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## **Joint COCERAL, FEDIOL, and FEFAC Reaction to the Council General Approach on the Deforestation Regulation**

Following the adoption of the General Approach of the Council on the EC proposal for a regulation on deforestation-free products by environment ministers during the Environment Council meeting on 28 June 2022, COCERAL, FEDIOL, and FEFAC would like to express their views on their priority areas of interest:

### **1. Traceability**

The Council has maintained the Commission's proposal to require traceability to plot information for all volumes sourced by operators. Even if some farmers are able to comply with this requirement, **collecting geolocation data of smallholders and cooperatives faces important technical, logistical, legal, and governance challenges** which cannot be addressed by companies alone. If such challenges are not solved under a multi-stakeholder approach involving local governments, local industry actors, EU operators, the European Commission, and NGOs, companies will not be able to collect reliable geolocation to plot information for the majority of smallholders currently part of their supply chains. **We strongly urge the Commission to tackle the abovementioned challenges through Forest Partnerships, development assistance, and any other required means before implementing and enforcing the geolocation to plot requirement of the Regulation.**

**To support rapid implementation and provide equivalent assurances, we call for traceability requirements to production area**, to be checked by satellite monitoring and checks on the ground as part of an operator's due diligence. Once these challenges have been satisfactorily overcome, the Commission could propose to make traceability to plot a requirement in its revision of the Regulation.

For further information and details on the challenges we have identified as well as the solutions we propose to reach traceability to plot, please go to Annex I below.

### **2. Cooperation with third countries**

Given that compliance with certain requirements of the Regulation will prove challenging for some actors in producing countries (e.g. traceability to plot if maintained), we are concerned that the chapter on cooperation with third countries was not strengthened by the Council in order to address those challenges.

To avoid the exclusion of a large portion of producers from supply chains into the EU as well as any shortages in the provision of relevant commodities, targeted cooperation and development assistance will be required to enable the establishment of national traceability systems, proper land tenure regulation, deforestation-prevention through capacity and knowledge building for environmentally and economically sustainable and deforestation-free agriculture, and much more. Addressing legal deforestation in producer

countries will further require financial incentives and compensations for farmers' conservation efforts.

### 3. Chain of Custody

While the Commission's Proposal does not explicitly refer to the required chain of custody for delivering deforestation-free products, its inclusion of "*risk of mixing with products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring*" as part of an operator's risk assessment presupposes that deforestation-free products cannot be physically mixed with products which have not been verified as "deforestation-free".

If this type of mixing is not allowed by the Regulation, **it will have a disruptive, trade distorting effect on global soy supply chains to the EU while undermining deforestation-free commitments and efforts already undertaken in high-risk areas.**

We would like to highlight the reasons why a requirement for segregation of deforestation-free supply of soy will have the abovementioned impacts:

- **Trade distorting effect:** in many soy producing areas, segregation of deforestation-free supplies would require building new infrastructure (country elevators, silos, crushing lines or plants, port loading) at such prohibitive costs that operators in most large ports are likely to abstain from the investment. Segregated chains would be limited to smaller ports usually used for niche markets with deforestation-free sourcing from low-risk areas. With the loss of the efficiencies of the shared large logistical infrastructure, we estimate the increase in costs to be in the range of 20-35% per ton of soy. Given such high costs and the fact that segregated flows are most cost-effectively organised in low-risk areas by identifying and excluding the few farms which may have deforested, supply flows into the EU are expected to be considerably reduced and to switch from high risk to low risk areas.
- **Undermining deforestation-free commitments in high-risk areas:** given that EU sourcing would shift from high-risk to low-risk areas, all positive engagement and incentives to farmers to halt deforestation would be abandoned. Mass balance to date has supported demand for deforestation-free production in high-risk areas and therefore incentivised the halting of deforestation. Mass balance is already an accepted system under the EU Renewable Energy Directive for showing compliance with sustainability and greenhouse gas emissions saving criteria. By not allowing for deforestation-free sourcing through mass balance, deforestation-free production in high-risk areas would lose incentives and the soy would have to be sold to regions or countries with no or low deforestation-free related requirements and reward.

To prevent these effects, we urge policymakers to allow deforestation-free products to be traded through a mass balance system, which ensures deforestation-free volumes bought correspond to deforestation-free volumes produced and which is accepted under the Renewable Energy Directive as a means of proving compliance with deforestation-free status.

Please see Annex II to understand how a mass balance system allows for verified and non-verified products to be mixed but ensures that deforestation-free volumes bought correspond to deforestation-free volumes produced.

