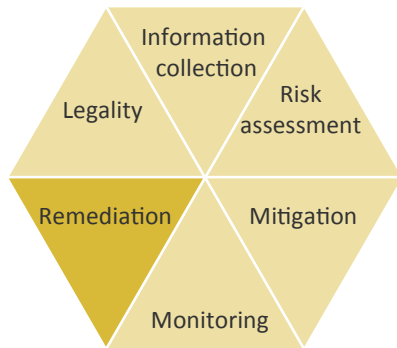
# 8. Cocoa smart-hexagon

The cocoa “smart-hexagon” visualises how different tools and approaches can meet the EU proposed deforestation-free regulation requirements and illustrates the relevance of a smart mix approach. For a description of every tool and approach, refer to *Table 1*.

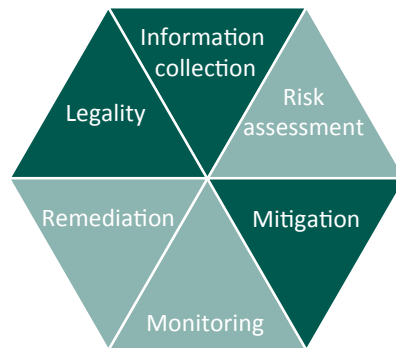
The shade of each cube outlines how “capable” the approach/tool is at meeting the EU proposed deforestation-free regulation requirements, i.e. the darker the shade, the more likely the tool is able to support compliance:

- **Capable of delivering:** Tool/approach alone is likely to be able to meet the specific requirement at present.
- **Potentially capable of delivering:** Tool/approach alone that might be able to meet the specific requirement in the future, depending on further developments.

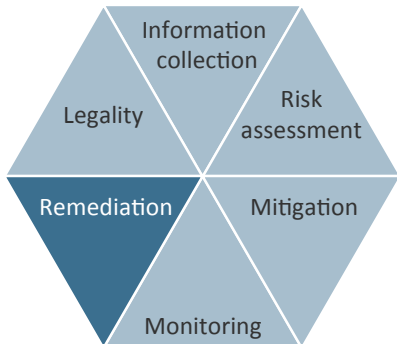
Producer country sustainability programmes and systems



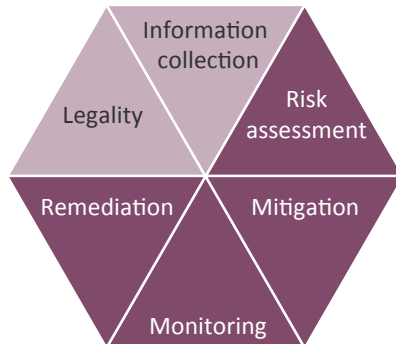
International and regional certification schemes



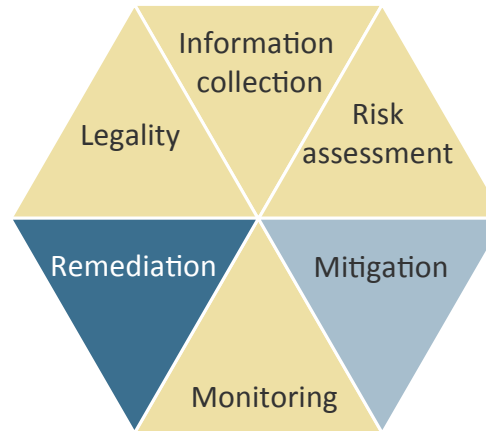
Collaborative approaches



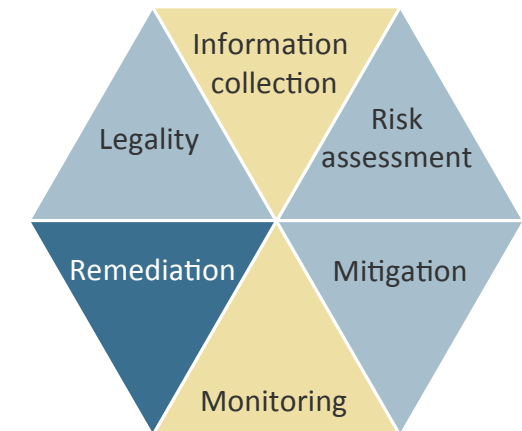
Company systems and sustainability programmes



