

# Mandatory minimum criteria for agro commodities placed on the European market

**A proposal for coherent company requirements on deforestation and sustainability across EU policy and legislation.**

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**The EU has the opportunity to demonstrate sustainability leadership and sort effect on-the-ground by taking deforestation, adverse impacts on climate and biodiversity as well as human rights violations out of all agro commodities placed on its markets. This paper proposes five minimum criteria to do so, and discusses five reasons to apply these criteria across the many current EU policy and legislative efforts, to achieve a true level-playing field. The paper also argues for supportive measures for producing countries to be able to deliver on these minimum criteria, and discusses how current robust standard systems can play a role for the mandatory framework-to-be.**

The European Commission is actively engaging on the challenge to cut down on climate change, deforestation and biodiversity loss as well as human rights violations within its economy and trade. The current efforts include a Green Deal -umbrella for various EU wide laws and policies-, including EU wide biodiversity and forestry strategies and an external, international dimension to be elaborated. Crucial for this paper is the upcoming policy and – most likely- legislation following the Communication on Stepping up EU Action to Protect and Restore the World's Forests<sup>1</sup>, which identifies five pillars for action. Furthermore, Due Diligence legislation for companies is being developed. Last but not least, there is the current EU finance legislation on taxonomy, transparency and climate benchmarking under the EU Plan for Financing Sustainable Growth.

The wave of ambition is there; the impacts of all this will be determined by further elaboration of clear actions, coherent criteria for companies and strong implementation. Often based on yearlong experience with pushing voluntary sustainability initiatives many supply chain stakeholders now plea for mandatory EU supply chain transparency and norms to avoid deforestation & conversion and human rights infringements. These include companies related to the vegetable oils, retail, traders and cacao manufacturers.<sup>2</sup> NGOs have long been calling for strong mandatory due diligence requirements to companies and financial institutions, reflected in [their reaction](#) to the EU Communication<sup>3</sup>.

With this paper we hope to contribute to this societal call and the way it can be operationalized, by proposing a set of coherent mandatory minimum norms for agro commodities placed on the EU market and arguing for the potential role of existing sustainability standards in their implementation. Unfortunately, polarized stances on voluntary standards and sustainability initiatives may block our progress in thinking about EU policy and legislation. Voluntary initiatives have gone beyond national legislation in their sustainability criteria and in turn paved the way for current EU sustainability legislation to

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<sup>a</sup> IUCN National Committee of the Netherlands has more than 15 years of experience advocating for sustainable trade chains. The spirit of this piece is in line with the IUCN NL strategic plan 2020-2024 and the IUCN Strategic Plan 2016-2020, but the specific proposal will not reflect in all detail the consensus of the whole worldwide Union and its members. The author wishes to thank IUCN NL colleague Michel Riemersma for contributions to the text.

follow suit. However, this will work only under certain conditions, as will be elaborated below.

### **Five minimum criteria for agro commodities on the EU market**

To promote a sustainable European way of life with flourishing and biodiverse forests, across the globe and with respect to human rights, the following five widely applicable mandatory minimum criteria should be used across the EU agro commodity market and the relevant EU legislations relevant to this market. Learning from voluntary standard systems and guidelines for good corporate behavior, we propose this set of criteria as mandatory:

1. **Legality.** Legality self evidently is a non-negotiable criterion, yet, often not controlled in practice. Verified legal compliance in the country of origin should be the very first requirement for products placed on the EU market, but this legal compliance is mostly not enough to combat deforestation and climate change or rights infringements within EU value chains. Therefore four other criteria should be considered key:
2. **General good business practice.** As in-country laws differ widely, international standards that should arrange for responsible business practice are the OECD Guidelines for Multinational Enterprises, the OECD/FAO Guidance for Responsible Agricultural Supply Chains, and the UN Guiding Principles on Business and Human Rights-UNGP. These guidelines however remain quite general on environmental criteria. Therefore an explicit criterion 3 is crucial for the EU to attain its objectives:
3. **Deforestation-free and conversion- free production.** This criterion, including conservation of forests, native grasslands, wetlands, peat lands and other natural ecosystems –is necessary to combat the climate and biodiversity impact of EU consumption. Priority for conservation efforts should be given to existing areas crucial for their High Conservation and/or High Carbon Stock Values. However, to restore already degraded ecosystems and landscapes, and allow farmers to (re-) enter EU markets, their on-farm restoration of natural habitats should be an option in particular circumstances. Transparency on where agro commodities come from should be part of the package of norms. However, transparency per se does not yet exclude deforestation and conversion, nor rights infringements. Transparency is a means-to-an-end and should not be a goal-in-itself.
4. **Respect for rights** is a crucial production criterion including respect for human rights, labor rights, and formal & customary land rights, in line with UNGPs, the Sustainable Development Goals framework and UNDRIP. This will be in part covered by law or OECD guidelines, but *respect for rights* requires going beyond national laws and the general human and labor rights criteria formulated in the OECD Guidelines.
5. **Climate- and biodiversity-smart agricultural practices.** While deforestation and conversion form the number one driver, other measures are important too to avoid or restore biodiversity loss and climate impact by agro commodities. They include responsible use of chemicals and sustainable soil and water management, referring a.o to water quantity and quality, biodiversity management and carbon storage.

