

Ivorian civil society position paper to European decision-makers on the European Union regulation on products linked to deforestation

Abidjan, 14 July 2021

The policy dialogue on sustainable cocoa between Côte d'Ivoire and the European Union launched on 22 January 2021 is an opportunity to initiate important reforms in the cocoa sector. We, as civil society organisations, welcome and strongly support this initiative.

Like the Voluntary Partnership Agreement on Forest Law Enforcement, Governance and Trade (VPA FLEGT) process, this dialogue must be inclusive and rigorous. It must enable Côte d'Ivoire to develop a strategy for the sustainable development of its cocoa sector as it has done for its forestry sector in recent years. For this to happen, it is important that commitments within this dialogue are based on tangible elements, on observed facts and above all on the reality on the ground. This is why, at a time when the European Union is preparing to adopt a regulation on products linked to deforestation, we felt it was necessary, as civil society organisations, to produce this document to share our thoughts.

The ultimate objective of this position paper is to ensure that the future EU regulation is enforceable and that it achieves a fully sustainable cocoa supply chain, free of deforestation, that allows cocoa farmers to earn a sufficient income and eliminates human rights abuses such as child labour in Côte d'Ivoire.

As civil society organisations campaigning for forest conservation and thus for deforestation-free cocoa, we are keen to see enforceable laws. One of the challenges of regulations is their enforceability on the ground. Sometimes the rules are poorly-designed. As a result, they are ineffective in solving the problem. We don't want another regulation that is ambitious and very proactive on paper but whose implementation in the years to come will be assessed as a failure because it will not work. We want a regulation with clear, concrete requirements, adapted to international issues as well as to national opportunities and challenges, thus taking into account the reality on the ground and the expectations of all stakeholders. That is why we are making this position paper.

In this note, we, 13 Ivorian civil society organisations from the Working Group on Transparency in the Cocoa Sector in Côte d'Ivoire, express our position on (i) the concept of the reference year and its implications and formulate (ii) concrete recommendations so that the European regulation on products linked to deforestation contributes to substantially improve the living conditions of producers, to effectively rehabilitate the forest in Côte d'Ivoire, to better fight against human rights violations, particularly child labour, to strengthen transparency; in short, to guarantee sustainable cocoa, with a supply chain that respects the environment, ecosystems and human rights.

1. The concept of a reference year

In its new policy defined within the framework of the European Green Deal, the European Union intends to fight against "imported deforestation". It is therefore considering excluding any product linked to deforestation from its territory (the Schengen area). In the [regulation](#) it is preparing on products linked to deforestation, it intends to introduce a date from which it will be able to indicate

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that a product is linked to deforestation and therefore illegal on European territory: this is the concept of a reference year.

In practical terms, as regards Ivorian cocoa, this means indicating a year from which it will be considered that there has been conversion of forest for cocoa production. The European Commission has said that the definition of forest retained by the European regulation under preparation would be based on the FAO definition¹. For example, if the year 2012 is determined as the reference year, all conversions of forest to cocoa plantations after 2012 would be deforestation-related cocoa. Under the proposed regulation, cocoa from these plantations could therefore not be exported to the EU.

Why do we need to be careful with the idea of a reference year?

In 2015, a study from the Ivorian National Bureau of Technical Studies and Development (BNETD in French) put the area of forest in Côte d'Ivoire at 3.4 million hectares. The results of the national forest inventory, published on 29 June 2021, show that the forest area in Côte d'Ivoire is now 2.97 million hectares, i.e. a loss of 12.64% in the space of five years. These figures are alarming and require urgent and vigorous action to stop this spiral of deforestation.

However, the civil society organisations that signed this position paper argue that **the idea of a reference year is not relevant given Ivorian law**. Moreover, the challenges of achieving sustainable cocoa in Côte d'Ivoire are elsewhere.

Indeed, in Côte d'Ivoire, the law clearly prohibits cocoa production in classified forests and protected areas (national parks and nature reserves). **Cocoa produced in classified forests and protected areas is therefore illegal**. In contrast, the rural domain is an area for agricultural production. The conversion of forest area to agriculture is allowed. **Cocoa produced in the rural domain is therefore legal**.

Based on this reality of Ivorian law, for us, setting a reference year even in 2030 amounts in a way to **legalising illegally produced cocoa in a protected area and unjustly condemning cocoa produced in an area dedicated to agriculture-- unless clarifications are made within the EU regulation, particularly in the definition and understanding of deforestation**. On this basis, we believe that it would be desirable to abandon the idea of a reference year and rely on national legislation, following the example of the FLEGT VPA, to define legal cocoa. **The real challenge would be to put in place tools that would ensure good traceability of cocoa**.

Moreover, maintaining this idea of a reference year could also have important social consequences. **In Côte d'Ivoire, there are no industrial cocoa plantations** as can be seen in other sectors such as rubber and oil palm. **Cocoa crops are family plantations and constitute the sole source of income for many cocoa-producing families**. A reference year would condemn their cocoa plantations that are operating legally under Ivorian law.

Our position is that emphasis should be placed instead on establishing real traceability, ensuring companies contribute to the rehabilitation of forest cover (particularly in protected areas), and establishing strong sanctions for operators that break the law.

1 The Food and Agriculture Organisation of the United Nations (FAO) defines forests as land with an area of more than 0.5 hectares (5,000m²) with trees reaching a height of more than 5 metres and a tree crown cover of more than 10%, or with trees capable of meeting these criteria. The definition excludes land whose predominant use is agricultural or urban.