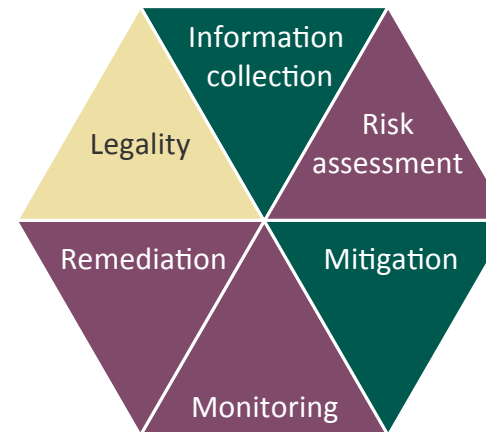
Example of a smart mix, producer country approach oriented



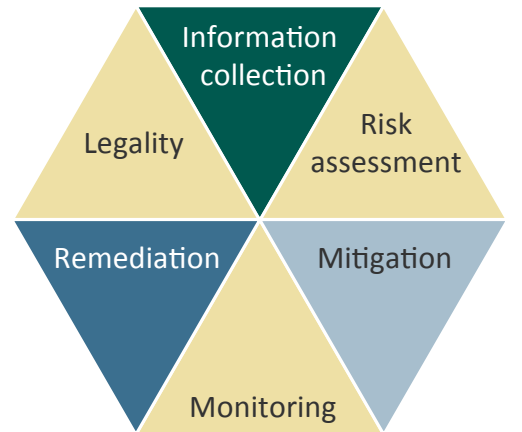
Example of a smart mix, downstream company landscape/jurisdictional approach oriented



Example of a smart mix, downstream company certified supply chain approach oriented



Example of a smart mix, small scale operator regional schemes certified oriented



Colour indicates type of tool or approach

- Yellow: Producer country sustainability programmes and systems
- Green: International and regional certification schemes
- Blue: Collaborative approaches and landscape initiatives
- Purple: Company systems and sustainability programmes

Tint indicates delivery capability

- Dark: Capable of delivering
- Light: Potentially capable of delivering

## Sources

ClientEarth. (2022). Getting to “deforestation-free”. Clarifying the traceability requirements in the proposed EU deforestation regulation. Retrieved from [https://www.clientearth.org/media/mdzplo2q/getting-to-deforestation-free\\_clarifying-the-traceability-requirements-in-the-eu-deforestation-regulation\\_clientearth.pdf](https://www.clientearth.org/media/mdzplo2q/getting-to-deforestation-free_clarifying-the-traceability-requirements-in-the-eu-deforestation-regulation_clientearth.pdf)

European Commission. (2021). Annexes to the proposal for a regulation of the European Parliament and of the Council. Retrieved from [https://environment.ec.europa.eu/publications/proposal-regulation-deforestation-free-products\\_en](https://environment.ec.europa.eu/publications/proposal-regulation-deforestation-free-products_en)

European Commission. (2021). Proposal for a regulation on deforestation-free products. Retrieved from [https://environment.ec.europa.eu/publications/proposal-regulation-deforestation-free-products\\_en](https://environment.ec.europa.eu/publications/proposal-regulation-deforestation-free-products_en)

European Parliament. (2022). Amendments adopted by the European Parliament on 13 September 2022 on the proposal for a regulation of the European Parliament and of the Council. Retrieved from [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0311\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0311_EN.html)

International Trade Center. (2021). The State of Sustainable Markets 2021. Retrieved from <https://digital.intracen.org/state-sustainable-markets-2021/cocoa/>

OECD-FAO. (2016). OECDFAO Guidance for Responsible Agricultural Supply Chains. Paris : OECD. doi: <http://dx.doi.org/10.1787/9789264251052-en>

Proforest, & IDH. (2022). EU Regulation on Deforestation-Free Products: Recommendations for a Forest Positive Impact. Retrieved from [https://www.proforest.net/fileadmin/uploads/proforest/Photos/Publications/IDH\\_Forest\\_Positive\\_Options\\_Policypaper.pdf](https://www.proforest.net/fileadmin/uploads/proforest/Photos/Publications/IDH_Forest_Positive_Options_Policypaper.pdf)

The Consumer Goods Forum FPC. (2022). Deforestation Monitoring and Response Framework. Retrieved from <https://www.theconsumergoodsforum.com/wp-content/uploads/2022/03/2022-CGF-FPC-Palm-Oil-MRF.pdf>

United Nations. (2011). Guiding principles on business and human rights. Retrieved from [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

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