With this set of norms we plead for robust due diligence *processes*; in which companies take responsibility for the application of the mentioned five *product-related criteria*. Strong verification of the application of these criteria should be part of the mandatory requirements.

For two main topics: deforestation/conversion and human rights, the widely endorsed [\*Accountability Framework\*](#)<sup>4</sup> offers ground to build on for EU legislation. It includes definitions and proposals for company sustainability policies. In light of upcoming legislation

opportunities, [IEEP](#)<sup>5</sup> has built on these insights in a discussion paper with proposals for the exact formulation of mandatory principles and criteria on deforestation/conversion and human rights (our number 3 and 4), and discusses potential “cut off dates” after which implementation of the criteria could be requested.

In practice, robust commodity standards such the Roundtables’ reflect heavily negotiated criteria for responsible practice that often include, specify and (may even) go beyond the five criteria proposed above. The EU legislation to achieve deforestation free products can build on their example and adopt a *mandatory cross commodity framework of principles and criteria as outlined above*. The elaboration of which can be supported by the proposals of AFI and IEEP, which in turn are well informed by existing voluntary initiatives. Then, the EU can also make use of best in class existing standards to control (part of) the mandatory criteria in practice. This can happen if a standard includes at least the EU minimum criteria (self evidently-), *and* includes strong criteria for the assurance of their implementation. Companies and financial institutions furthermore should remain responsible for such criteria to be well applied and should make sure that sufficient resources are available for this assurance process. Without sufficient resources, implementation of even the strongest standards will still be hard in practice.

For those in doubt about the necessity and effects of such minimum criteria, we try to outline some reasons in the next part.

### **Five reasons for the EU to apply mandatory minimum sustainability criteria**

We started off with our proposal for five minimum criteria to be required for (agro) commodities placed on the EU market, wherever they come from and whatever they are used for. Below, we explain why we think this is necessary.

#### **1. The EU can only achieve its goals by going beyond voluntary initiatives**

Voluntary standards for agro commodities such as soy, palm oil and cacao have certainly led the way in criteria setting and have delivered results but need to be backed and scaled up by authorities taking responsibility for the wide application of minimum norms as discussed above. The application of the minimum criteria should be assured before products land on the EU supermarket shelves. Leaving the choice to consumers only (by labeling) or to companies (by voluntary sourcing requirements for some products) will not help to solve the current limited scale of uptake of sustainability norms. This is especially true for ingredients that are invisible on the supermarket shelves such as soy, which is used mostly in livestock feed.

In soy only 2 % of the global market is certified by RTRS, 6 % when a broader set of feed standards is considered.<sup>6</sup> In the European use of around 40 million tons of soybean, [we found that](#) only about 22 % was verified free of illegal deforestation, and only 13 % deforestation free according to voluntary standards such as RTRS, Proterra or Donau Soja in 2017.<sup>7</sup> The rest relied on legal compliance in producing countries, which often is not controlled, not strong and not stable, and furthermore would still allow 110 million ha to be deforested legally in Brazil, Argentina and Paraguay alone<sup>8</sup>.

In palm oil, [about 19 % is RSPO certified worldwide](#), and 30% of cacao is certified with strong labels such as Utz, Rainforest Alliance, or Fair Trade.<sup>9</sup> Without further up-scaling of sustainability criteria such efforts will keep on facing challenges in their fulfillment of societal goals.

The EU by its upcoming legislation can upscale the application of sustainability criteria far beyond current percentages; and through this set an example for other power blocks to follow. However, scale should also be achieved in producing landscapes (think Brazil, Argentina, Indonesia, Ghana, Ivory Coast), where not only EU markets play a role.

Landscape and jurisdiction-wide approaches are being tried out for commodities such as palm oil, soy and cacao, important to increase on-the-ground impact. However, this is a step-by-step process, so far reliant on the will of farmers and local politicians.

We cannot yet point to really successful examples, and cannot yet count on such efforts to deliver deforestation free responsible agro-commodities. Our stance is that also in jurisdictional approaches, *clear sustainability criteria* (cf the ones of the Roundtables) should lead the way in combination with other measures, such as landscape wide planning, green finance, and improved legal compliance.

In sum, a coherent set of EU minimum criteria could help scale sustainability both in the market *and* in producing landscapes, while also creating EU-wide clarity for companies.

## **2. The EU has the opportunity and duty to create coherence and clear messages**

The current wave of policy and legislative efforts by the EU presents both a unique opportunity to step up action, as well as a risk. If EU legislation will not be coherent and overly complex, it might create competing messages, resulting in loopholes, unnecessary bureaucracy for companies or even incentives that go against the final goals.

A coherent set of minimum criteria for agro commodities to be required across all EU legislative efforts on forests, climate, biodiversity, agriculture, human rights and sustainable finance could help face this challenge of coherence.

The various policy goals will require additional measures and additional criteria to meet, but still a coherent set of criteria across EU policy, legislation and agreements will create clarity to producers, consumers, policy makers, traders, consumer facing companies and financial institutions working for the EU market.

Scale will also reduce their cost, for example for traders in vegetable oils, if all European products- and not just specific niche markets - should be deforestation/ conversion free and responsible. And hopefully, through international diplomacy, the criteria will apply beyond the EU.

## **3. The EU can create effect on-the-ground - beyond processes of due diligence and transparency**

For companies to contribute to the EU's climate and forest goals, what counts is their performance or effect on-the-ground. For this, the on-the-ground verification of robust sustainability criteria is essential, wherever the product comes from, including the EU itself.

Verifying farm-by-farm, year-by-year (as robust commodity standards require) is important. Companies and investors should include the concept of 'ground-truthing' (as defined by [Forest Peoples Programme](#)) in their due diligence: local communities, indigenous organisations and NGOs have their feet on the ground and provide essential independent and qualitative information that is not captured by quantitative "paper-based assessments of compliance from secondary sources and company self-reporting".<sup>10</sup>

This can be complemented by for example satellite monitoring that has become rather sophisticated over the past decade.

Due diligence and transparency - often argued for- are process-oriented requirements; they are important to combat deforestation and rights infringements but not enough in (current) practice without clear minimum criteria to be applied.

Requiring the application of minimum criteria by producers, traders, financiers and consumer facing companies in any case goes beyond current- often superficial - due diligence processes. In practice due diligence has too often meant checking online if there is any risks, often building only on NGO research, media case reports and self-reporting of the company. Furthermore companies may choose to tackle the risk only if it is material to them.

Increased transparency is essential as well to achieve final goals. However, implementing transparency about the origin of products (say soy from Brazil or palm oil from Indonesia) without taking responsibility for the final *performance* of supply chains on the ground will not effectuate sufficient change. It may also lead to excluding whole areas or countries without solving the problems.

#### **4. EU can learn from commodity standards and help create scale by adopting mandatory criteria, also on verification.**

An EU mandatory framework can build on the experience of robust voluntary standards and initiatives that have gone beyond national legislation towards sustainability and in turn paved the way for current EU sustainability legislation to follow suit. The best in class examples of standards include those of the Roundtable on Sustainable Biomaterials, Roundtable for Sustainable Palm Oil, the Roundtable on Responsible Soy, or Rainforest Alliance (for cocoa and other agro commodities other) and equivalent alternatives.<sup>11</sup>

These standard systems have led the way as voluntary initiatives, but cannot solve the current sustainability challenges without a stronger level playing field by putting mandatory minimum criteria.

The EU Renewable Energy Directive offers an interesting learning experience, as it required minimum criteria to be verified by voluntary standards. The EU RED has been rightly criticized for creating policy driven demand for biofuels leading to land-use change related GHG emissions, especially in case of vegetable oils<sup>12</sup>. Furthermore, it also allowed shallow and not well-controlled voluntary standards to deliver overly cheaply on the requirements.

However, what is interesting in the EU RED model is the hybrid governance; this idea of making robust standard systems work for mandatory criteria could be extended beyond biofuels and biomass into fuel, feed, fiber and any other use of agro commodities, of these standards include strong requirements on the robustness of governance and verification of such standards.

In practice this means that the EU can set mandatory minimum criteria for all (agro commodity) products to be placed on the EU market, including criteria for the quality of their verification. Then, after benchmarking standards against these mandatory criteria, the EU could build on strong voluntary standards to control their application.

Companies and financial institutions should remain responsible for such criteria to be well applied and make sure that sufficient resources are available for the assurance process of their implementation. For a stronger application of RSPO for example, independent quality auditors with sufficient time to do their work are key. Also, in line with the FPP concept of ground-truthing, sufficient resources allocated to local NGO's should allow them to provide qualitative information about the human rights and environmental situation on the ground.

#### **5. The EU can support governments and smallholders of producing countries to comply with the minimum criteria to achieve effect**

The EU can set minimum criteria, make strong standards, control them in practice, hold companies accountable for their performance on the criteria, *and* monitor for this all to really contribute to its EU goals. For this to be successful, however, more work should be done in producing countries themselves. Requiring application of minimum norms in the EU value

chains should be complemented by support to producing countries to apply them; not only because this would be fair, but also because of its final effect.

Standards have so far not been able to deliver sufficiently against deforestation and biodiversity loss. This is partly because of a lack of scale (eg RTRS) and implementation challenges in-the-field (eg RSPO). However, the lack of effect is mainly due to the fact that application of voluntary standards in deforestation risk environments is a challenge: there is too much opportunity for non-compliance. Not in the least because of the lack of control of (basic) legal compliance in producing countries and a lack of extra incentives for land users to avoid above-legal deforestation or conversion of native habitats.

EU policy for support can help countries achieve legal compliance and can help the creation of incentives for above-legal conservation. This, because the application of the proposed EU minimum criteria should not mean an *a priori* exclusion of risk zones or risk producers, probably even the contrary. Should Europe for example pull its hands off Brazil, Indonesia, Ivory Coast, because of the current challenges related to deforestation, grassland conversion, land grab or child labor? We argue that the EU –to achieve its climate and biodiversity goals- rather should help apply sustainability criteria in these countries' risk-environments, not only by *requiring*, but also by *supporting* their application in such zones.

To be truly effective on-the-ground and on the long term, norms have to be applied across jurisdictions and even biomes (think Cerrado and Chaco in Latin America). For example: soy is often rotated with maize, and has close relations with land use for cattle production in Latin America. Successful application of minimum norms means application across commodities, across jurisdictions and across types of farmers. These latter include smallholders, who also should be enabled to participate in the EU's sustainable markets.<sup>13</sup> It may seem attractive to just concentrate on human rights or on deforestation in such complex endeavors. Deforestation-free trade with human rights abuses attached is not the way to go for the EU. Neither is fair trade that destroys the forests or savannahs. This requires tailor-made sets of multiple measures, in which again voluntary initiatives are important to pilot approaches to apply integrated criteria.

### **Last not least**

Besides scaling up the application of sustainability criteria in the current EU market and related production landscapes, EU policy can also support a responsible scale of *demand* for consumption of animal protein (incl soy as feed) palm oil, cocoa and other to stay within planetary boundaries. For example, the EU should have supportive policies and financial incentives to achieve a larger share of plant-based protein compared to animal-based protein in human diets.

To finalize our central argument: the five minimum criteria proposed may even help *promote* such responsible markets to further develop. How? Cost is often used as an argument against sustainability requirements in current trade. However, some current high volume/low margin value chains simply are too cheap and even counterproductive from a resource efficiency, climate and biodiversity perspective to survive at this scale on the long run. For example, if farmers, traders, feed manufacturers and retail all keep saying they do not have the margins for improvement on the sustainability performance of soy, something has to change in the current rationale. It will hurt some but benefit many to help down-scale consumption to sustainable levels with reasonable prices attached, last but not least for the farmers on who we really depend to implement sustainability in practice.



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