However, if the idea of the base year is maintained, we recommend that the EU considers a date not far from the current discussions in the cocoa sector. **This could for example be 2018, 2020** or simply the date of entry into force of the EU regulation. The scope of the reference year should be limited to forests in the rural domain; destruction of forests in classified forests and protected areas should not be allowed at all, even if it took place before the cut-off date, as it is illegal under Ivorian law. In this way, the primary forests still available in this area will be given greater protection. In addition, it will encourage greater investment in agroforestry on existing cocoa plantation.

We also recommend regulatory reform in Côte d'Ivoire to better adapt to this new situation. **This could involve the introduction of an agricultural code in Côte d'Ivoire** in the same way as there is a national forestry code, an environmental code and a mining code. Of course, such a recommendation should be directed at the Ivorian authorities. But we are also addressing it to the European authorities because the EU has been supporting Côte d'Ivoire for several years on similar reforms, particularly in the forestry sector.

Mobilise FOR, not against

As an NGO campaigning for forest conservation, sustainable and participatory management of natural resources, and given the level of deforestation in Côte d'Ivoire, all initiatives in favour of the forest are positive for us. Our philosophy is that we should not fight AGAINST; we should mobilise FOR. In this logic, instead of fighting against deforestation, we say that we must mobilise for the reconstitution of the forest cover in Côte d'Ivoire. Especially since the forest inventory reveals that the share of reforestation represents only 0.3% of the forest area in Côte d'Ivoire. Of course, it is possible both to stop deforestation and to promote reforestation. It is simply a question of approach: we think it is important to approach the subject in a positive way.

We therefore make the following recommendations which we hope will be taken into account in the future European regulation.

2. Recommendations for a sustainable cocoa supply chain

1. Improving the living conditions of cocoa farmers by improving their incomes is key to achieving sustainable cocoa. To achieve this, it is necessary to

- include in the regulation a requirement for companies to pay farmers the Living Income Differential (LID)
- **to ensure a fairer distribution of value along the global cocoa chain allowing a substantial increase in the price to producers.** This would require a review of the current cocoa marketing scheme, with companies in Belgium and Spain acting as middlemen, marketing cocoa beans to the United States for example. This means that the income and profits that could go to farmers are diverted to these Belgian and Spanish traders.
- require a contribution to local development based on the model of² the mining sector, i.e. based on the annual turnover of companies.

² The mining code in Côte d'Ivoire imposes a contribution to local development paid by companies in the mining industry. It represents 0.5% of the company's annual turnover and is paid directly to the local level.

2. The restoration of forest cover is essential for sustainable cocoa. The regulation should therefore :

- **Establish a requirement for the practice of agroforestry in areas dedicated to agriculture as compensation, similar to the compensatory reforestation mechanism in the forestry sector.** Today, there are agroforestry initiatives undertaken by companies in the cocoa sector. These initiatives are welcome but remain timid. The European regulation could require proof that cocoa exported to the European market comes from an agroforestry farm, on the basis of the agreed technical standards. This would have the direct effect of increasing investment in tree planting programmes on cocoa farms. Agroforestry programmes play an important role in Cote d'Ivoire's current production policy, but could be better than those observed so far, which are mainly based on farmer awareness-raising and voluntary commitments. A stronger agroforestry policy would allow cocoa production to continue while maintaining forest cover at an acceptable level of ecological balance. This is the objective of the Cocoa and Forests Initiative launched in 2017 by the governments of Côte d'Ivoire and Ghana and some 30 multinational cocoa companies.
- **Establish a fund financed by companies benefiting from cocoa revenues, for the rehabilitation of protected forest areas that have been degraded by cocoa.** The European regulation could, for example, require multinationals in the sector to provide evidence each year of their contributions to the rehabilitation of forests in Ivorian protected areas degraded by cocoa, as well as report on the results of this financial contribution with tangible data on the areas rehabilitated. The annual contribution amount could be set as a proportion to the volume of cocoa the company purchased the previous year, as presented by the company through an independent report.

3. The implementation of a traceability system is important but not sufficient. In addition, it is necessary to :

- **Put in place robust monitoring tools based on independent bodies.** For example, the regulation could require companies to report on the monitoring of their supply chains by an independent body (entities such as NGOs could also contribute to this work through an accreditation system that the EU could set up)
- **Provide for severe sanctions to crack down on companies/actors that buy or operate in areas where there is a high risk of illegal cocoa** due to proximity to a protected area infiltrated for cocoa production, without being able to present evidence of rigorous due diligence or an independent report.

4. One of the keys to the success of the regulation would be the degree of transparency and accountability required of the actors. For the EU Regulation to be effective, it should also require :

- **Companies to provide transparency on annual turnover, as is the case for companies in the mining industry with³ the EITI mechanism.** A similar process could be established

³ Extractive Industries Transparency Initiative: <https://eiti.org/fr/qui-sommes-nous>

in the cocoa sector. Such a mechanism would allow for continuous and credible monitoring and evaluation of the cocoa sector's operations.

- The data and reports generated by companies during their due diligence process should be publicly available, to allow NGOs to do their independent monitoring work.

Recommendations for the involvement of NGOs

The member organisations of the Working Group for Independent Monitoring and Transparency in the cocoa sector in Côte d'Ivoire are willing to support the implementation of these recommendations. It is desirable that the European Union promote a framework for exchange where actors have the opportunity to get to the bottom of the issues in meetings. With the field experience of its members in data collection, the WG-Transparency Cocoa is available to take its place in such a discussion framework.

To supplement this, we recommend that the European Union :

- **Provide a framework for NGO intervention in the regulation.** This could be done by creating a system of accreditation of NGOs by the EU so that NGOs accredited through this system do the work of independent monitoring of companies' supply chains. This is similar to the format of the competent authorities for the EUTR, except that this time the monitoring work will also be done by NGOs in the producer countries, i.e. upstream.

Signatures



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