### 4. Scope

We support the Council's decision to keep the Commission's limited scope to deforestation and forest degradation until a review of the Regulation. While we do not oppose future

extensions of the scope in principle, we believe that the current Regulation should be tested first, and that the extension of the scope should be backed by a thorough impact assessment.

#### **5. Duplication of due diligence**

We welcome the Council's amendments to remove duplication of due diligence efforts by operators and traders. In practice, imposing the same due diligence obligations on traders would lead to operators having to provide the same information twice, once to the competent authorities and a second time to large traders.

## **Annex I: Geolocation to Plot: Understanding the Challenges and Finding Solutions**

Firstly, it is important to note that the vast majority of palm operators in the EU have no direct relationship with smallholders. Indeed, the majority buy directly or indirectly from mills in producing countries but not directly from smallholders.

In the soy supply chain, much of the indirect sourcing is done via co-operatives and middlemen collectors. Buyers have an understanding of the production area where these suppliers are located and are actively working on improving this data granularity to enable land use monitoring of indirect supply chains. However, there is no access to individual plot geolocations.

To date, traceability to plot has been possible and has been achieved but predominantly in the following cases: in the presence of robust and updated national farm registration systems with no legal issues around the proof of ownership of land and for large company plantations supplying mills directly. For example, for palm oil supplied to the EU, we estimate that around 45% are traceable to plantation, but these volumes are for the most part not sourced from smallholders.

Please find below a description of each of the main challenges we have identified, and for each challenge, a proposed solution moving forward:

**Challenge 1: the majority of smallholders and co-operative members in the palm and soy sectors do not supply to either mills or EU operators directly.** Their produce is gathered by middlemen/collectors or the co-operatives, who sell the aggregated bulk to mills and exporters. Companies which do not own mills do not have the legitimacy or leverage to either request geolocation data from smallholders and co-operative members directly (due to the lack of a direct business relationship) or from the collectors/co-operatives (who will not want to share information about the smallholders/members they have a business arrangement with for fear of bypassing or due to non-disclosure agreements).

**Solution 1: multi-stakeholder initiatives/efforts**, including local governments, local industry actors, EU operators, the European Commission, and NGOs are required to create a traceability system, with the agreement and cooperation of all, combined with fair compensation to smallholders for not deforesting the land they own. Projects of this kind have been promising but costly in terms of time and resources, and to date have only involved thousands of smallholders, whereas there are millions of smallholders in soy and palm supply chains.

**Challenge 2: incomplete and out of date national farm registration systems, combined with lack of proper land title regulation**, make it impossible to have reliable geolocation to plot information which corresponds to official boundaries of owned land. With a Regulation which demands strict traceability systems, companies will want to avoid the risk of sharing inaccurate information with competent authorities.

**Solution 2: the European Commission should support producing countries in establishing robust national farm registration systems** and clear and accessible procedures for smallholders to request legal recognition of their land ownership.

**Challenge 3: any official or unofficial government restrictions to the sharing of geolocation to plot data** in a usable/transferable format will result in EU operators not being able to share such data even if they have obtained it.

**Solution 3: the Commission should identify any such restrictions with all relevant producing countries and use the diplomatic route,** such as through Forest Partnerships, to explain to those producing countries that providing geolocation to plot in an electronic format to EU competent authorities is a prerequisite for market access to the EU. In such dialogue, all concerns related to data protection or data ownership should be properly discussed, addressed, and agreed upon by both parties.

### **Conclusion**

Given the time, resources, and need for multi-stakeholder collaboration to make geolocation to plot information feasible to collect from smallholders in an official and reliable manner, operators in the EU whose supply base includes a large portion of smallholders are concerned that these practical challenges have not been duly recognised or taken into account in the Regulation.

As COCERAL, FEDIOL, and FEFAC we urge policymakers to not put the cart before the horse and therefore to tackle the challenges outlined above before implementing and enforcing the geolocation to plot requirement of the Regulation.

Our industry stands ready to work with the Commission and other stakeholders to address all these challenges to maintain sustainable smallholders in our supply chains.

### **Why Geolocation to Production Area?**

Geolocation to Production Area allows operators to monitor the area for any possible deforestation without needing the geolocation to plot information of each farmer. If deforestation is detected, operators can apply their policy of Suspend and Engage. If the producer does not stop and recover the deforestation, the operator signals to the mills that they no longer want to buy from that producer. The producer might still be in the area, but the operator is not buying from them. Disqualifying the entire production area when deforestation is detected is more trade restrictive than necessary to fulfil the stated objective.

## Annex II: Mass balance ensures deforestation-free volumes bought correspond to deforestation-free volumes produced

The diagram below shows how a mass balance system allows for verified and non-verified products to be mixed but ensures that deforestation-free volumes bought correspond to deforestation-free volumes produced:

