Indonesian–EU palm oil trade and consumption

Improving coherence of EU actions to avoid deforestation and human rights abuses

Research paper

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Indonesian–EU palm oil trade and consumption: Improving coherence of EU actions to avoid deforestation and human rights abuses

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Cover photo: Ulet Ifansasti, Greenpeace
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Preface

This report aims to document and describe existing initiatives and policies in relation to the palm oil trade between Indonesia and the EU. It is a background document meant to inform discussions between and within different stakeholders on how the EU can be more pro-active and coherent in its trade, climate, energy, agriculture, development and environment policies when it comes to trade in palm oil with Indonesia.

The document is a desk review, informed by interviews with key informants from NGOs in the EU and Indonesia, private sector actors, and government representatives in EU Member States and Indonesia.

The authors want to acknowledge our Indonesian collaborator Giorgio Budi Indrarto as well as all those interviewed and those who have commented on the draft report, including: Joko Arif, Vincent van den Berk, Andreas Brede, Jeremy Broadhead, Marcus Colchester, Paul Eastwood, Jelmen Haaze, Abu Meridian, Minang Minangsari, Christoph van Oorshoven, Siobhan Pearce, Vanessa Richardson, Joko Sarjito, Ian Sawarganda, Bernardinus Steny, Teguh Surya. Any remaining mistakes are obviously ours.
## Abbreviations and acronyms

<table>
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>ACOP</td>
<td>Annual Communications of Progress (related to Green Palm certificates)</td>
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<tr>
<td>ADP</td>
<td>Amsterdam Declarations Partnership</td>
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<td>AFD</td>
<td>Agence Française de Développement</td>
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<tr>
<td>AMDAL</td>
<td>Analisis dampak lingkungan (Environmental Impact Assessment)</td>
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<tr>
<td>APL</td>
<td>Areal Penggunaan Lain (Land designated for other use – not in the forest estate)</td>
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<td>APROBI</td>
<td>Asosiasi Producers Biofuel Indonesia (Indonesian Biodiesel Producers Association)</td>
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<td>ASEAN</td>
<td>Association of South–East Asian Nations</td>
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<tr>
<td>B2O, B30, B100</td>
<td>Diesel containing 20%, 30% and 100% biofuel</td>
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<td>BASPO</td>
<td>Belgian Alliance for Sustainable Palm Oil</td>
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<td>BAU</td>
<td>Business as usual</td>
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<tr>
<td>BCM–FLEG</td>
<td>Bilateral Cooperation Mechanism on Forest Law Enforcement and Governance between China and the EU</td>
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<tr>
<td>BMEL</td>
<td>German Federal Ministry of Food and Agriculture</td>
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<td>BMZ</td>
<td>German Federal Ministry for Economic Cooperation and Development</td>
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<tr>
<td>BPK</td>
<td>Badan Pemeriksa Keuangan (State Audit Board)</td>
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<tr>
<td>Caobisco</td>
<td>Association of Chocolate, Biscuit and Confectionery Industries of Europe</td>
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<td>CBD</td>
<td>Convention on Biological Diversity</td>
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<td>CDC</td>
<td>UK’s development finance institution</td>
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<td>CDP</td>
<td>Carbon Disclosure Project</td>
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<td>CEED</td>
<td>Centre of Excellence for Environmental Decisions</td>
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<td>CEPA</td>
<td>Comprehensive Economic Partnership Agreement</td>
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<td>CFNA</td>
<td>Chinese Chamber of Commerce for Import &amp; Export of Foodstuffs, Native Produce and Animal By-Products</td>
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<td>CFS</td>
<td>Committee on World Food Security</td>
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<td>CGF</td>
<td>Consumer Goods Forum</td>
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<td>CITES</td>
<td>Convention on Trade in Endangered Species of Wild Fauna and Flora</td>
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<td>COP-21</td>
<td>21st Conference of the Parties on Climate Change</td>
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<td>COREPER II</td>
<td>Committee of the Permanent Representatives of the Governments of the Member States to the European Union</td>
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<td>CPO</td>
<td>Crude palm oil</td>
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<td>CPOPC</td>
<td>Council of Palm Oil Producing Countries</td>
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<td>CSO</td>
<td>Civil society organisation</td>
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<td>CSPO</td>
<td>Certified Sustainable Palm Oil</td>
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<td>CSR</td>
<td>Corporate social responsibility</td>
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<td>DASPO</td>
<td>Dutch Alliance for Sustainable Palm Oil</td>
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<td>Defra</td>
<td>UK Department for Environment, Food and Rural Affairs</td>
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<td>DEG</td>
<td>German development finance institution</td>
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<td>DFI</td>
<td>Development Finance Institution</td>
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<td>DFID</td>
<td>UK Department for International Development</td>
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<td>DRLI</td>
<td>Decent Rural Living Initiative</td>
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<td>EBA</td>
<td>Everything But Arms</td>
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<td>EFTA</td>
<td>European Free Trade Area</td>
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<td>EIDHR</td>
<td>European Instrument for Democracy and Human Rights</td>
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<td>EIP</td>
<td>European Innovation Partnerships</td>
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<td>EPOA</td>
<td>European Palm Oil Alliance</td>
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<td>ERC</td>
<td>Ecosystem Restoration Concession</td>
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<td>ESG</td>
<td>Environmental and Social Governance</td>
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<td>ESPO</td>
<td>European Sustainable Palm Oil Initiative</td>
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<td>EU</td>
<td>European Union</td>
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<td>FAO</td>
<td>Food and Agriculture Organisation of the United Nations</td>
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<td>FCPF</td>
<td>Forest Carbon Partnership Facility</td>
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<td>FEDIOL</td>
<td>European Vegetable Oil and Protein Meal Industry Federation</td>
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<td>FFB</td>
<td>Fresh fruit bunch</td>
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<td>FIC</td>
<td>Food Information for Consumer Regulations</td>
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<td>FIR</td>
<td>Food Information Regulations</td>
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<td>FLA</td>
<td>Fair Labour Association</td>
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<td>FLAG</td>
<td>Forestry, Land-Use and Governance (UK development programme in Indonesia)</td>
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<td>FLEG</td>
<td>Forest Law Enforcement, Governance and Trade</td>
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<td>FMO</td>
<td>Dutch development finance institution</td>
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<td>FONAP</td>
<td>Forum for Sustainable Palm Oil</td>
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<td>FORCLIME</td>
<td>Forests and Climate Change (German technical assistance on forests and climate in Indonesia)</td>
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<td>FPIC</td>
<td>Free prior and informed consent</td>
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<td>FQD</td>
<td>Fuel Quality Directive</td>
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<td>GAPKI</td>
<td>Gabungan Pengusaha Kelapa Sawit Indonesia (Indonesian Palm Oil Association)</td>
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<td>GDP</td>
<td>Gross domestic product</td>
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<td>GHG</td>
<td>Greenhouse gas</td>
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<td>GIZ</td>
<td>German Agency for Development Cooperation</td>
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<td>GMO</td>
<td>Genetically modified organism</td>
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<td>GPP</td>
<td>Green Public Procurement</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>GSP</td>
<td>General System of Preferences</td>
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<td>HCS</td>
<td>High carbon stocks</td>
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<td>HCV</td>
<td>High conservation value</td>
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<td>HGU</td>
<td>Hak Guna Usaha (Land Use Permit)</td>
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<td>HS</td>
<td>Harmonised Commodity Description and Coding System</td>
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<td>IDH</td>
<td>The Sustainable Trade Initiative</td>
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<td>IFC</td>
<td>International Finance Corporation</td>
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<td>ILO</td>
<td>International Labour Organisation</td>
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<td>ILUC</td>
<td>Indirect land use change</td>
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<td>IMACE</td>
<td>European Margarine Association</td>
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<tr>
<td>INOBUS</td>
<td>Institut Penelitian Inovasi Bumi (Earth Innovation Research Institute)</td>
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<tr>
<td>IP</td>
<td>Indigenous people</td>
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<td>ISCC</td>
<td>International Sustainability and Carbon Certification</td>
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<td>ISPO</td>
<td>Indonesian Sustainable Palm Oil</td>
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<td>IUP</td>
<td>Izin Usaha Perkebunan (Plantation Business Permit)</td>
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<td>JAPBUSI</td>
<td>Jejaring/Serikat Pekerja Buruh Sawit Indonesia (Indonesia Oil Palm Union Network)</td>
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<td>JPKI</td>
<td>Jaringan Pemantau Independen Kehutanan (Independent Forest Monitors Network)</td>
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<tr>
<td>KPA</td>
<td>Konsortium Pembaruan Agraria (Agrarian Reform Consortium)</td>
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<td>KPK</td>
<td>Komisi Pemberantasan Korupsi (Corruption Eradication Commission)</td>
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<td>LL</td>
<td>Legacy Land</td>
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<td>MEA</td>
<td>Multilateral Environmental Agreement</td>
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<td>MFP</td>
<td>Multi-Stakeholder Forestry Programme</td>
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<td>MSPO</td>
<td>Malaysian Sustainable Palm Oil</td>
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<td>MVO</td>
<td>An independent expertise and network organisation on Corporate Social Responsibility founded by the Dutch Ministry of Economic Affairs</td>
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<tr>
<td>NDCs</td>
<td>Nationally Determined Contributions (to addressing climate change)</td>
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<td>NGO</td>
<td>Non-governmental organisation</td>
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<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<td>P4F</td>
<td>Programme for Forests</td>
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<tr>
<td>PIR–KKPA</td>
<td>Perkebunan Inti Rakyat (Plasma Cooperative Credit Programme)</td>
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<td>PIR–Trans</td>
<td>Perkebunan Inti Rakyat (Plasma Transmigration Programme)</td>
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<tr>
<td>PKO</td>
<td>Palm kernel oil</td>
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<td>POIG</td>
<td>Palm Oil Innovation Group</td>
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<td>POTC</td>
<td>Palm Oil Transparency Coalition</td>
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<td>PPI</td>
<td>Production, Protection &amp; Inclusion</td>
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<td>RBC</td>
<td>Responsible Business Conduct</td>
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<td>RED II</td>
<td>Renewable Energy Directive (recast)</td>
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<td>REDD+</td>
<td>Reduction in Emissions from Deforestation and Forest Degradation</td>
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<td>RSB</td>
<td>Roundtable on Sustainable Biomaterials</td>
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<td>RSPO</td>
<td>Roundtable on Sustainable Palm Oil</td>
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<td>RTRS</td>
<td>Roundtable on Sustainable Soy</td>
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<td>SDG</td>
<td>Sustainable Development Goal</td>
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<td>SIA</td>
<td>Social impact assessment, or sustainability impact assessment</td>
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<tr>
<td>SPKS</td>
<td>Serikat Petani Kelapa Sawit (Palm Oil Smallholders’ Union)</td>
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<td>SPOTT</td>
<td>Sustainability Policy Transparency Toolkit</td>
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<tr>
<td>STDB</td>
<td>Surat Tanda Daftar Budidaya Perkebunan (Plantation Cultivation Certificate)</td>
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<td>STDU-B</td>
<td>Surat Tanda Daftar Usaha Perkebunan (Plantation Business Registration Certificate)</td>
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<tr>
<td>SVLK</td>
<td>Sistem Verifikasi Legalitas Kayu (Timber Legality Verification System)</td>
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<td>TFA 2020</td>
<td>Tropical Forest Alliance 2020</td>
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<td>TSD</td>
<td>Trade and Sustainable Development</td>
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<td>UKCCU</td>
<td>UK Climate Change Unit</td>
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<tr>
<td>UNDRIP</td>
<td>UN Declaration on the Rights of Indigenous Peoples</td>
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<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
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<tr>
<td>VGGT</td>
<td>Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security</td>
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<td>VPA</td>
<td>Voluntary Partnership Agreement</td>
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<td>VSAs</td>
<td>Verified Sourcing Areas</td>
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<td>WHD</td>
<td>World Health Organisation</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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<tr>
<td>WWF</td>
<td>World Wide Fund for Nature</td>
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<tr>
<td>ZSL</td>
<td>Zoological Society of London</td>
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Annex 1: Detailed recommendations for addressing EU trade and consumption of Indonesian palm oil products 94
1. Executive Summary

Trade arrangements, consuming country legislation, agricultural policies, development cooperation and private sector actions – including voluntary certification – can be combined to exert a powerful influence on how commodities are produced. As well as product safety and public health, these instruments can be used to address environmental and human rights concerns. Palm oil – a commodity that has become omnipresent in a wide range of uses – has been singled out for attention because of the impacts of its production on forests and forest-dependent communities.

The need for coherent actions to address these impacts has been recognised. As the world’s second-biggest importer of palm oil, the EU has a large forest footprint in South-East Asia, where around 85% of all palm oil is produced. It therefore has opportunities through its trade and development cooperation policies to make significant contributions to these actions.

Indonesia, the world’s largest producer, has lost 27.5 million hectares (ha) of forest over the last 35 years; 7.5 million ha of this was for agriculture, and of this 2.9 million ha was due to palm oil expansion. Despite recent decreases in its annual deforestation rate, in 2018 the country still ranked fourth in the world, for deforestation, and forest loss continues to be the major factor contributing to its greenhouse gas emissions. Other environmental impacts of deforestation include loss of biodiversity and water quality, and smoke and haze from peat and forest fires. Expansion of palm oil estates has led to loss of local peoples’ rights to forest areas – often without their consent – and the employment generated may be substandard, with allegations of forced and child labour, raising serious concerns about human rights violations, including customary rights, linked to palm oil production.

Indonesia’s Nationally Determined Contributions (NDC) for mitigating greenhouse gases includes up to a 91% reduction in emissions from forestry and land-use change from projected 2030 levels. To contribute to this target Indonesia has imposed a moratorium on converting primary forest and peatland to other uses since 2011. This was made permanent in 2019, providing protection for 166,000 km$^2$ of forest. In addition, in 2018, the government declared a three-year moratorium on new palm oil plantations on forest land.

Palm oil is crucially important for Indonesia’s economy. Crude palm oil (CPO) and palm kernel oil (PKO) are Indonesia’s second biggest export earner, after coal, contributing US$16.53 billion in 2018: 9.2% of its total exports and 1.6% of gross domestic product (GDP). The sector employs an estimated 3.78 million people.

The EU’s recast Renewable Energy Directive (RED II) seeks to contribute to the EU’s climate change goals by requiring Member States to set targets to replace fossil fuels as an energy source by 2030, and it allows them to offer incentives for including biofuels in their energy mix. However, it recognises that production of biofuels by conversion of land that previously carried high carbon stocks – including forests and peatland – or displacement of existing crops to such land, risks negating gains made from changing to renewable energy. RED II therefore stipulates that, by 2030, biofuels that have a high risk of indirect land use change (ILUC) may not count towards Member States’ obligatory targets. Palm
oil has been singled out as the only agricultural crop that carries such a risk, and may be included in targets only if certified as not contributing to ILUC or produced by smallholders occupying less than two hectares.

In 2018 about 65% of the EU's palm oil imports were used for energy generation. Implementation of RED II could therefore result in significant reductions in palm oil imports, and Indonesia, along with other palm oil producers, sees the Directive as a barrier to trade that favours vegetable oil crops produced in the EU.

Indonesia and the EU are negotiating a free trade agreement, known as the Comprehensive Economic Partnership Agreement (CEPA). Because of the importance of Indonesia's palm oil exports to the EU, the likely impacts of RED II represent a potential obstacle to concluding CEPA. Indonesia has proposed a separate article on vegetable oils in the CEPA chapter on Trade and Sustainable Development (TSD), where issues of environment, human rights and sustainable trade are intended to be addressed. This aims to ensure that palm oil is treated equitably in relation to competing products produced in the EU. Other recently concluded trade agreements – those between the EU and Mercosur and between the European Free Trade Area (EFTA) and Indonesia – set interesting precedents for how forests, vegetable oils and human rights could be addressed in CEPA.

Indonesia has a mandatory palm oil certification scheme – the Indonesia Sustainable Palm Oil (ISPO) system. This aims to “improve the competitiveness of Indonesian palm oil in the global market and to reduce greenhouse gases emissions and draw attention to environmental issues”. Based primarily on Indonesia's relevant legislation, it rates poorly compared to other schemes to certify sustainable palm oil and has minimal market recognition. An initiative to improve ISPO is under way, but it has been criticised by national civil society organisations as non-transparent and omitting key requirements, including protection of customary land rights, and coverage of smallholders.

There is a plethora of private sector initiatives aimed at improving palm oil's reputation for sustainability. Many of these are based on certification of compliance with the standard adopted by the multi-stakeholder group, the Roundtable for Sustainable Palm Oil (RSPO). In response to criticisms concerning various weaknesses, RSPO amended its standard in 2018. The new standard prohibits conversion of forests and draining of peatlands, and requires GHG emissions reductions and compliance with regulations governing land tenure and land-use rights, including respecting customary rights.

The 2003 EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, which aims to tackle illegal logging and trade in illegally produced timber, has created a coherent set of instruments for change and may have useful lessons for addressing the trade in palm oil and its impacts on forests and forest-dependent peoples. It combines formal trade agreements between the EU and timber-producing countries that establish requirements for legal timber production with EU legislation to prevent placing illegal timber on EU markets, and backs this up with development assistance to help implement legality assurance systems and promotion of voluntary private sector action. Indonesia was one of the first countries to enter into such an agreement and the first to implement it.

In July 2019 the European Commission published a Communication entitled “Stepping up EU Action to Protect and Restore the World’s Forests”. This recognises that production of agricultural commodities is a primary cause of forest loss, and it identifies five priorities, each with a key set of actions. These
include measures – which could include new legislation – to reduce EU consumption of products that cause deforestation; working with commodity-producing countries to reduce pressures on their forests; strengthening international cooperation to halt deforestation and forest degradation and encourage forest restoration; respecting indigenous peoples’ rights; provisions in trade agreements that promote trade in agricultural and forest-based products that avoid deforestation or forest degradation; redirecting finance to support sustainable land-use practices; and better availability and quality of information on forest change and commodity trade flows.

Until now, actions by the EU and its Member States to address deforestation and human rights violations caused by palm oil production have lacked coherence, with some initiatives undermining others, and lacking an overarching vision and action plan. The new Communication, combined with EU legislation on the use of biofuels for renewable energy and EU negotiations with Indonesia on a free trade agreement, now offers opportunities for a coherent approach aimed at improving the way palm oil is produced.

This report aims to present such an approach – one aimed at ensuring that EU policies and actions support Indonesia’s attempts to reduce deforestation and respect local peoples’ customary rights and labour rights. It makes concrete suggestions for implementing the EU Action Plan on Deforestation and Forest Degradation, with specific reference to the palm oil trade with Indonesia.
2. Introduction

2.1 Background

Indonesia is the world’s largest producer of palm oil, producing 43 million tonnes in 2018, 62% of total world volume. Palm oil products comprise about 10% by value of Indonesia’s total exports, its second-largest earner after coal-based products. As a renewable resource with the highest per hectare production of all vegetable oils, palm oil is perceived as having the potential to contribute to replacing fossil fuels as an energy source.

However, its cultivation has caused large-scale deforestation, often in areas with high carbon stocks, thus negating any possible gains made in reducing emissions through using palm oil as biofuel. Even if increased palm oil production does not directly cause forest loss, there is a risk that expansion of the oil palm estates to meet renewable energy targets will displace current food and feedstock production resulting in indirect land use change (ILUC).

Moreover, acquisition of land for oil palm estates is often associated with disregard for tenure rights of local communities, including indigenous peoples (IPs), who depend on forests and lands for their livelihoods. And allocation of plantation rights and licensing laws are reported to be regularly flouted.

After India, the EU-28 is the second most important destination for Indonesia’s palm oil product exports. In 2018 the value of palm oil products exported to the EU-28 totalled nearly US$2.3 billion, or 13.8% of the country’s total palm oil export earnings. EU market requirements concerning production of palm oil products therefore have the potential to promote environmental and social standards, including forest conservation and respect for land tenure rights.

The EU has recognised the importance of replacing fossil fuels to generate energy as a key component of its actions to mitigate climate change. In 2018, a 2009 Directive on renewable energy was recast (“RED II”), setting a binding target to cut emissions to at least 40% below 1990 levels by 2030 and allowing Member States to provide incentives to achieve their contribution to those targets. The Directive also recognises the risk of direct and indirect land use change (ILUC) impacts from increased production and sets out procedures to avoid using the incentives to promote biofuels and bio-liquids produced from agricultural crops, or by displacement of food and feed-stock crops for biofuel production, where these have involved loss of natural high carbon stock vegetation types.

RED II was further clarified in March 2019 with a Delegated Act concerning determination of high ILUC-risk feedstock for which a significant expansion of the production area into land with high carbon stock was observed. It also set out requirements for certification of low ILUC-risk biofuels, bio-liquids and biomass fuels. Impact studies have shown that palm oil has the highest ILUC risk, and its use as a subsidised renewable energy source would have to be phased out by 2030, unless certified as not leading to ILUC, or produced by smallholders cultivating less than 2 ha of land.

The share of palm oil imported into the EU is used increasingly for energy – in 2018, 53% was used for biodiesel for transport and 12% for electricity generation. Therefore implementation of RED II will have
a significant impact on imports from Indonesia. Indonesia and other palm oil producers see this as a trade barrier to protect EU-produced biofuels that effectively bans use of palm oil in the EU market.

Since July 2016 the EU and Indonesia have been negotiating a free trade agreement, known as the Comprehensive Economic Partnership Agreement (CEPA). This aims at a broad scale of measures to facilitate and increase trade between the partners. Given the importance of palm oil in bilateral trade, the implications of RED II present a significant obstacle to concluding the agreement.

Experience in the forest sector might offer lessons for reconciling tensions between RED II and conclusion of the CEPA. In that case standards and verification systems for legal timber were developed through a broadly inclusive, although imperfect, multi-stakeholder deliberative process in Indonesia, and an export licensing system that met the requirements of new EU legislation was negotiated and agreed between the EU and Indonesia.

Private sector actions can also play a role, with major producers, traders and retailers of palm oil products ramping up environmental and social standards in primary production and traceability to source. With nearly three quarters of EU palm oil imports for food certified to the voluntary standard of the Roundtable for Sustainable Palm Oil (RSPO) and a target of 100% by 2020, EU market preferences have been clearly expressed.

2.2 Purpose of this paper

This paper aims at informing discussions on a trade-based approach to resolving issues in Indonesia’s palm oil sector, especially its links to deforestation and human rights, and the role that trade with the EU could play. In particular, it examines the coherence of EU-led initiatives, including those of individual Member States and the private sector, which could help ensure that EU palm oil imports are not associated with deforestation and human rights abuses.

It gives policy-makers and NGOs in Indonesia and the EU, and the donor community, information on existing initiatives to tackle deforestation and ensure respect for human rights, including customary rights, in Indonesia, and how they reinforce or contradict each other. It draws lessons from these initiatives to set options for policy coherence and renewed EU engagement, through cooperation, dialogue and trade-based approaches to support Indonesia to resolve governance issues in the palm oil sector.
3. Palm oil production and trade

3.1 Palm oil and the Indonesian economy

3.1.1 World trade in palm oil

Palm oil and its fractions (HS Code 1511) comprise by far the largest vegetable oil traded internationally, with a total estimated value in 2018 of US$31.5 billion. This marks a 25.5% decrease since the world value of trade peaked at US$42.3 billion in 2011, largely due to a decline in the world price of crude palm oil (CPO), which has dropped 33% from US$825/metric ton in January 2017 to US$552 in June 2019. The EU-28¹ as a group was the largest overall importer in 2018, with imports valued at US$6.8 billion, comprising 21.6% of the global total, followed by India with US$5.5 billion (17.5%) and China US$3.4 billion (10.79%)².

3.1.2 Indonesian production and exports

Indonesia is the world’s largest producer of palm oil. Its total production of CPO in 2018 was 43 million tonnes, an increase of 12.65%, from 38.17 million tonnes in 2017. Its total production of CPO and palm kernel oil (PKO) reached 47.43 million tonnes in 2018, up from 41.22 million tonnes in the previous year³.

Indonesia’s palm oil export volumes increased from 16.8 million tonnes in 2009 (65.7% of total world trade) to 27.9 million tonnes in 2018 (54.6%), while their value increased from US$10.4 billion (34.3%) to US$16.5 billion (54.6%), although down from a peak in 2017 of US$18.5 billion (61.2%)⁴ (Figure 1). This represented 9.17% of the country’s total exports, its second highest commodity export after coal products. By contrast, 2018 exports from Malaysia, the second largest exporter, were worth US$8.7 billion (28.7% of world trade).

Figure 1. Indonesia’s export of palm oil products 2009–18

¹ The UK has been included in the EU for the purposes of this report, despite its intention to leave in 2019.
² All trade data derived from Trade Map (https://www.trademap.org) calculated by the International Trade Centre based on UN COMTRADE statistics and based on Indonesia’s declared exports values and volumes.
³ Statement by the Indonesian Federation of Palm Oil Producers (GAPKI) in February 2019 (https://www.rambuenergy.com/2019/02/indonesia-cpo-production-up-by-12-65,exports-increases/)
⁴ GAPKI figures state that 34.71 million tonnes were exported in 2018, an increase of 8% from the previous year.
The contribution of Indonesia’s palm oil exports to its total GDP increased from 1.8% in 2009 to 1.96% in 2014, but has since declined to 1.62% in 2018 (Figure 2).

**Figure 2.** Contribution of Indonesia’s palm oil exports to GDP

The biggest export markets by volume and value for Indonesian palm oil products since 2009 have been India (in 2018: US$3.6 billion; 21.5%), the EU-28 (US$2.3 billion; 13.8%) and China (US$2.1 billion 12.6%). These markets have shown a fluctuating but broadly declining share since 2009 (Figure 3), indicating an increased diversification of Indonesia’s trade partners.

**Figure 3.** Major export markets for Indonesia’s palm oil product exports 2009–18

Other significant destinations for Indonesian palm oil products are Pakistan, Bangladesh, Malaysia, Egypt, the USA and Myanmar. In 2018 each of these countries accounted for between 2.7% and 8.8% (in total 27%) of Indonesia’s total export volume. Apart from Malaysia, exports to all these countries have shown a strongly increasing trend over the last decade.
### 3.1.3 Palm oil trade with EU

The main EU destinations in 2018 for Indonesian palm oil products were Spain (31% of EU total), Netherlands (28.4%) and Italy (23.7%).

Figures 4 and 5 show the ten-year trend in value and volume of Indonesia’s palm oil exports to selected EU destinations. Spain was the largest customer with a strongly increasing trend, while the Netherlands’ share, which was the biggest (US$1.25 billion) in 2012 – and still second – has since shown a 60% decline. This is attributed to Colombia’s replacement of Indonesia as a supplier to the Dutch market due to transport costs and quality considerations. The value of Italy’s market, which was the largest in 2014, has since declined to third place (US$542 million), while Germany (fourth biggest destination in 2018; US$82.9 million), the UK (seventh; US$47.8 million) and France (tenth; US$21.9 million) are minor by comparison.

Other significant importers in 2018 were Latvia (fifth; US$69.9 million), Greece (sixth; US$53.9 million, Estonia (seventh; US$43.9 million) and Belgium (ninth; US$32.9 million). Apart from Greece, these countries have only emerged as significant export destinations since 2013.

**Figure 4.** Selected EU Member State destinations for Indonesian palm oil exports 2009–18 ($’000)

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5 Colombia’s exports to the Netherlands increased 20-fold from 10,624 tonnes worth US$8.14 million in 2009 to 272,244 tonnes worth US$162.46 million in 2018.
Figure 5. Selected EU Member State destinations for Indonesian palm oil exports 2009–18 (metric tons)

3.1.4 Domestic consumption

Indonesia’s domestic consumption of palm oil is shown in Figure 6. In 2018 consumption is estimated to have reached 12.8 million tonnes, 31.5% of total production, increasing from 5.1 million tonnes and 23.6% of production in 2009, following a steep drop in 2014.

Figure 6. Domestic consumption of Indonesian palm oil 2009–18

In September 2018, in a move to curb oil imports, Indonesia made it mandatory to use fuel comprising at least 20% locally produced biofuel, known as B20, in all diesel-powered machinery. Trials by the Indonesian Biodiesel Producers Association (APROBI) are currently testing the use in vehicles of 30% biofuel (B30), which has been used to fuel power plants since January 2016. In 2019 the Agriculture
Ministry started trials with B100 in its vehicle fleet and began discussing possible mass production of B100 fuel with state-owned enterprises and private companies. This was promoted by the Minister as the "answer to Indonesian palm oil discrimination by EU", suggesting political rather than practical motivations. However, if B30 were to be widely adopted, domestic consumption would increase, and would probably stimulate expansion of the area needed for oil palm plantations, regardless of declining demand in the EU.

### 3.1.5 Palm oil price trends

Figure 7, which shows the monthly prices for Indonesian palm oil over the period 2009–19 indicates a strongly declining price trend since mid-2010, with current prices around their lowest level for the decade. This drop has been attributed partly to the rapid increase of the oil palm estate resulting in an oversupply, and it is expected to lead to a reduction in the expansion of new plantations in the immediate future.

**Figure 7.** Price of Indonesian palm 2009–19 (US$/metric ton)

3.2 Oil palm plantation ownership

The Directorate of Estate Crops and the Indonesian Bureau of Statistics divide oil palm producers into three categories: smallholders, state-owned companies and the private sector. The area held by state-owned companies has dwindled since the late 1970s, when it was 65% of total planted area, in favour of both private companies and smallholders. In 2016, 52.2% of the estate was owned by large private plantations (up from 35% in 1978); 40.5% by smallholders (from close to 0%); and only 6.6% by state-owned enterprises.

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7 Crude Palm Oil Futures End of Day Settlement Price (https://www.indexmundi.com/commodities/?commodity=palm-oil&months=120)
8 Direktorat Jenderal Perkebunan, Jakarta (2015) from Figure 1 in Jelsma et al. (2017)
3.2.1 Smallholder plantations

Smallholder plantations must be less than 25 ha to be able to operate without a Plantation Business Licence (Hak Guna Usaha – HGU), which would require an environmental impact assessment. They only require a registration certificate (Surat Tanda Daftar Usaha Perkebunan – STDU-B), which are issued by the mayor or regency head. These plantations are typically run as family farms that rely on other actors for processing fruit bunches. These may be either “scheme” smallholders, who manage their plantations under a nucleus estate arrangement and are contractually bound to sell their fruit to the nucleus’s mill, or independent smallholders, who cultivate oil palm without the support of nucleus estates or other parties.

Included amongst scheme smallholders are the so-called “plasma smallholders”, farmers who took part in the Plasma Transmigration Program (Perkebunan Inti Rakyat, also known as PIR-Trans), set up by the Indonesian government in 1987. Under the scheme, villagers were relocated to oil palm growing areas and given 2 ha of land to farm, plus another 0.5 ha for their housing and food crops. They were partnered with a local company which provided employment while the land was being prepared. The company provided technical support, while the plasma farmers agreed to sell their produce to the company at a price set by the government.9

The Palm Oil Smallholders’ Union (Serikat Petani Kelapa Sawit, SPKS) has outlined numerous challenges faced by farmers.10 These include lack of access to fertilisers, education and finance, and very low-quality seed. In addition, the prices they receive for fresh fruit bunches (FFBs) are not related to their production costs and the status of their land may be unclear. Overall, the complexity of the sector creates uncertainty regarding the characteristics of independent smallholders themselves, and makes it difficult for farmers to self-identify, which in turn leads to a lack of government aid and provision of advice. SPKS recommends that clear categorisation of smallholders should be the first step in unravelling this complexity. The 2018 palm oil moratorium (see 3.6.3) may offer an opportunity to address this through creating a database of STDB holders as part of the review.

Research by Jelsma et al. (2017)11 on smallholders in the Rokan Hulu district of Riau province showed that the government definitions mask reality on the ground. Seven types of smallholder were distinguished: small local farmers; medium local farmers; large resident farmers; small migrant farmers; medium migrant farmers; small and medium peat farmers; and large investor farmers, each with varying land tenures and ethnic compositions. Many independent oil palm smallholders in the study area did not fit the legal definition of smallholder; a large proportion of farmers were wrongly classified in order to avoid compliance with business regulations. Because of the evident preference of many of this type of farmer for frontier areas where land is cheap and abundant, genuine smallholders are likely play an insignificant role in oil palm expansion into ecologically significant peatland and forest areas. Instead this is likely to be due to the prominent role of external (risk) capital, speculation, informal land markets and lack of capability and/or duplicity of local authorities.

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9 The PIR models in the 1970s first established the concept of nucleus (company) vs plasma (smallholders) – originally with 80% plasma and 20% nucleus. The company would develop palm oil plots for smallholders around its plantation and, once credit had been repaid, smallholders could either become independent or retain their relationship with the company. Others schemes included “PIR-KKPA” – which provided Primary Cooperative Credit for independent smallholder members in which the nucleus is company is responsible as a guarantor of the cooperative’s debt to the bank. When companies develop new land they still have an obligation to provide at least 20% of the area for plasma smallholders (Siobhan Pearce, pers. com.)

10 https://www.spks.or.id/publikasi/buku/petani-swadaya-kelapa-sawit-indonesia-keterbatasan-definisi-kesenjangan-dan-tantangan/

The study concludes that many of Indonesia's oil palm smallholders face barriers due to informality, poor production practices and lack of compliance capacity, which threaten to restrict their access to demanding markets. This could lead to a bifurcation of the oil palm sector, with smallholder production supplying less demanding markets. Initiatives to assist smallholders address these compliance barriers and enhance their competitiveness could therefore fail if the heterogeneity of the smallholder oil palm sector is not accounted for.

### 3.2.2 Major private enterprises

In terms of production, major private enterprises are dominant in the sector, producing slightly over half the total Indonesian palm oil output. The top ten companies based on 2016 revenue are shown in Table 1, which also shows the size of the companies’ land banks. The Golden Agri Resources Group (606,168 ha) has the largest holding.

**Table 1.** The top ten palm oil companies in Indonesia based on reported 2016 revenues

| Rank | Company | Parent Group | Parent HQ | 2016 Revenue (US$ m) | Land bank (’000 ha)
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PT Cargill*</td>
<td>Cargill Incorporated</td>
<td>USA</td>
<td>107,000</td>
<td>165.4</td>
</tr>
<tr>
<td>2</td>
<td>Wilmar International*</td>
<td></td>
<td>Singapore</td>
<td>41,000</td>
<td>327.0</td>
</tr>
<tr>
<td>3</td>
<td>PT Salim Ivomas Pratama Tbk**</td>
<td>Indofood Agri Resources Ltd</td>
<td>Singapore</td>
<td>14,530</td>
<td>356.6</td>
</tr>
<tr>
<td>4</td>
<td>Astra Agro Lestari Tbk PT</td>
<td>PT Astra International Tbk</td>
<td>Indonesia</td>
<td>14,120</td>
<td>291.0</td>
</tr>
<tr>
<td>5</td>
<td>PT Sinar Mas Agro Resources and Technology (SMART)*</td>
<td>Golden Agri-Resources Ltd</td>
<td>Singapore</td>
<td>7,210</td>
<td>606.2</td>
</tr>
<tr>
<td>6</td>
<td>Tunas Baru Lampung Tbk</td>
<td>Sungai Budi Group</td>
<td>Indonesia</td>
<td>6,500</td>
<td>92.4</td>
</tr>
<tr>
<td>7</td>
<td>PT Dharma Satya Nusantara Tbk</td>
<td></td>
<td>Indonesia</td>
<td>4,100</td>
<td>184.5</td>
</tr>
<tr>
<td>8</td>
<td>PT PP London Sumatra Indonesia Tbk (Lonsum)*</td>
<td>PT Salim Ivomas Pratama Tbk</td>
<td>Indonesia</td>
<td>351.1</td>
<td>Included under Indofood Agri Resources (3)</td>
</tr>
<tr>
<td>9</td>
<td>PT Socfin Indonesia*</td>
<td>Socfin Group</td>
<td>Luxembourg</td>
<td>29.7</td>
<td>407.7</td>
</tr>
<tr>
<td>10</td>
<td>Asian Agri*</td>
<td>Royal Golden Eagle (RGE)</td>
<td>Singapore</td>
<td>Not stated</td>
<td>161.9</td>
</tr>
</tbody>
</table>

* RSPO certificate holder
** RSPO certificate revoked
* Source: https://www.spott.org/palm-oil/

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12 https://www.indonesia-investments.com/business/commodities/palm-oil/item1667
13 https://www.bizvibe.com/blog/food-beverages/top-10-indonesian-palm-oil-companies/
14 Two Malaysia-based companies, Minamas Plantations, the Indonesian subsidiary of Sime Darby, and Kuala Lumpur Kepong Berhad (KLK) have land banks in Indonesia of 278,283 ha and 145,350 ha respectively. Both hold RSPO certificates.
3.3 Employment in the oil palm sector

The palm oil sector is a key generator of employment in the Indonesian economy. The Indonesia Oil Palm Labour Union Network (JAPBUSI) claimed in April 2019 that the EU plan “to prohibit CPO as a raw material for biofuel” will affect about 16 million people, including smallholders and labourers. JAPBUSI’s chairman stated that about 3.78 million people worked in oil palm plantations, including two million farmers, and that many more were involved in the commodity’s supply chains, as well as CPO factories and other manufacturing industries that use CPO as their raw material. However, as noted in 3.4.2 below, there are issues related to the quality of employment and labour rights.

3.4 Oil palm and human rights

There are three main categories of human rights violations connected to palm oil production in Indonesia: institutionalised violations due to forestry and agricultural policies, laws and programs that don’t recognise “adat” (customary) forests; conflicts over land when land rights are not handled properly; and violations that occur in the plantations, including forced and child labour.

3.4.1 Tenure rights

The Agrarian Reform Consortium KPA reported that there had been at least 1,771 land conflicts between 2014 and 2018. 642 of these involving oil palm plantations, and, at the end of 2018, 807,177 ha of land in Indonesia, impacting 87,568 households, was involved in disputes.

One of the main reasons for conflict is related to the 1967 government policy of claiming state ownership of all land in the forest estate that was not privately owned, including indigenous territories. These causes are being further exacerbated by uncoordinated land allocation and repeated changes in policy by central and local governments and the lack of progress with gazettement of state forest area which creates uncertainty over land tenure. Other causes include the lack of responsibility and control by officials, coupled with a limited number of personnel and budget, leading to expansion of oil palm into state forest areas.

Sirait (2009) documented three case studies involving four ethnic subgroups of the Dayak Bidayuh indigenous communities in West Kalimantan province in relation to the expansion of oil palm plantations over their customary territories. This provides an example of how these communities confront large-scale oil palm plantations and cope with the associated opportunities and conflicts and is likely to be representative of what occurs in other parts of the country. The study found that only a few IPs – and mostly only their elites – benefited from engagement in the plantations. Most indigenous community members ended up nearly landless and needed to pursue livelihoods through off-farm activities, involving temporary or permanent migration. Engagement in oil palm plantation

16 Sandra Moniaga, Human rights and forests in Indonesia: quoted in Forests of fear, the abuse of human rights in forest conflicts, Fern, November 2001.
17 http://news.trust.org/item/20190613082001-nsx7b
18 All land in Indonesia falls into two groups: forest estate (kawasan hutan), and non-forest areas also known as APL (areal penggunaan lain/area for other land uses. Indonesia’s Forestry Law No. 41/1999 (a revision of the 1967 law), divides forests into state forest (hutan negara) and private forest (hutan hak or hutan rakayat).
activities resulted in IPs becoming more detached from their environments and customary natural resource management systems, due to the individualisation of ancestral lands, descendant group lands and household lands.

A 2013 report by Human Rights Watch\textsuperscript{21} found that Indonesian authorities were routinely violating the rights of forest-dependent communities in allocating land use and setting forest industry concession boundaries. These included community rights to meaningful consultation under domestic law and fair compensation for loss of access to land and forests; the rights of IPs under international law to control communal land and natural resources; and internationally recognised rights to security of person, non-interference with privacy, family, and home, and the peaceful enjoyment of possessions. Mismanagement and corruption associated with forestry and agricultural concessions were also found to be fuelling land conflicts, sometimes violent, between companies and local communities.

As part of his 2014 election campaign manifesto, President Joko Widodo promised to register all land in the country by 2025, to redistribute 12.7 million ha of land for social forestry (masyarakat adat), including to IPs, and to resolve disputes over land claims. Although this would include returning land granted as plantation concessions, progress has been hampered by the Ministry of Land and Spatial Planning’s refusal to share detailed maps and related documents on plantation companies, despite a Supreme Court ruling in 2017 ordering the Ministry to do so.\textsuperscript{22} The Coordinating Ministry for the Economy’s assurance to the palm oil industry that it would not make data on permits for oil palm concessions (Hak Guna Usaha – HGU) publicly accessible also adds to the uncertainty over implementation. HGU documents, which by law should be publicly available, include details such as land boundaries, coordinates and concession areas, as well as the leaseholders’ names and are essential if land-grabbing is to be detected.

In 2012, the Indonesian organisation AMAN brought a case for land rights for review by the Constitutional Court, which ruled that customary forest is not state forest, thus overturning the 1967 law and its 1999 revisions. This was seen as a major step towards recognition of indigenous rights. The Rights and Resources Coalition reported that, by the end of 2018, some 9.6 million ha belonging to 785 indigenous communities had been mapped and submitted to the government for further processing, but only about 27,000 ha of had been returned.\textsuperscript{23} Obstacles cited include restricting the land reform agenda largely to a land certification programme, while neglecting land redistribution; the government’s unwillingness to act on an Indigenous Peoples Bill; and resistance from the private sector, which would prefer to negotiate land claims with local authorities rather than indigenous communities.

An additional issue is how to deal with customary land that has been allocated for oil palm (or other uses) and is no longer in the forest estate. The World Bank estimates that a total of 54 million ha in Indonesia is held by customary rights holders, but it is not clear how much of this is within the forest estate or is now designated as for “other use” (Areal Penggunaan Lain, APL).


\textsuperscript{22} https://news.mongabay.com/2019/05/wariness-over-indonesian-presidents-vow-to-get-tough-in-land-disputes/

\textsuperscript{23} https://rightsandresources.org/en/blog/progress-too-slow-too-small/
3.4.2 Labour rights

Research in Riau province by Sinaga (2013)\(^{24}\) described some of the issues faced by workers in the oil palm plantation sector, in particular with regard to employment status and income. The paper claims that trade liberalisation in the sector has adversely affected labour rights and that poor working conditions have also had ramifications for micro-level food security. Her research found that the workforce in palm oil production is largely fragmented because of differentiated access to land between landless migrants from populated regions and local indigenous smallholders; differences between small permanent workforces, and labour contracted or subcontracted for shorter periods of time or incorporated as casual day labourers; and positions within the task-related hierarchy, with men responsible for oil palm harvesting versus women employed in low-paid plantation maintenance activities. This fragmentation is claimed to have given plantation owners an advantage, as workers are largely disorganised, rarely unionised, and thus have limited opportunities to advance labour demands.

Sinaga concludes that the link between trade liberalisation and labour rights is an important aspect for discussion: in particular that production relies on poor working conditions. In addition, land use change results in replacement polyculture food crops to monoculture farming, reducing food security for local people.

A report by the Fair Labour Association (FLA) for the Consumer Goods Forum (CGF)\(^{25}\) presents aggregate research findings, including analysis and recommendations concerning forced labour issues in the palm oil sector in Indonesia and Malaysia. In both countries this revealed several indicators of forced labour, including coercive practices including threats, violence, lack of clarity of employment terms and conditions, dependency on the employer, lack of protection by state/police, debt bondage, high recruitment fees, and involuntary overtime at the oil palm estates and in the supply chain. The highest risk of forced labour was found amongst harvest and maintenance workers, notably those who apply pesticides and fertilisers. In Indonesia, most workers come from other parts of the country to the palm oil-producing regions of Kalimantan and Sumatra, where forced labour can be linked to unrealistic production targets pushing families (including children) to work alongside hired workers; it can also be linked to low wages, the remoteness of plantations, limited mobility of workers, and lack of contractual agreements. Casual workers – mostly female – were found to be the most vulnerable among the workforce.

The report highlighted CGF’s critical role and provided a series of recommendations to mitigate forced labour risks in palm oil production by using its industry leadership to spur collective action by its members. In response, CGF has published an action plan\(^{26}\) aimed at driving collaboration and focusing on actions by its members to address forced labour risks in the extended palm oil supply chain and assessing industry progress on implementing Priority Industry Principles. These cover the themes: Advocacy and Engagement, Research, and Insights and Tools, and include engaging with the Indonesian government, in collaboration with key stakeholders, on its commitment not to tolerate forced labour.

\(^{24}\) Harati Sinaga (2013) Employment and income of workers on Indonesian oil palm plantations: food crisis at the micro level.
3.5 Palm oil and deforestation

3.5.1 Expansion of palm oil estate

In 2016 Indonesia’s oil palm estate covered 11.8 million ha, up from 9.6 million ha in 2012, an average growth of 4.5% per year. In mid-2019 it was estimated to be 14 million ha. However the exact area is uncertain: three different government agencies have reported widely varying statistics – the Corruption Eradication Commission (KPK): 20 million ha; Statistics Indonesia (BPS): 12–30 million ha; and the Ministry of Agriculture: 14 million ha.

GAPKI has stated that its production target is at least 42 million tonnes of CPO per year by 2020. This is in line with a United States Department of Agriculture (USDA) 2019–20 forecast of 43 million tonnes, a 4% increase from the previous year, which it predicts will come mainly from area expansion, rather than increased per-ha productivity.

However, some observers point to a current oversupply of Indonesian palm oil, which is resulting in depressed prices. This may restrict plantation expansion in the short term, although land banking by investors is expected to continue, with increased domestic demand (for example in pursuing B30 biodiesel) compensating for lower returns from exports.

At present, almost 70% of Indonesia’s oil palm plantations are on Sumatra, with the remaining 30% mainly in the four Kalimantan provinces on the island of Borneo. There are new plantation developments in the easternmost provinces of Papua and West Papua.

3.5.2 Palm oil and deforestation

Indonesia’s overall level of deforestation has historically been the second highest in the world, after Brazil. According to FAO (2015), the country lost more than 27.5 million ha of forest between 1990 and 2015, an average annual loss of 1.1 million ha (Table 2 and Figure 7).

<table>
<thead>
<tr>
<th>Year</th>
<th>1990</th>
<th>2000</th>
<th>2005</th>
<th>2010</th>
<th>2015</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forest cover ('000 ha)</td>
<td>118,545</td>
<td>99,409</td>
<td>97,857</td>
<td>94,432</td>
<td>91,010</td>
<td>501,253</td>
</tr>
<tr>
<td>Change ('000 ha)</td>
<td>-19,136</td>
<td>-1,552</td>
<td>-3,425</td>
<td>-3,422</td>
<td>-27,535</td>
<td></td>
</tr>
<tr>
<td>Annual change (%)</td>
<td>-1.60</td>
<td>-0.31</td>
<td>-0.70</td>
<td>-0.72</td>
<td>-0.92</td>
<td></td>
</tr>
</tbody>
</table>

Source: Forest Resource Assessment 2015

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30 CPO prices to remain muted due to palm oil glut (https://www.thedgemarkets.com/article/cpo-prices-remain-muted-due-palm-oil-glut)
According to the World Resources Institute (2019), Indonesia’s rate of primary forest loss has declined in recent years from a peak of about 920,000 ha in 2016 to 340,000 ha in 2018 – a 40% reduction from the average rate between 2002–16, but still the world’s third highest after Brazil and Democratic Republic of Congo.\(^{32}\)

Barron et al. (2017)\(^ {33}\) analysed the extent to which palm oil production has been responsible for deforestation. They refuted a claim published in the French newspaper *Le Monde* that it had caused 40% of forest loss worldwide, and calculated that oil palm plantations account for only 8% of the 29% total deforestation attributed to agricultural crops, i.e. 2.3%, or 5.6 million ha out of the 239 million ha of forest lost between 1990 and 2008. In Indonesia, however, 7.5 million ha out of 25 million ha of forests were lost for agricultural production, and of this area 2.9 million ha (40%) were for oil palm plantations.

A 2018 study by Meijaard et al.\(^ {34}\) also noted that almost 40% of oil palm expansion in Indonesia has been in forests, and that oil palm was responsible for 16% of all deforestation between 1972 and 2015.

Austin et al.\(^ {35}\) have examined the area and proportion of palm oil plantations replacing forests across Sumatra, Kalimantan, and Papua during the period 1995–2015. Over that period plantations expanded by an average of 450,000 ha/year, resulting in deforestation of 117,000 ha/year (Figure 8). Following a large increase in the rate of replacement of forest by palm oil plantations between 2005 and 2010, the level has remained relatively stable since then, despite large increases in overall area, indicating a decrease in the proportion of new plantations replacing forests.

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\(^{32}\) The world lost a Belgium-sized area of primary rainforests last year (https://www.wri.org/blog/2019/04/world-lost-belgium-sized-area-primary-rainforests-last-year)

\(^{33}\) Baron et al. (2017): No, palm oil is not responsible for 40% of global deforestation (https://phys.org/news/2017-06-palm-oil-responsible-global-deforestation.html)

\(^{34}\) Meijaard et al. (2018). Oil palm and biodiversity – a situation analysis by the IUCN Oil Palm Task Force (https://portals.iucn.org/library/node/67753)

3.5.3 Impacts of oil palm on biodiversity

Meijaard et al. (2018) give evidence that palm oil production has had a substantial negative impact on most species, mainly through the clearing of natural forests on mineral and peat soils. Other reported impacts include fertiliser and pesticide run-off of which may affect freshwater biodiversity. Indirect impacts include poaching and trapping of birds, mammals and snakes in plantations. In Indonesia severely affected species include orangutans, gibbons, tigers and forest specialist species, such as Old World flycatchers. Plant diversity is severely reduced with some planted areas showing more than 99% less tree diversity than natural forests. Oil palm plantations also contain fewer animal species with studies showing a reduction in mammal diversity of 65–90%.

Oil palm plantations also displace certain forest species, which generates conflicts with local people over damage to agricultural crops, as well as conflict killings. This has been well demonstrated for orangutans, tigers, elephants and rhinos. Species decline towards extinction has been twice as fast in Indonesia than in any other country, attributed at least in part to forest conversion of forest to oil palm plantations.

3.5.4 Oil palm and greenhouse gas emissions

The deforestation resulting from expansion of the oil palm estate, combined with emissions from periodic fires lit to clear forest and brush on peatland, has been a significant contributor to Indonesia’s 2015 position as the world’s fourth largest greenhouse gas emitter.36

Meijaard et al. (2018) note that decomposition or burning causes large amounts of CO₂ to be released following drainage of peat soils when land is prepared for oil palm establishment. Although plantations, once established, can maintain high rates of carbon uptake, and palm oil products could potentially replace fossil fuels as a source of energy, it is estimated that it would take decades to compensate for the carbon released when forests are cleared and peatlands are drained. One estimate quoted was that it would take between 75 and 93 years for the carbon emissions saved through use of

36 https://www.carbonbrief.org/the-carbon-brief-profile-indonesia
biofuel to compensate for the carbon lost through forest conversion, depending on the type of forest and how it was cleared. If the original habitat was peatland, carbon balance would take more than 600 years. Conversely, planting on grasslands would lead to a net removal of carbon within 10 years. These time-frames underscore the need to ensure that any increase in palm oil production aimed at replacing fossil fuel is derived from improved productivity of existing plantations, or establishment of new plantations on non-forest or non-peat land, and do not displace cultivation of other crops to forest or peat land.

3.6 Indonesian measures to tackle deforestation

3.6.1 Nationally Determined Contribution

In 2015 the Indonesian government announced its commitment to reduce its greenhouse gas (GHG) emissions by 29–38% by 2030 over “business as usual” levels as part of the country’s Nationally Determined Contribution (NDC) for meeting its Paris Climate COP-21 commitments. In the forest sector the change is more pronounced: nearly 70% as an unconditional target – and 91% if international support is available – mainly through payments via REDD+ (Table 3). Reaching even the more modest target would require significant reductions to the planned expansion of oil palm plantations on forest or peat land.

Tacconi et al. (2019) have pointed out that achieving the 2030 overall emissions reduction target may require even more substantial efforts than indicated at the time. This is because emissions appear to be increasing at a significantly faster rate than the projected average of 3.9% between 2010 and 2030, with actual total forestry emissions in 2014 about 48.3% higher than the projection. Achieving the 91% reduction target will require a range of policies and activities, extensive action research to assess whether the design of the planned policies and activities is appropriate and whether it is likely to deliver the targets, and monitoring and evaluating policies and activities as they progress. One of the main challenges identified is weak coordination between different levels of governance and a political economy that is not conducive to reforms in the land-based sector. This has been demonstrated, for example, by green growth ambitions at the provincial level in East Kalimantan province, where local plans to expand oil palm plantations were at odds with provincial efforts to reduce emissions.

Table 3. Indonesia’s First Nationally Determined Contribution to meeting Paris climate change targets (MTon CO$_2$e)

<table>
<thead>
<tr>
<th>Emission source</th>
<th>2010</th>
<th>2030</th>
<th>2030</th>
<th>2030</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>BAU</td>
<td>CM 1</td>
<td>CM 2</td>
<td>CM 2</td>
</tr>
<tr>
<td>Total</td>
<td>1,334</td>
<td>2,869</td>
<td>2,034</td>
<td>1,787</td>
</tr>
<tr>
<td>Forestry (including peat fires)</td>
<td>647</td>
<td>714</td>
<td>217</td>
<td>64</td>
</tr>
<tr>
<td>Forestry % of total</td>
<td>48.5%</td>
<td>24.9%</td>
<td>10.7%</td>
<td>3.6%</td>
</tr>
<tr>
<td>Change from NDC implementation – total</td>
<td>-29.1%</td>
<td>-37.7%</td>
<td>-69.6%</td>
<td>-91.0%</td>
</tr>
<tr>
<td>Change from NDC implementation – forestry</td>
<td>-69.6%</td>
<td>-91.0%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

BAU = business as usual; CM 1 = unconditional mitigation scenario; CM 2 = conditional mitigation scenario, considers sectoral development target when international support is available.


https://www.greenclimate.fund/countries/indonesia
3.6.2 Government moratorium on new concessions

In 2011 the government issued a two-year moratorium banning new permits for oil palm, pulpwood and logging concessions that involved conversion of primary natural forests and peatlands. This still allowed companies with existing permits to continue clearing their land. It has been extended three times, most recently in July 2017.

In August 2019 the moratorium was made permanent through Presidential Instruction No. 5/2019. Effective enforcement would ensure permanent protection of 660,000 km² of primary and peat forests.

However, it does not include secondary forests, which cover 433,000 km², more than half of which could be allocated for logging and pulpwood concessions, and nearly a tenth of which is earmarked for conversion to non-forestry use, including clearing for oil palm plantations. There are suggestions that some parties may deliberately clear areas of primary forest within moratorium zones for the express purpose of degrading them so that they become recognised as secondary forest, and thus fall out of the scope of the moratorium, or that local officials may rezone forest land as APL, where mining and oil palm cultivation are permitted. The moratorium also exempts conversion of 35,000 km² of primary and peat forests for geothermal and oil exploitation, and for agricultural activity deemed to be of “strategic national importance”. This includes about 10,000 km² in Indonesia’s easternmost region of Papua, home to the country’s largest remaining contiguous areas of primary rainforest.

Some observers have also expressed concern that the President’s recent speech emphasising the achievement of growth targets, at the expense of environmental regulation, contradicts the government policy of preserving forests.

3.6.3 Government moratorium on new oil palm plantations

In September 2018 the Indonesian President signed Presidential Instruction No. 8/2018 on the “Moratorium and Evaluation of Licensing for Oil Palm Plantations and Increasing Productivity of Oil Palm Plantations”. This limits the expansion of oil palm plantations for the following three years, while the government seeks to evaluate and reorganise permits and procedures in the industry. It aims to increase CPO production through improving plantation productivity, using more efficient and effective farming techniques. The Instruction also ordered central and regional authorities to verify and reorganise the domestic oil palm plantations map to address the practice of granting plantation licenses without setting clear boundaries to concession areas, a practice which has resulted in unclear land ownership and locating plantations on land designated as forest.

The Instruction has four parts. First, the government will postpone the issuance of forest release forms during the moratorium’s three-year implementation period. This includes submitted release applications that have not yet been completed or have been identified as being in productive forest areas, and it applies to ongoing applications for productive forest areas that have been approved in principle. Second, the government will review all oil palm plantation permits that have been issued, including Location Permits (Izin Lokasi), Plantation Business Permits (Izin Usaha Perkebunan – IUP), and exemption for geothermal and oil exploitation.

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40 These exceptions are aimed at food security, and do not include oil palm; however, it is reported that developers with permits for sugar cane in Papua planted oil palm instead. While allowance can be made for Indonesia's sovereign right to develop, clearer criteria for what activities constitute "strategic national importance" would allay concerns that exceptions are being misused.
41 Increased exploitation of Indonesia's forests feared after president's demand for unrestricted investment (https://www.eco-business.com/news/increased-exploitation-of-indonesias-forests-feared-after-presidents-demand-for-unrestricted-investment/)
Cultivation Rights (Hak Guna Usaha – HGU), Registration for Plantation Cultivation (Surat Tanda Daftar Budidaya Perkebunan – STDB) and forest release permits. The review will assess whether the permit holders have fulfilled their obligations, which include the allocation of 20% of total plantation area to plasma smallholders, and development of HCV areas. Third, the government will follow up all permit reviews with two options: return the land as forest area; or enforce the law, including imposing fines for violations. Fourth, the government will ensure supplies of oil palm fruit to the industry through land productivity improvement efforts, rather than through land expansion.

Although advocacy groups have generally welcomed the moratorium, some have voiced concerns. These relate mainly to its short duration, which is insufficient to tackle all issues pertaining to oil palm plantation overlapping with the forest estate and evaluation of all existing permits, as well as its application only to land controlled by the Ministry of Environment and Forestry – leaving unprotected millions of hectares of forest and peatland controlled by local government or within existing palm oil concessions. As a Presidential Instruction, it is not legally binding on government departments or local officials, and contains no sanctions for non-compliance. It also conflicts with the government’s stated commitment to “planned deforestation”, whereby the government continues to allocate new areas, much still forested, for further plantation and agriculture development through its agrarian reform and land-swap programmes.¹²

3.6.4 The Indonesian Sustainable Palm Oil Standard

The Indonesian government launched the Indonesian Sustainable Palm Oil Standard (ISPO) in 2011. Based on existing Indonesian legislation, the scheme aims to improve the sustainability and competitiveness of the country’s palm oil industry, while contributing to the government’s commitments to reduce greenhouse gas emissions. ISPO certification is currently mandatory for all large crude palm oil producers and voluntary for smallholders.

Most recent data indicate that the ISPO Commission has certified 502 plantations, covering 4.11 million ha, corresponding to nearly 30 percent of Indonesia’s total estimated palm oil area of 14 million ha.⁴³

The ISPO standard comprises seven principles covering:

- licensing system and plantation management
- technical guidelines for palm oil cultivation and processing
- environmental management and monitoring
- responsibilities for workers
- social and community responsibility
- strengthening community economic activities
- sustainable business development.

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¹² Time for a ban on deforestation for palm oil, not a moratorium, says Greenpeace (https://www.greenpeace.org/international/press-release/18595/time-for-a-ban-on-deforestation-for-palm-oil-not-a-moratorium-says-greenpeace/)

⁴³ Indonesia certifies a record amount of palm plantations as sustainable (https://www.reuters.com/article/us-indonesia-ispo/indonesia-certifies-a-record-amount-of-palm-plantations-as-sustainable-idUSKCN1R80GJ)
ISPO is strongly aligned with Indonesia's existing legal and regulatory requirements and relies heavily on Indonesia's Environmental Impact Assessment (Analisis Mengenai Dampak Lingkungan – AMDAL) process.

In various comparisons with other palm oil certification schemes, ISPO has been judged to be weaker than that of the Round Table on Sustainable Palm Oil (RSPO) and other comparable schemes (see 13.1), due to inadequate environmental protection, neglect of human rights, weak law enforcement and poor governance.\textsuperscript{44} It has been observed that, although most aspects needing attention are covered in general by existing Indonesian law, detailed implementing regulations and guidance to make laws operational are lacking and actual implementation is weak.

This poor compliance is exemplified by an August 2019 assessment by the Indonesian State Audit Board (Badan Pemeriksa Keuangan – BPK), which found that about 81% of the country’s palm oil plantations did not meet existing requirements.\textsuperscript{45} Violations included larger than permitted plantations, non-compliance with the ISPO standard, and failure to allocate sufficient land for smallholder farmers in their operations. Many plantation companies lacked right-to-cultivate permits (HGU), and some concessions overlapped mining concessions or protected and conservation areas – including carbon-rich peatlands.

A 2016 audit by the Indonesian Corruption Eradication Commission (Komisi Pemberantasan Korupsi – KPK) concluded that Indonesia lacked a credible and accountable system to prevent violations and corruption in the palm oil industry. It found corruption rife in the permit-issuance process for plantations, with many companies allowed to clear and plant in forest areas that are ostensibly off-limits for oil palm cultivation.

In its current form, ISPO certification has no market recognition and is used by operators only because it has been made mandatory by the government. A recent study by CIFOR\textsuperscript{46} found that only 2.4% of independent smallholders in research sites in Central and West Kalimantan are currently able to comply with its requirements, casting doubt on ambitions to make it compulsory for small farmers. The study also underlined smallholders’ lack of opportunity to access technical and bureaucratic support and production inputs, and consequently to adopt good agricultural practices and increase production (see also 3.2.1).

A process to improve the current ISPO standard was launched in 2016. This involved an ISPO Strengthening Team formed by the Indonesian Coordinating Ministry of Economic Affairs. The initial open consultation process became increasingly non-transparent after its first year. A government draft published in 2017 been criticised by Indonesian CSOs\textsuperscript{47} because of this lack of consultation, perceived backtracking on earlier agreed principles, and the lack of coverage of principles covering:

- protecting primary natural forests and peat
- respect for human rights
- independent monitoring, with independent monitors only given a role in the ISPO Committee

\textsuperscript{44} https://eia-international.org/news/backtracking-reform-indonesias-government-weakening-palm-oil-standards/
\textsuperscript{45} https://news.mongabay.com/2019/08/81-of-indonesias-oil-palm-plantations-flouting-regulations-audit-finds/
\textsuperscript{46} One size does not fit all (https://forestsnews.cifor.org/61701/one-size-does-not-fit-all/fnl-en)
\textsuperscript{47} https://eia-international.org/news/indonesias-president-halts-signing-weak-palm-oil-regulation-halts-new-plantations/
- grievance/complaint mechanisms
- regulation on law enforcement and sanctions for non-compliance.

Critics cite these shortcomings as evidence of the government’s lack of commitment to improve governance in the oil palm plantation sector.

Nevertheless, the proposed new standard has yet to be signed into law and, if ISPO’s weaknesses can be overcome, it has certain advantages in contributing to improved sustainability of Indonesia’s oil palm plantation sector, as:

- it is a national standard – so is not seen as being externally imposed
- it is mandatory – so all plantations must eventually be certified
- it is nationwide – so should ultimately cover the whole country.
4. EU regulatory measures relevant to palm oil

4.1 The Renewable Energy Directive

Increasing the use of renewable energy is an important part of the EU’s measures to reduce greenhouse gas emissions and meet its commitment under the 2015 Paris Agreement on Climate Change, as well as its 2030 energy and climate framework, including a binding target to cut emissions by at least 40% below 1990 levels by 2030.

Directive 2009/28/EC\(^{48}\) introduced a set of criteria, aimed at protecting lands with high biodiversity value and high-carbon stock, but did not address the issue of indirect land-use change (ILUC) – the change that occurs when the cultivation of crops for biofuels, bio-liquids and biomass fuels displaces production of other agricultural crops and may lead to the consequent expansion of agricultural land into high-carbon stock areas, such as forests, wetlands and peatland, thereby causing additional greenhouse gas emissions.

Directive (EU) 2015/1513\(^{49}\) therefore recognised that greenhouse gas emissions arising from ILUC may negate some or all savings made from use of individual biomass fuels. While the scale of ILUC depends on the type of feedstock, the level of additional demand triggered by the use biomass fuels, and the extent to which HCS land is protected, the highest risks occur where there is expansion of production into land with high-carbon stock. The Directive therefore required that promotion by Member States of food and feed crops-based biofuels should be limited, and that gradually decreasing limits should be set for biofuels produced from food and feed crops for which a significant expansion into land with high-carbon stock is occurring. However, low ILUC-risk fuels – for example agricultural yield increases from improved practices, investments in better machinery and knowledge transfer – should be exempt from such limits.

Directive (EU) 2015/1513 further required the Commission to submit a comprehensive proposal for a cost-effective and technology-neutral post-2020 policy aimed at creating a long-term perspective for investment in low ILUC-risk sustainable biofuels with the aim of decarbonising the transport sector.

4.2 The Recast Renewable Energy Directive

Directive (EU) 2018/2001\(^{50}\) (the recast Renewable Energy Directive, RED II) seeks to avoid Member States providing incentives to promote the use of agricultural raw material for biofuels, bio-liquids and biomass fuels (henceforth “biofuels”) in a way that encourages destruction of biodiverse lands. Such


fuels should qualify for incentives only where it is guaranteed that the agricultural raw material does not originate from biodiverse areas, or where the production of the agricultural raw material does not interfere with the protection of rare, threatened or endangered ecosystems or species.

The Directive also stipulates that land should not be converted for the production of agricultural raw material for biofuels if the carbon stock loss from its conversion could not be compensated for by greenhouse gas emission savings resulting from the production and use of biofuels within a “reasonable period”. Wetlands and continuously forested areas with a canopy cover of more than 30% should be included in that category of land.

The Directive also provides for the Commission’s recognition of voluntary certification schemes in setting standards for production of sustainable biofuels and certifying that their production meets those standards. Recognised schemes must meet adequate standards of reliability, transparency and independent auditing.

The Commission was also authorised to determine which feedstocks were high ILUC-risk and which would be subject to a decrease in their contribution to the Directive’s targets through a Delegated Act, see below.

Each Member State’s gross final consumption of energy from renewable sources and its minimum share may not exceed that Member State’s 2019 level of consumption, unless the sources are certified to be low-ILUC risk. From 31 December 2023 until 31 December 2030, the limit of high ILUC-risk sources must gradually decrease to 0%.

Voluntary schemes applicable to palm oil that the European Commission recognises as demonstrating compliance with the sustainability criteria for biofuels, included the Roundtable on Sustainable Biomaterials (RSB) and the International Sustainability and Carbon Certification (ISCC).

4.3 The Delegated Act to determine high ILUC-risk feedstock and certifying low ILUC risk

A Delegated Act of March 2019, supplementing Directive (EU) 2018/2001 sets out specific criteria for:

- determining the high ILUC-risk feedstock for which a significant expansion of the production area into land with high carbon stock is observed; and
- certifying low ILUC-risk biofuels.

Criteria for high ILUC risk are based on the overall worldwide position with respect to each particular feedstock, rather than an approach that would discriminate between particular countries. Exemptions from proving low ILUC risk include expansion of land-use change into abandoned or severely degraded land, or by independent small farm holders, whose individual holdings are less than 2 ha.

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The Delegated Act is accompanied by a report on the status of the worldwide expansion of production of relevant food and feed crops, which aims to enable Member States to distinguish between high and low ILUC-risk biofuels. Its analysis showed that, during the period 2008–15, palm oil had both the highest speed of overall expansion and the highest share of expansion into forestland (70%) of all crops considered, and was also the only crop where a large share of expansion takes place on peatland (18%). The report concluded that palm oil was the only feedstock where the expansion of its production area into HCS land is so pronounced that the resulting GHG emissions from land use change would eliminate all emission savings of fuels produced – and was therefore identified as the only one with high ILUC risk.

However, palm oil production may be considered low ILUC risk where: (i) productivity on existing land is increased; or (ii) cultivation of feedstock is extended on unused land, such as abandoned land, or severely degraded land. Such fuels certified as low-ILUC risk can be excluded from the gradual phase-out set out in RED II.

The blanket treatment of palm oil regardless of source has been criticised in that it fails to distinguish production from plantations which are not contributing to forest loss and which are managed to high standards from those expanding into primary forest and peatland.

The report’s finding means that, although EU Member States will still be able to use and import palm oil, after 2030 they will not be able to include volumes which are not certified as low ILUC risk when calculating the extent to which they have fulfilled their renewable energy targets.

This is likely to limit the potential growth of EU imports of palm oil and is regarded by Indonesian trade and palm oil interests as being a significant barrier to trade. Accordingly, the Council of Palm Oil Producing Countries (CPOPC) has stated that Indonesia and Malaysia jointly plan to seek a solution through the World Trade Organisation (WTO) Dispute Settlement Body and other possible avenues. Malaysia has since been reported to be planning to bring a complaint to the WTO by November 2019.

A further view is that the expansion of oil palm in Indonesia is no longer economically feasible because of the drop in prices over the last decade (see 3.1.5), attributed to an oversupply of palm oil. This suggests that there may be limits to which ILUC is still actually occurring and that the findings of the report should be reconsidered in this light.

Transport & Environment (an EU clean transport campaign group) has commissioned a report by a law firm, Myhre & Co Advokatfirma AS, to assess whether a phase-out of the RED targets of specific feedstocks could be justified under WTO rules, based on the environmental and climate impacts of such crops. The report concluded that, in general, phasing out palm oil as biofuel feedstock, and

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therefore not allowing it to be accounted for renewable targets, is compatible with WTO rules on the basis of environmental protection and the fact that the measure is not trade-restrictive.

4.4 EU tariffs on palm oil imports

Regulation No. 978 of 2012\(^{58}\) provides for tariff reductions for developing countries under three categories: a general arrangement; a special incentive arrangement for sustainable development, and good governance (GSP+);\(^{59}\) and a special arrangement for the least-developed countries (“Everything But Arms” – EBA). Indonesia currently qualifies under the general arrangement and palm oil is listed in the Regulation as a “sensitive product”;\(^{60}\) which means Common Customs Tariff \textit{ad valorem} duties are reduced by 3.5 percentage points.

Table 4 shows the current tariff regime applicable to selected Indonesian palm oil products. With a few exceptions, tariffs are comparatively low so there are minimal opportunities to use tariff reductions as an incentive for products which meet sustainability standards. There is also known to be reluctance on the part of the European Commission to consider tariff variations for the same products based on different production methods.

\textit{Table 4. EU tariffs applicable to palm oil products from Indonesia}\(^{61}\)

<table>
<thead>
<tr>
<th>Product Code</th>
<th>Description</th>
<th>Tariff rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>15110000</td>
<td>Palm oil and its fractions, whether or not refined, but not chemically modified:</td>
<td></td>
</tr>
<tr>
<td>15111010</td>
<td>Crude oil – for technical or industrial uses other than the manufacture of foodstuffs for human consumption</td>
<td>0%</td>
</tr>
<tr>
<td>1511090</td>
<td>Crude oil – other</td>
<td>0%</td>
</tr>
<tr>
<td>1519011</td>
<td>Other: solid fractions – in immediate packings of a net content not exceeding 1 kg</td>
<td>4.4%</td>
</tr>
<tr>
<td>1519099</td>
<td>Other – for technical or industrial uses other than the manufacture of foodstuffs for human consumption</td>
<td>3.1%</td>
</tr>
<tr>
<td>151901920</td>
<td>Solid fractions – other for the manufacture of fatty acids etc.</td>
<td>3.8%</td>
</tr>
<tr>
<td>151909120</td>
<td>Solid fractions for the manufacture of fatty acids etc.</td>
<td>1.6%</td>
</tr>
<tr>
<td>1513000000</td>
<td>Palm kernel and fractions thereof, whether or not refined, but not chemically modified</td>
<td></td>
</tr>
<tr>
<td>1513211020</td>
<td>Crude oil, for technical or industrial uses other than the manufacture of foodstuffs for human consumption, for the manufacture of fatty acids etc.</td>
<td>0%</td>
</tr>
<tr>
<td>1513211090</td>
<td>Crude oil, for technical or industrial uses other than the manufacture of foodstuffs for human consumption – other</td>
<td>0%</td>
</tr>
<tr>
<td>1513213000</td>
<td>Crude oil, other, in immediate packings of a net content not exceeding 1 kg</td>
<td>4.4%</td>
</tr>
</tbody>
</table>


\(^{59}\) Currently includes Armenia, Bolivia, Cape Verde, Kyrgyzstan, Mongolia, Pakistan, the Philippines and Sri Lanka.

\(^{60}\) The differentiation between tariff preferences for “sensitive” and “non-sensitive” products is to take account of the situation of the sectors manufacturing the same products in the EU.

\(^{61}\) https://madb.europa.eu/madb/euTariffs.htm
<table>
<thead>
<tr>
<th>HS Code</th>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1513219000</td>
<td>Crude oil, other</td>
<td>2.2%</td>
</tr>
<tr>
<td>1513291100</td>
<td>Other solid fractions, in immediate packings of a net content not exceeding 1 kg</td>
<td>8.9%</td>
</tr>
<tr>
<td>1513291900</td>
<td>Other solid fractions</td>
<td>7.4%</td>
</tr>
<tr>
<td>1513293020</td>
<td>Other for the manufacture of fatty acids etc.</td>
<td>1.6%</td>
</tr>
<tr>
<td>1513293090</td>
<td>Other – for technical or industrial uses other than the manufacture of foodstuffs for human consumption</td>
<td>1.6%</td>
</tr>
<tr>
<td>1513295000</td>
<td>Other – in immediate packings of a net content not exceeding 1 kg</td>
<td>8.9%</td>
</tr>
<tr>
<td>1513299000</td>
<td>Other</td>
<td>6.1%</td>
</tr>
</tbody>
</table>

Source: EU Market Access database

On 12 August 2019, following an investigation that showed that Indonesian biodiesel producers benefited from grants, tax benefits and access to raw materials below market prices, the European Commission imposed provisional countervailing duties of 8% to 18% on imports of subsidised biodiesel from Indonesia. These aimed at restoring a level playing-field for European Union biodiesel producers, following a complaint by the European Biodiesel Board. The investigation will continue with a possibility to impose definitive measures by mid-December 2019. This measure was seen as a further blow to Indonesian biodiesel producers, after the EU decision on RED II in March that palm oil should be phased out as a renewable transportation fuel. A response by Indonesia, including increased tariffs on EU dairy products, is expected.

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5. EU Action Plan to Protect and Restore the World’s Forests

5.1 Background

A newly published Action Plan from the European Commission to step up protection and restoration of the world’s forests (July 2019) creates opportunities to address issues related to the impacts of production, trade and consumption of palm oil on forests and forest-dependent people in a coherent way.

The need for an EU initiative to tackle deforestation and forest degradation was first mooted in 2013 in both the EU Strategy for Forests and the Forest-Based Sector and the 7th Environment Action Programme. This responded to an increasing awareness of the link between deforestation and agricultural expansion and recognised that the EU, as a major importer of agricultural commodities, was part of the problem but could also be part of the solution.

A “Feasibility study on options to step up EU action against deforestation” assessing possible policy interventions to step up EU action against deforestation and forest degradation, was published in February 2018, followed by a roadmap for an EU Action Plan. This was subject to public consultation, which concluded in February 2019.

The resulting Action Plan “Stepping up EU Action to Protect and Restore the World’s Forests” was published on 23 July 2019.

5.2 Priorities for action

The Action Plan lays out five priorities, each comprising a series of possible actions that the Commission’s new political leadership should decide upon when it takes office on 1 November 2019:

- **Reduce the EU consumption footprint on land and encourage the consumption of products from deforestation-free supply chains in the EU.** Actions will include:
  - establishing a multi-stakeholder and Member State platform for dialogue on deforestation, forest degradation and increasing the world’s forest cover, aimed at building alliances, pushing for and sharing commitments, and sharing experiences and information;
  - encouraging strengthened standards and certification schemes that identify and promote deforestation-free commodities; and

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66 Feasibility study on options to step up EU action against deforestation (http://ec.europa.eu/environment/forests/pdf/feasibility_study_deforestation_kh0418199enn_main_report.pdf)
assessing additional demand side regulatory and non-regulatory measures to ensure a level
playing-field and a common understanding of deforestation-free supply chains, in order
to increase supply chain transparency and minimise the risk of deforestation and forest
degradation associated with commodity imports in the EU.

Other significant actions under this heading include reviewing RED II in 2023 and strengthening EUTR implementation.

- **Work in partnership with producing countries to reduce pressures on forests and to**
  **“deforest-proof” EU development cooperation. Actions will include:**
  - ensuring that deforestation is included in political dialogues at country level, and
    helping partner countries to develop and implement national frameworks on forests and
    sustainable forest management;
  - ensuring that EU support for other projects in partner countries does not contribute to
    deforestation and forest degradation;
  - helping partner countries to implement sustainable forest-based value chains and promote
    sustainable bio-economies; and
  - developing and implementing incentive mechanisms for smallholder farmers to maintain
    and enhance ecosystem services.

Other actions will include strengthening efforts to support the rights of indigenous peoples and local
communities dependent on forests, as well as environmental rights defenders in accordance with
Resolution 28/11 of the UN Human Rights Council, promoting restoration of forest landscapes, and
reforestation projects that integrate ecological principles with local population rights, and livelihoods.

- **Strengthen international cooperation to halt deforestation and forest degradation and**
  **encourage forest restoration. Actions will include:**
  - strengthening cooperation on policies and actions to halt deforestation and forest
degradation and to restore forests in a wide range of international fora by promoting best
practices and a common understanding of sustainable supply chains; and
  - promoting trade agreements that include provisions on the conservation and sustainable
management of forests and encourage trade in agricultural and forest-based products that
do not causing deforestation or forest degradation, and including such provisions in new EU
comprehensive trade agreements.

In addition, the impacts of trade agreements will be assessed through robust sustainability impact
assessments (SIAs), and experience and information on policies and legal frameworks will be shared
with other major consumer and producer countries.

- **Redirect finance to support more sustainable land-use practices. Actions will include:**
  - assessing possible mechanisms to catalyse green finance for forests and how to further
leverage and increase funding to support producer countries conserve their existing forest
cover and regenerate forests, and creating positive incentives for investments in sustainable
forest management and sustainable forest-based value chains; and
  - considering improving company reporting on the impacts that their activities have on

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deforestation and forest degradation in any future revision of the Non-Financial Reporting Directive.69

Increased attention on deforestation in implementation of the 2018 Action Plan for Sustainable Finance70 will also be considered under this priority.

- **Support the availability, quality of, and access to information on forests and commodity supply chains; and research and innovation.** Actions will include:
  - establishing an EU Observatory on deforestation, forest degradation, changes in the world’s forest cover, and associated drivers;
  - exploring the feasibility of developing a Copernicus71 REDD+ service component to strengthen existing global or national forest-monitoring systems;
  - improving coordination among research institutes, including through north–south and south–south cooperation frameworks of the European Innovation Partnerships (EIPs);72 and
  - sharing innovative EU practices on the circular economy, sustainable bio-economy, renewable energy, smart agriculture and other relevant areas with other countries.

This priority will also assist producer countries to track progress implementing their policy objectives, including their NDCs; their deforestation and legal and sustainable commodity production commitments and related trade; improve the availability, quality and harmonisation of reliable information on forest resources and land-use change; and support for the development of global and regional information systems to monitor the effects of forest fires.

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71 The EU’s Copernicus Earth Observation and Monitoring programme provides full, free and open access to Sentinel satellites data and information (https://www.copernicus.eu/en)

72 EIPs are an approach to EU research and innovation covering a range of sectors aimed at streamlining efforts and accelerating market take-up of innovations that address key challenges for Europe, by bringing together actors from the entire research and innovation value chain.
6. EU policy on human rights

EU policy on providing assistance in promoting democracy and human rights in non-EU countries is set out in Regulation (EU) No. 235/2014. Amongst other areas of focus, it identifies the following aspects that are relevant to palm oil production: (i) promotion of the rights of IPs as proclaimed in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), among other things: economic, social and cultural rights, including the right to an adequate standard of living and core labour standards; (ii) corporate social responsibility, in particular through the implementation of the UN Guiding Principles on Business and Human Rights, and freedom to conduct business, as set out in Article 16 of the Charter of Fundamental Rights of the European Union; (iii) support for local, regional, national or international civil society organisations involved in the protection, promotion or defence of human rights and fundamental freedoms; and (iv) support for, protection of, and assistance to human rights defenders, including addressing their urgent protection needs, in accordance with Article 1 of the UN Declaration on Human Rights Defenders.

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7. EU policy relevant to palm oil

7.1 EU Public Procurement

The EU Green Public Procurement (GPP) criteria are developed to facilitate the inclusion of green requirements in public tender documents. The criteria aim to reach a good balance between environmental performance, cost considerations, market availability and ease of verification, but they are not mandatory and procuring authorities may choose to include all or only certain requirements in their tender documents.

A 2015 report by Fern\(^\text{74}\) argued that the European Commission should add criteria for sustainable foodstuffs to the EU GPP standards. This is because the public sector’s role as a major purchaser of food and catering services – which include products made from palm oil and other forest-risk commodities – gives it considerable potential to affect EU markets for these products.

A European Commission article, “Palm oil and public procurement”\(^\text{75}\), published in July 2018, notes that the food sector has the third largest impact on climate (after energy and transport) – responsible for over 10% of European greenhouse gas emissions – and that addressing sustainably produced palm oil will form part of the proposals for new EU GPP Criteria for Food and Catering Services. The article states that the latest proposals indicated that defined shares of food and drink products containing palm oil will need to meet sustainability requirements including impacts on soil, biodiversity, land use change, organic carbon stocks and conservation of natural resources, and that certification schemes for sustainable production based on multi-stakeholder organisations with a broad membership, such as RSPO, could be used as a means for proof.

7.2 The EU Non-Financial Reporting Directive

The EU Non-Financial Reporting Directive\(^\text{76}\) lays down rules on disclosure of non-financial and diversity information by requiring large companies to report on the policies they implement in relation to environmental protection, social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery etc. This has clear relevance to EU companies in palm oil supply chains.

The Directive allows flexibility on how companies may disclose environmental and social information, but has published non-mandatory guidelines.\(^\text{77}\) The guidelines on reporting climate-related information\(^\text{78}\) suggest that companies with adverse impacts on the climate as a result of land-use change, including deforestation and forest degradation, should consider disclosing indicators on these matters. Companies may decide to use international, European or national guidelines according

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to their own characteristics or business environment. The guidelines recommend OECD Guidance documents for several sectors: the UN Guiding Principles on Business and Human Rights, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and ISO 26000.

7.3 The EU Taxonomy Technical Report

The EU Taxonomy Technical report (June 2019) is a tool aimed at enabling capital markets to identify and respond to investment opportunities that contribute to environmental policy objectives. It presents a framework for evaluating activities and their contribution to climate change mitigation and adaptation aimed at achieving the goal of re-orienting capital flows towards sustainable investment. The report is a result of the EU Action Plan Financing Sustainable Growth, which highlights the need for an EU classification system that provides a common language on what constitutes sustainable activities. It is likely that the report will be adopted as a Delegated Act, and over time will determine EU financial flows and also policy decisions.

In relation to palm oil, the Taxonomy requires that all of the following three criteria must be met for agricultural activities to be recognised as delivering substantial contributions (and hence be financed):

- reduced emissions from ongoing land and animal management
- increased removals of carbon from the atmosphere and storage in above- and below-ground biomass through ongoing land and animal management, up to the limit of saturation levels
- not carrying out agricultural activity on land that was previously deemed to be “of high carbon stock”

There is also a reference to palm oil, under the heading “Manufacturing”. This states that products and processes will be excluded from sustainable financing if the “products are derived from new, greenfield oil palm tree plantations”. Exceptions can be made for small-scale oil palm cultivators operating in existing forest plantations.

7.4 EU Ecolabel

The EU Ecolabel, established in 1992, is a voluntary scheme that rewards products and services that meet high environmental standards throughout their life-cycle: from raw material extraction, to production, distribution and disposal. It aims to promote the circular economy by encouraging producers to generate less waste and CO₂ during the manufacturing process.

User Manuals for application of the EU Ecolabel to detergents and cleaning products and for rinse-off cosmetic products include criteria for sustainable sourcing of palm oil and their derivatives. This states that ingoing substances used in the products which are derived from palm oil or palm kernel oil should be sourced from plantations that meet the requirements of a certification scheme for sustainable production that is based on multi-stakeholder organisations with a broad membership.

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including NGOs, industry and government, and which address environmental impacts including on soil, biodiversity, organic carbon stocks and conservation of natural resources. Evidence may include RSPO certificates. For chemical derivatives of palm oil and for palm kernel oil, it is acceptable to demonstrate sustainability through book and claim systems such as GreenPalm certificates or equivalent by providing the Annual Communications of Progress (ACOP) declared amounts of procured and redeemed GreenPalm certificates during the most recent annual trading period.

As of March 2019, a total of 1,575 Ecolabel licences had been awarded for 72,797 products and services. These included 371 licences for 4,434 detergent and cleaner products, and 111 licences for 2,269 rinse-off cosmetic products. It is not clear how many products covered by these contained palm oil.

A 2016 report by Iraldo and Barberio found that the EU Ecolabel’s added-value for companies lay in it being a useful “showcase” tool of their eco-innovation efforts, potentially able to close the information gap – mainly with consumers but also with retailers and public procurers – about the environmental performance of their products and services. However, it was found that the Ecolabel’s market rewards are limited because of a lack of consumer awareness, and insufficient and inadequate promotion and support from public institutions.

7.5 Food labelling

The Food Information Regulations (FIR) and Food Information for Consumer Regulations (FIC) came into force on 13 December 2011, but most requirements were not made compulsory until 13 December 2014. These require that the type of any animal or vegetable oil or fat ingredient must be provided and displayed in the ingredients list, with a full description, such as “fully or partly hydrogenated”. The requirements are aimed mainly at giving consumers choice on health grounds but, in combination with other criteria, they could also be to address consumer concerns about sustainability.

7.6 European Parliament resolution on palm oil and deforestation

A European Parliament resolution adopted on 4 April 2017 made 59 wide-ranging recommendations on trade and consumption of palm oil in Europe. These covered actions that the Commission, Member States, EU institutions, all industry sectors using palm oil, companies that cultivate palm oil, international climate and development funds, and development financial institutions should carry out. Although they are non-binding, these recommendations broadly indicate the political awareness and interest in the environmental and social impacts of palm oil production, trade and consumption and the need for coherent EU action.

84 Fabio Iraldo and Michele Barberio (2016) Drivers, barriers and benefits of the EU Ecolabel in European companies’ perception (https://pdfs.semanticscholar.org/7f35/26c43dbeae011730b69092f93fa1f4adce3a.pdf)
8. EU Trade Policy

8.1 New EU trade policy

The EU document “Trade for all”, published in 2015, sets out EU aspirations in international trade. While encouraging open markets, it maintains that these should not require the EU to compromise its core principles, such as human rights and sustainable development around the world, or high-quality safety and environmental regulation and public services at home. To make trade negotiations more transparent, the strategy commits to publishing all key negotiating texts.

This new approach aims to safeguard the European social and regulatory model, so that trade agreements that the EU enters into will not lower levels of regulatory protection. It also involves using trade agreements and trade preference programmes as levers to promote values such as sustainable development human rights, fair and ethical trade, and the fight against corruption.

8.2 Improving the implementation and enforcement of Trade and Sustainable Development chapters

In 2018 the Commission issued a non-paper on improving the implementation and enforcement of Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements. The aim of these chapters is to maximise the leverage of increased trade and investment to achieve effective and sustainable policy change on issues such as decent work, environmental protection, and the fight against climate change. Stakeholder consultations have identified the need to improve implementation of TSD chapters, with more effective means to achieve global social, labour and environmental standards.

A set of 15 actions were recommended to revamp TSD chapters categorised under four broad headings:

- Working together with Member States, the European Parliament, and international organisations
- Enabling and civil society, including Social Partners, to play a greater role in implementation
- Delivering priorities for each partner country, including assertive enforcement, early ratification of core international agreements, reviewing the TSD implementation effectiveness, a handbook for implementation, stepping up resources, including climate action and trade and labour conditions
- More transparency and better communication, publishing the agendas and minutes of meetings of the government-to-government TSD bodies’ and related events, progress towards implementation of commitments, and dispute settlement.

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87 Trade for all – towards a more responsible trade and investment policy (http://trade.ec.europa.eu/doclib/press/index.cfm?id=1381)
88 Non paper of the Commission services – Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements (http://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf)
Despite these steps, the perceived lack of an effective enforcement mechanism for the provisions of FTAs’ TSD chapters is still seen by some observers as a weakness. The recently concluded EU–Mercosur FTA\(^89\) (for example) states that the dispute settlement procedures do not apply to the TSD Chapter. Instead disputes concerning the TSD chapter provisions may be addressed through consultations within a TSD sub-committee aimed at reaching a mutually satisfactory resolution and, if such a resolution cannot be reached, through commissioning a report by an independent panel of experts.

Nevertheless, the recent fires in the Amazon, blamed partly on the Bolsonaro government’s relaxation of regulations on development in the region, have raised questions about Brazil’s commitment to the provisions of the TSD chapter and have provided an opportunity for EU lawmakers to reconsider whether to ratify the agreement.\(^90\) The European Commission, on the other hand, warned that the binding commitments in the FTA were the best tool to ensure respect for environmental standards.

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89 http://trade.ec.europa.eu/doclib/press/index.cfm?id=2048
90 EU piles pressure on Brazil over Amazon fires (https://uk.reuters.com/article/uk-eu-mercosur-ireland/eu-piles-pressure-on-brazil-over-amazon-fires-idUKKCN1VD0PV)
9. The EU–Indonesia Comprehensive Economic Partnership Agreement

The EU officially launched negotiations with Indonesia on a bilateral Comprehensive Economic Partnership Agreement (CEPA) on 18 July 2016. This agreement aims to facilitate and create new market access, increase trade between the EU and Indonesia, and expand direct investment. The draft CEPA includes 16 subject chapters, with the TSD chapter being the most relevant for addressing sustainable palm oil production and renewable energy.

The eighth round of negotiations took place in Jakarta from 17 to 21 June 2019. The report indicates that little progress has been made with the TSD chapter, stating that intensive discussions took place, “…but resulted in only limited progress in terms of text consolidation. Conceptual differences remain on scope and the article on sustainability in a trade context. In depth discussions were held also on the articles on labour, the right to regulate, upholding levels of protection, sustainability schemes, sustainable fisheries management and trade and climate action – the latter being the most advanced in terms of text consolidation. Due to still on-going internal consultations Indonesia was not yet in a position to discuss the provisions related to trade in timber and sustainable forest management.”

9.1 Sustainability Impact Assessment

The consultancy Development Solutions completed a draft Final Sustainability Impact Assessment (SIA) of CEPA in April 2019. This aimed: (i) to present an analysis of the potential economic, social, human rights and environmental impacts that the trade agreement could have, in the EU, in Indonesia, and in developing countries and least developed countries; (ii) to employ a continuous and wide-ranging consultation process that ensured a high degree of transparency and engaged all relevant stakeholders; and (iii) to provide recommendations on positive impacts and best-practices and how to avoid or minimise any compromising and unintended negative effects.

The report concluded that direct economic impacts arising from reducing tariffs on vegetable oils are likely to be minor, with marginal decreases expected in Indonesia’s palm oil output as removal of trade barriers results in redirection of resources to other sectors of the economy (such as clothing and footwear). Increased trade in palm oil will occur largely as a result of the diversion of Indonesia’s palm oil exports to the EU and away from third countries, rather than increasing overall production. Exports to the EU from other palm oil-producing countries (including Colombia, Honduras and Guatemala) would be impacted.

The report recognised problems related to human rights including land disputes and labour rights; it also noted that decreases in production would cause minor contractions in employment in the sector, which could result in disadvantages for smallholder farmers, and unskilled and informal labourers.

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if they are unable to move to other sectors, but that these changes could be addressed through “mitigating measures”. The SIA report suggested that the CEPA implementation would not have notable impacts on IP’s land rights in the palm oil sector.

The report noted the potential environmental impacts of palm oil cultivation (including ILUC) arising from deforestation, clearing of peatland and fire and resulting contributions to GHG emissions. It suggested that certification schemes that restrict illegal practices used in palm oil production could also play a role in a sustainable landscape approach that would counter environmental degradation related to deforestation and threats to ecosystems, and that the CEPA could tackle environmental issues related to trade by including commitments on the effective implementation of Multilateral Environmental Agreements (MEAs), including CITES and the Paris Agreement, as well as continued cooperation on land-use change practices.

The SIA report suggested that the CEPA could consider including measures to ensure that oil palm plantations are sustainably managed and without environmental risk, for example by considering the application of a robust certification scheme and strengthened oil palm smallholder capacity to adopt sustainable practices in the management of palm oil production. It expressed the view that voluntary certification would help promote demand for sustainably produced palm oil, as well as private sector accountability, and would have positive socio-economic effects while positively contributing to environmental protection.

The report’s relevant recommendations include:

- promoting Corporate Social Responsibility (CSR) and Responsible Business Conduct (RBC) practices as well as ILO labour standards
- ratifying and implementing all relevant ILO Labour Conventions and adhering to the ILO Decent Work Agenda
- supporting various social programmes/projects in cooperation with the ILO focusing on improvement of working conditions
- including a clause in the CEPA preamble recalling the State’s duty to protect and promote the rule of law and calling for the parties to respect and ratify all nine of the United Nations international core human rights conventions and their optional protocols
- making specific references in the TSD to ILO Convention No. 169 on Indigenous and Tribal Peoples
- through the EU–Indonesia Human Rights Dialogue, focusing on the protection of the rights of the most vulnerable groups, including Indigenous Peoples’ rights, to customary land, and women’s and children’s rights – and giving support to CSOs working in this field
- cooperating on strengthening the RSPO and the ISPO schemes’ protection of human rights, including indigenous people’s customary land rights
- including a provision in the TSD Chapter calling the parties to commit to climate change-related issues by further implementation of MEAs, including UNFCCC, CITES and the Paris Agreement
- ensuring capacity building and sharing of best practices with regard to both social and environmental issues, in particular, providing technical and financial assistance to strengthen palm oil smallholder capacity to adopt sustainable palm oil management practices.
Compared with the findings of the draft Interim SIA, published in September 2018, the report’s assessment of the severity of the risks appears to have been moderated. Nevertheless, it appears necessary to revisit the EU’s proposed TSD chapter text taking account of the identified risks and recommended mitigation measures.

9.2 Trade and Sustainable Development chapter

The following sections summarise key aspects of alternative drafts of the TSD chapter proposed by each party in 2017. The details in the Indonesian draft on barriers arising from environmental and social provisions and a detailed chapter plus an annex on vegetable oils and trade clearly underline the importance of palm oil to Indonesia and the risks to growth of trade in palm oil products imposed by implementation of RED II. This perception is likely to be heightened following the findings on palm oil in the EU report on ILUC accompanying the Delegated Act and the recent tariff hikes on biodiesel imports.

9.2.1 EU draft TSD text

The EU proposal for the TSD chapter, released on 29 May 2017, refers to the right of each Party to determine its sustainable development policies and priorities, to establish the levels of domestic environmental and labour protection it deems appropriate, and to adopt or modify its relevant laws and policies, which must be consistent with each Party’s commitment to internationally recognised standards and agreements. It requires each Party to ensure that its relevant laws and policies provide for and encourage a high level of environmental and labour protection; to strive to improve such laws and policies and their underlying levels of protection; and not to weaken the levels of protection in order to encourage trade or investment.

The draft’s article on protection of labour rights refers to the ILO Declaration on Social Justice for a Fair Globalisation of 2008, while an article on environmental protection requires the Parties to effectively implement the multilateral environmental agreements, protocols and amendments to which they are parties, including the Convention on Biological Diversity (CBD) and the Convention on Trade in Endangered Species of Wild Fauna and Flora (CITES). The draft cites the importance of the role of trade in pursuing the objective of the United Nations Framework Convention on Climate Change (UNFCCC) and an article on forests recognises the role of trade in sustainable forest management and refers to the FLEGT VPA in this context.

An article on trade and responsible management of supply chains requires the parties to promote CSR or responsible business conduct, support the dissemination and use of relevant international instruments, and to recognise the utility of and promote joint work on international sector-specific guidelines on CSR and responsible business conduct, including the OECD–FAO Guidance for Responsible Agricultural Supply Chains. The draft requires measures to protect environmental and labour conditions to be developed and implemented in a transparent manner that allows non-state actors to submit their views.

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The draft text closely resembles that agreed in the free trade agreement recently concluded with the Mercosur bloc.\(^96\)

The draft contains no specific provisions on protection of tenure rights, and does not refer to the Committee on World Food Security (CFS) voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security (VGGT), or the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). However, the OECD Guidelines for Agricultural Supply Chains,\(^97\) which do incorporate the VGGT, may be relevant in this context, although these are weak on deforestation and Indonesia is not an OECD member, and so may not consider them applicable.

It is considered that tenure-related issues are dealt with more appropriately under the bilateral EU–Indonesia Partnership Cooperation Agreement (see Section 11.1.1). This is linked to a decision taken on an essential clause dealing with human rights in “COREPER II”\(^98\). If this clause were to be modified, discussions would need to take place in COREPER II and a decision on this adopted by the EU Council.

### 9.2.2 Indonesia draft TSD text

A restricted version of Indonesia’s draft of the TSD chapter, dated 5 June 2017, reaffirms the Parties’ commitment to promote the development of international trade and their bilateral trade and economic relationship in such a way as to contribute to sustainable development. It refers to Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, the ILO Decent Work Agenda, the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled “The Future We Want”, and the outcome of the UN Summit on Sustainable Development of 2015 entitled “Transforming Our World: the 2030 Agenda for Sustainable Development”.

In an article on sustainability, the draft proposes that CEPA’s implementation should be “economically and commercially sustainable” and “lead to economic benefits and guarantee a certain level of trade preferences”, while considering the significance of the environmental and social dimensions of sustainability. It proposes that the Parties should strive “to ensure that its laws and policies provide for and encourage high levels of domestic protection in the environmental and social areas”, “without undermining the economic development dimension of sustainability, and that “diminishment of economic benefits due to the pursuit of sustainability shall lead to adequate compensation”.

As with the EU draft, the Indonesian draft cites effective implementation of multilateral environmental agreements as a response to environmental challenges, but that such measures should “not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade”.

An article on social agreements cites the Parties’ obligations to respect, promote and effectively implement the principles concerning the fundamental rights at work, deriving from the membership.
of the ILO and the ILO Declaration on Fundamental Principles and Rights at Work and its follow-up, adopted by the International Labour Conference at its 86th Session in 1998. Again, this states that violation of these obligations should not be invoked “as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes”.

The draft includes an article on climate change which refers to the UNFCCC and cooperation with respect to the implementation of the 2015 United Nations Paris Agreement. It proposes engaging in dialogue and share information and experience in areas of mutual interest, including, “Design, implementation and promotion of frameworks and mechanisms related to renewable energies and biofuels, such as the EU’s Renewable Energy Directive (RED) and the EU’s Fuel Quality Directive (FQD), and specifically mentions “measures against deforestation under the Forest Law Enforcement Governance and Trade (FLEGT) scheme”.

Under the heading “Biological diversity and the theft of biological diversity”, the draft calls for creation of “conditions to facilitate access to genetic resources for environmentally sound uses and to provide legal certainty with respect to access to genetic resources and benefit sharing arising from their utilisation based on the principle of prior informed consent and mutually agreed terms between providers and users of genetic resources”. The article also proposes “encouraging trade in products which contribute to the sustainable use and conservation of biological diversity, in accordance with domestic laws and international legal instruments/agreements”, to which the Parties are party, and “promoting the conservation and sustainable use of biological diversity in natural or agricultural ecosystems, including endangered species, their habitat, specially protected natural areas and genetic diversity; the restoration of ecosystems; the elimination or reduction of negative environmental impacts resulting from the use of living and non-living natural resources”.

An article on “Sustainable forest management and trade in timber products” refers to the FLEGT VPA and also application of “market based instruments, in accordance with the World Trade Organisation agreement and relevant international instrument[s], to prevent market access of illegal timber products from third parties”.

In summary, Indonesia’s proposal suggests a view that environmental or social considerations should not undermine economic goals.

Significantly, a whole article is devoted to “Trade and sustainable development of vegetable oils”. This proposes that:

- “The Parties recognise the important role that vegetable oils play and will increasingly play with respect to sustainability and to trade between the Parties. The Parties recall the significant relevance of vegetable oils in the agricultural, social, economic, environmental, nutritional, health-related and energy contexts.

- “The Parties recognise the respective efforts undertaken on the definition of regulatory frameworks for increased sustainability of vegetable oil production. In this context, the Parties agree that sustainability criteria and standards applied to vegetable oils that have been independently established by each party should be accepted”.

An annex to this chapter provides more detail on vegetable oils, including “elimination and prevention of tariffs and non-tariff barriers to bilateral trade”; “achieving a level playing field … through the establishment of competitive and business-favourable market conditions based on the principles
of openness, non-discrimination and transparency”; and “ensuring that any measure, which may affect trade in the vegetable oils sector is based on verifiable scientific evidence”. It proposes mutual recognition of “standards for sustainable vegetable oil products which have been established by each of Party”. While acknowledging “development of sustainability frameworks and standards by non-governmental actors”, the annex suggests a provision “that these non-governmental schemes do not lead to excessive fragmentation, are not anti-competitive, are based on scientific justification and do not mislead consumers”.

The annex further proposes that “common, non-discriminatory rules regulating biofuels” be adopted, and mutual recognition of “sustainability standards for sustainable vegetable oil products which have been established by each of the government[s] of the Parties”.

This article and its annex demonstrates Indonesia’s view that its standards with respect to palm oil production (i.e., ISPO) should be accepted by the EU and that there should be limitations on the use of voluntary certification schemes.

### 9.3 Proposed alternative text for CEPA

A briefing by Client Earth considered that the provisions proposed by the Commission in the TSD chapter are too weak to prevent the potential negative effects of increased trade, notably those linked to forest conversion for palm oil production, and that these must be strengthened on the basis of a sound Sustainability Impact Assessment and their implementation supported by adequate monitoring and enforcement mechanisms. In addition to strong TSD provisions, Client Earth recommended that a number of core provisions should be included to ensure that environmental considerations are built into the fabric of the agreement.

The briefing suggested alternative text for improving forestry-related provisions to the TSD text. These covered:

- enacting legislation to achieve COP-21 NDCs
- recognising customary rights governing the legal ownership and use rights over forested land
- implementing measures adopted through multi-stakeholder processes, to ensure that supply chains exclude commodities at risk of being obtained from illegal and unsustainable forest conversion
- promoting transparency of information related to use of and trade in forest resources
- strengthening existing sustainability standards for forest-risk commodities especially by including independence and transparency of verification and strong complaints mechanisms
- including reference to VGGT and UNDRIP
- providing for participation of non-state actors in strengthening of environmental regulations and providing them with the opportunity to submit complaints concerning compliance with the TSD chapter.

In addition to these suggested text amendments, the briefing also called for structural provisions aimed at ensuring that social and environmental considerations are built into the fabric of the agreement. These include:

- core environmental principles, in particular those principles enshrined in the EU treaties, as guiding principles to the overall agreement
- a hierarchy clause stipulating that nothing in the trade agreement may prejudice the effective implementation of international environmental, labour, and human rights agreements
- a commitment to ratify and effectively implement a core list of international environmental, labour, and human rights agreements before the trade agreement enters into force
- effective monitoring and enforcement mechanisms, with the strengthening of civil society organisations’ capacity to effectively participate in such mechanisms and the possibility for citizens and civil society organisations to lodge formal complaints of non-compliance
- the possibility of suspension or termination of the agreement if the ex-post impact assessments of the agreement are negative
- a modernised exceptions chapter cognisant of 21st century challenges, allowing countries full regulatory freedom for recognised public interests such as environmental protection, consumer protection, human rights, animal rights, labour protection, and climate change.

These suggestions address many of the risks identified in the Interim SIA report.

9.4 Recent EU comment on palm oil trade

At the launch of the EU–Indonesia 2019 Blue Book (see Section 11.1) on 28 May 2019 (three weeks before the eighth CEPA negotiations were due to start), an EU representative was quoted as saying that Indonesia and the European Union needed to further promote cooperation on sustainable palm oil to help ease the tension between Jakarta and Brussels over the EU’s move to phase out the use of CPO in biofuel by 2030.¹⁰⁰ This referred to the European Commission’s adoption in March of the Delegated Act on sustainability criteria for biofuels, which Indonesia sees as a protectionist trade policy directed against palm oil, the only commodity identified as having a high ILUC risk. Indonesia considers this Act as discriminatory because it does not exclude other vegetable oils — such as soy, rapeseed and sunflower oils—which have lower yields and use more land for equivalent production.

The EU official’s statement noted that there were many exceptions in the Delegated Act and a dynamic revision approach is possible, including studies, sharing data and other projects involving sustainable palm oil. Reviews of the legislation in 2021 and 2023, before the provision takes effect in 2024, could include consideration of Indonesia’s policies to produce sustainable palm oil, such as revamping the ISPO system, a moratorium on the new concessions, and a policy to replant rather than expand plantations onto new land.

¹⁰⁰ EU wants cooperation over sustainable palm oil (https://www.thejakartapost.com/news/2019/06/03/eu-wants-cooperation-over-sustainable-palm-oil.html)
10. Other processes related to CEPA and palm oil

10.1 The EU–ASEAN Working Group on Palm Oil

At the 22nd Ministerial Meeting between the EU and the Association of Southeast Asian Nations (ASEAN) held on 21 January 2019, ministers from both sides agreed to establish a joint working group to address issues relating to palm oil. The meeting also reaffirmed, amongst other commitments, to implementing the Sustainable Development Goals (SDGs), cooperation on tackling climate change; use of renewable energy; addressing deforestation and illegal wildlife trade; protection of human rights and fundamental freedoms; an open, fair, non-discriminatory, transparent, rules-based multilateral trading system, a level playing field; and fighting all forms of protectionism, including protectionist unilateral trade measures, and unfair trade practices – all with potential links to palm oil production.

There is no new publicly available information on the group’s role, functions or its potential links to RED II and CEPA negotiations. Hence it is not clear whether this group has been formally established or how it proposes to address these issues.

10.2 The EFTA–Indonesia Comprehensive Economic Partnership Agreement

Indonesia and the European Free Trade Area (EFTA) states concluded a free trade agreement, also called CEPA, in December 2018. The agreement’s TSD chapter included several articles with relevance for palm oil production and trade, including the following commitments:

- effective application of laws, policies and practices aiming at protecting primary forests, peatlands, and related ecosystems, halting deforestation, peat drainage and fire clearing in land preparation, reducing air and water pollution, and respecting the rights of local and indigenous communities and workers
- supporting the dissemination and use of sustainability standards, practices and guidelines for sustainably produced vegetable oils
- cooperation on improving and strengthening government standards where applicable
- ensuring transparency of domestic policies and measures pertaining to the vegetable oils sector
- ensuring that vegetable oils and their derivatives traded between the Parties are produced in accordance with the objectives related to protecting primary forests, peatlands, and related ecosystems, halting deforestation, peat drainage and fire clearing in land preparation, reducing air and water pollution, and respecting rights of local and indigenous communities and workers.

102 Comprehensive Economic Partnership Agreement between the Republic of Indonesia and the EFTA States (https://www.efta.int/free-trade/Free-Trade-Agreement/Indonesia)
In agreeing the EFTA CEPA, Switzerland granted concessions of five bilateral quotas for different palm oil products with a total volume of maximum imports of 10,000 tonnes, rising to 12,500 tonnes per year over five years.\textsuperscript{103,104} Preferential imports which form part of these quotas must respect the provisions of the article on sustainable management in the vegetable oil sector must also be delivered in 22-tonne tanks to ensure the traceability of the palm oil.

\textsuperscript{103} (https://www.newsd.admin.ch/newsd/message/attachments/55131.pdf)\textsuperscript{104} Switzerland’s imports of palm oil products from Indonesia declined from about 10,000 tonnes in 2009 to only 162 tonnes in 2018.
11. EU–Indonesia initiatives related to forests

11.1 EU–Indonesia country strategy

11.1.1 Partnership Cooperation Agreement

Principles for cooperation between the EU and Indonesia are set out in a Framework Agreement dated 26 April 2014. The first general principle is that an essential element of cooperation is that “respect for democratic principles and fundamental human rights, as laid down in the Universal Declaration of Human Rights and other international human rights instruments applicable to both Parties underpins the internal and international policies of both Parties”. The Agreement also confirms the Parties’ commitment to promoting sustainable development, cooperating to address the challenge of climate change and contributing to reaching the Millennium Development Goals.

The aims of cooperation include developing trade and investment between the Parties to their mutual advantage; establishing cooperation in all trade and investment-related areas of mutual interest, in order to facilitate trade and investment flows and to prevent and remove obstacles to trade and investment; and establishing cooperation in other sectors of mutual interest, including human rights, environment and natural resources, forestry, agriculture and rural development.

Specific articles deal with cooperation on trade and investment, human rights, the environment and natural resources, forestry, agriculture and rural development, and civil society.

In general, the document is aspirational in setting out principles upon which more specific arrangements on trade and other cooperation can be built, but its impact, other than highlighting that trade and development are closely linked, is unclear.

11.1.2 2019 EU–Indonesia Blue Book

The 2019 EU–Indonesia Blue Book is the current version of the EU’s annual publication on development cooperation with Indonesia. It covers a range of thematic areas, from trade-related assistance and green infrastructure and growth, to environmental protection and climate resilience, human rights and civil society empowerment.

The justification for the planned cooperation clearly identifies the need to support work on aspects connected to palm oil production and trade and related social and environmental impacts, but from the description, it is difficult to detect a coherent package of measures to address these.

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105 Framework Agreement on comprehensive partnership and cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part (http://trade.ec.europa.eu/doclib/docs/2016/july/tradoc_154810.pdf)

**Development cooperation**

Development cooperation is defined by aid assistance to a partnership built on Sustainable Development Goal (SDG) 17, focused on “Partnerships for the goals”. These include the following shared strategic priorities: economic cooperation, including sustainable investments, as well as environmental protection and climate change mitigation.

- Protection of the environment. Sustainable management of forests and peatlands is identified as an important area for cooperation. Forest Law Enforcement, Governance and Trade (FLEGT) licensing for Indonesia’s timber products is cited as a significant success in this area.
- Support for civil society organisations (CSOs). Promoting human rights, democracy, gender equality and economic development is also highlighted, noting that the new edition of the EU Roadmap for Engagement with Civil Society ensures a more structured approach for collaboration between civil society, central and local governments across Indonesia, and with the EU and its Member States.

The Blue Book notes further that gender equality is mainstreamed as a cross-cutting issue into all EU programmes and that the EU is currently supporting several projects focusing on increasing women’s economic empowerment and female participation in decision-making processes.

**Economic cooperation**

Economic cooperation is seen as a priority area, with the objectives of increasing bilateral trade, investment and business opportunities, and pursuing poverty alleviation through sustainable economic development. A new five-year €10 million programme, ARISE Plus – Indonesia, is the EU’s first trade-related bilateral assistance programme with Indonesia. By working closely with the Government and other key stakeholders to enhance Indonesia’s capacity to boost trade performance and competitiveness, promote sustainable and inclusive growth, and contribute to employment creation, it aims to help Indonesia benefit in future from implementation of CEPA.

Although the project will work on strengthening institutional capacity of key Indonesian stakeholders in implementing a National Quality Assurance (NQA) Scheme and improving the current Export Quality Infrastructure (EQI) Roadmap with regard to its main export sectors, it is not clear from publicly available information whether this will include environmental and social aspects of palm oil supply chains.

**Climate change and the environment**

The EU is prepared to support Indonesia’s development of its Nationally Determined Contributions (NDCs), with particular focus on sustainable, low-emission land use, energy efficiency and climate change adaptation.

The Blue Book notes that RED II sets ambitious targets to increase the use of energy from renewable sources, including the use of sustainably produced biofuels and recognises that this opens a difficult
dialogue with Indonesia on sustainable and environmental friendly production of food-based biofuels. Cooperation on addressing the main drivers of deforestation, land degradation and rising greenhouse gas emissions include forestry, palm oil production and peatland drainage and its associated fire risks. EU support to reduce the adverse environmental impact of these industries, and to mitigate their contribution to climate change, includes:

- FLEGt licensing of timber products
- the Forest Carbon Partnership Facility (FCPF), which provides funding for achieving REDD+ objectives, with actions targeted at forest conservation and sustainable forestry
- the EU REDD Facility, which focuses on reducing emissions from deforestation and forest degradation
- studies on strengthening and expediting the Indonesian certification for sustainable palm oil (ISPO)
- the use of Copernicus Remote Sensing, a tool developed as part of the EU’s Earth Observation programme for improved peatland mapping.\footnote{https://www.copernicus.eu}  

Despite the importance of the production and trade in palm oil in relation to CEPA and RED II, these areas of support do not appear to form a coherent set of actions aim at resolving the concerns.

**Good governance, human rights and gender equality**

Good governance, human rights and gender equality are cross-cutting issues addressed in development cooperation initiatives to ensure that the fundamental rights of citizens and communities are protected.

The EU supports Indonesian civil society through the European Instrument for Democracy and Human Rights (EIDHR).\footnote{A thematic funding instrument aiming to support projects in the area of human rights, fundamental freedoms and democracy in non-EU countries, designed to support civil society to become an effective force for political reform and defence of human rights (https://ec.europa.eu/europeaid/how/finance/eidhr_en.htm_en)} Projects in 2018 have included non-discrimination based on gender or disability and the promotion of responsible and human rights-based business practices. In addition, cooperation includes establishing a more enabling environment for women and girls following the EU Gender Action Plan 2016–2020,\footnote{https://ec.europa.eu/europeaid/eu-gender-action-plan-ii-gender-equality-and-womens-empowerment-transforming-lives-girls-and-women-0_en} and protection of women’s rights in line with SDG 5, through civil society initiatives.

**11.1.3 The EU REDD Facility**

The EU REDD Facility – funded by the EU Commission, France, Germany, Ireland, the Netherlands, Spain and the United Kingdom and hosted by the European Forest Institute – supports countries in improving land-use governance as part of their efforts to slow, halt and reverse deforestation. It also supports the EU’s overall efforts to reduce its contribution to deforestation in developing countries, focusing on countries that are engaged in Reducing Emissions from Deforestation and forest Degradation (REDD+).
The Facility’s work has three objectives:

- supporting the clarification and implementation of legal frameworks
- enabling sustainable land-use investment and management
- informing deforestation-free production and trade.

It provides demand-driven and customised support for developing and implementing REDD+, FLEGT and land-use governance strategies.

In Indonesia, the Facility supports forest governance reform, participatory land-use planning and developing innovative approaches to clarify tenure at the district level. It is also engaged in improving land-use governance by helping increase transparency in forest revenue flows. Projects include:

1) **Assessing legality**

This project is a study to determine how legal frameworks could contribute to reducing deforestation in Indonesia, if clarified and implemented. The study examined the supporting role that trade and supply chain-related measures can play to provide incentives for legal compliance. The study piloted in the districts of Siak, Pelalawan, Seruyan, Kotawaringin Barat, Sorong and Fak fak. The report aimed to answer the following questions:

1. If all stakeholders complied with relevant existing government regulations, would Indonesia achieve its forest-related NDC targets by 2030?
2. How can the EU support efforts in Indonesia to reach its forest-related NDC targets?

It is unclear when the report will come out, but analysis undertaken by the study, although of a preliminary nature, indicates that there are significant problems with the implementation of existing laws, and that considerable areas of land have been illegally converted. A second phase, which includes more detailed analysis of legal frameworks including those related to FLEGT VPA implementation, is under way.

The EFI REDD Facility believes that, according to the preliminary assessment, Indonesia could meet its NDC target of 70% reduction of forest sector emissions if all laws and policies were properly enforced.

2) **Jurisdictional level sustainable palm oil (Terpercaya)**

This project aims to develop jurisdictional sustainability indicators to demonstrate sustainable palm oil production, and to encourage progress towards sustainability by linking jurisdictions with international markets for palm oil using supply-chain mapping through Trase.

The thinking behind Terpercaya is that measuring sustainability performance at the jurisdiction level, based on a set of indicators and a supply-chain tracking system, may be simpler, less costly, and more effective in reducing deforestation while maintaining (or increasing) palm oil production and including smallholders and indigenous peoples in global supply chains.

Democratically elected local governments play a central role, as they have both the authority and the legitimacy to issue regulations and implement policies for sustainability. More importantly, local governments, unlike many other actors, have the authority to monitor and enforce sustainability laws and regulations.
Twenty-two indicators\textsuperscript{112} have been agreed, with the aim to update/assess them annually, by a multi-stakeholder group, including government (Ministry of Home Affairs, Ministry of Environment and Forestry, Coordinating Ministry of Environmental Affairs, Ministry of Agriculture) private sector (Unilever, GAR, Pepsico and local and international NGOs (AMAN, KEHATI, SKPS, RSPO, IDH, WRI, Greenpeace and Auriga and LTKL).\textsuperscript{1} These indicators will now be used to assess the sustainability or lack thereof of commodity production across a district, encouraging local authorities to ensure the whole district meets these criteria, after which the district can be “certified” as producing sustainable palm oil. It is still unclear, however, who will do the certification, and which mechanisms are being used.

Data for indicators is being collected across Indonesia in a current second phase of Terpercaya, and a future project could also include Malaysia.

The hope is that Terpercaya could inform EU DGs and specifically:

(1) DG Energy when revisiting the RED and its Delegated Act. Ideally Terpercaya could provide district-level information relating to EU ILUC criteria spelled out in the RED and its Delegated Act

(2) DG Trade, when negotiating CEPA to allow the EU to import palm oil that does not contribute to deforestation and human rights violations from Indonesia. Equally this system could potentially help provide information relevant in monitoring the CEPA

ISPO is not expected to certify all local producers/smallholders in a short time period, and one limitation is that it only looks at current production areas. Hence the Terpercaya process could support ISPO. Discussions are taking place between Terpercaya and ISPO proponents.

The aim is also to include other indicators more specifically related to other commodities, and possibly to link this system with FLEGT/SVLK monitoring system, so the system would not just look at palm oil but also provide information relevant to timber legality and sustainability in the different districts.

11.2 The Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA)

FLEGT aims to tackle the problem of illegal logging through a range of measures, in particular implementation of systems to verify legal timber production in timber-producing countries, combined with controls of timber placed on the EU market to minimise the risk of placing products containing illegally harvested timber on the market. Key FLEGT elements include:

- Legality assurance systems in timber-exporting countries that prescribe relevant laws for legal timber production, systems to verify their compliance, timber product traceability, export licensing of compliant shipments, and periodic system auditing – all agreed through a deliberative process involving affected stakeholders
- Negotiation of Voluntary Partnership Agreements (VPAs) between the EU and developing countries that wish to develop such systems and have them formally recognised
- Recognition by EU competent authorities of licenses issued by VPA partner countries that their timber product exports to the EU meet the requirements of the 2010 EU Timber Regulation (EUTR),\textsuperscript{113} legislation prohibiting the placing of illegal timber on the EU market

\textsuperscript{112} http://www.euredd.efi.int/documents/15552/460846/The+Terpercaya+Brief+4+%28SCREEN%29.pdf/0399f22-96de-9265-75e1-ebea9d8b0815

\textsuperscript{113} Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of
and requiring operators to conduct due diligence of the timber products they place on the market.

Indonesia concluded negotiation of its bilateral FLEGT VPA\textsuperscript{14} in 2011, and in 2017 it became the first and only country so far to export licensed timber products. Its timber legality assurance system (Sistem Verifikasi Legalitas Kayu – SVLK) is based on compliance checks by nationally accredited private sector conformity assessment bodies of Indonesia operators in forest areas and throughout supply chains and issuance of certificates which are required for export licensing. Indonesia’s system is different from other timber legality assurance systems, which are operated exclusively by government agencies. It is also the only VPA negotiated to date that gives a formal role to national CSOs to monitor its implementation.

Indonesia’s VPA negotiations were started before the EUTR was adopted and its commitment to concluding the agreement was contingent on assurance from the EU that the EUTR would be adopted and that FLEGT-licensed timber would be given preferential treatment. This was because it anticipated increased costs of implementing the system and, unless the VPA was accompanied by trade advantages, the risk of being undercut by competitors that chose not to enter VPAs.

The VPA has not been without problems and critics, especially concerning transparency and law enforcement and the ability to follow up action taken concerning issues raised by the Independent Forest Monitors Network (Jaringian Pemantau Independen Kehutanan – JPIK). The legality standard does not examine how logging licences were issued historically (which include allegations of corruption), it has limited coverage of forest-dependent peoples’ rights, and it allows licensing of timber produced from clearing forests for agriculture.

A 2013 report by Human Rights Watch\textsuperscript{15} lists a range of problems with the SVLK audit system:

- its criteria do not guarantee compliance with legal tenure rights or rights to use land and resources that may be affected by timber harvesting
- auditors assess only the legality of company, not government, practices and only those occurring during the previous year of operation
- audits do not ensure that permits are not issued for lands with pre-existing community claims
- the SVLK does not adequately monitor whether companies have violated local communities’ legal right to consultation, much less their free prior and informed consent
- the SVLK does not ensure that companies comply with laws that require communities be compensated for lost access to forestland and share in the benefits from logging
- auditors may issue the company a “pass” even if one or more criteria are still being verified at the close of the audit
- some auditing companies may pressure their auditors to overlook shortcomings in order to issue certificates.

\textsuperscript{14} Voluntary Partnership Agreement between the European Union and the Republic of Indonesia on forest law enforcement, governance and trade in timber products into the European Union (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R0995)

Independent oversight of the audits was also identified as a significant problem, with some members of JPIK criticising auditors and the government for failing to share necessary information they need in a timely fashion.

Despite these problems, the FLEGT structure and process offer ideas for opportunities that could be developed in the case of palm oil.

- the VPA is a formal trade agreement that sets out the rights and issues that arise can be brought to the attention and addressed in a bilateral EU–Indonesia Joint Implementation Committee
- the system is based on Indonesia’s own laws and not seen as being imposed by outside interests
- the SVLK comprises a standard and certification process developed by Indonesian stakeholders and agreed through national deliberation
- the SVLK has varying performance standards which make certification of small enterprises easier
- while not part of the agreement, there was an understanding that the EU and some Member States would support development of the SVLK and other activities linked to strengthening forest sector governance
- the EUTR provided a demand-side incentive to complete negotiations and gives Indonesia’s forest products exports a competitive advantage.
12. Member State trade and development initiatives linked to Indonesia and palm oil

12.1 The Amsterdam Declarations Partnership

The Amsterdam Declarations are non-legally binding political commitments, signed by seven European countries (Denmark, France, Germany, Italy, the Netherlands, Norway and the United Kingdom), which aim to support the implementation of private sector commitments on stopping deforestation and producing sustainable palm oil. By expanding market demand for sustainable commodities in the signatory countries, the Declarations aim to incentivise sustainable production in producer countries.

The Amsterdam Declarations were launched in 2015 and build on the commitments of New York Declaration on Forests. They underline the importance of preserving primary forests and HCV areas through responsible supply chain management.

The Deforestation Commitment aims to promote “eliminating deforestation” by 2020 and supports the private-sector goal of zero net deforestation. The Palm Oil Declaration supports the private sector commitment for a fully sustainable palm oil supply chain by 2020 (based on the European Sustainable Palm Oil (ESPO) initiative, signed by eight national and three European sector organisations, see Section 13.6).

The two declarations have been merged into the Amsterdam Declarations Partnership (ADP) implementation strategy. This includes four main strategic lines that make use of existing formal processes, partnerships, initiatives and networks:

- Facilitate European action on Climate, Deforestation and Trade: link deforestation from agricultural commodities more closely with discussions on implementing the Paris Climate Agreement, the Convention on Biological Diversity (CBD) Strategic Plan for Biodiversity, European trade negotiations and the Sustainable Development Goals (SDGs).
- Stimulate the Global Value Chain approach for agricultural commodities, in particular palm oil: advance partnerships on both supply and demand sides, and work with producer countries on integrated landscape approaches.
- Enhance dialogue with major consumer and producer countries: expand global market coverage by engaging partner countries and through diplomacy.
- Enhance transparency and use of voluntary Corporate Social Responsibility (CSR) reporting: integrate deforestation and climate/carbon footprint in CSR reporting and enhance third-party monitoring and data transparency.

Representatives of the signatory countries and the European Commission meet in regular Coordination Meetings, at which external experts, civil society organisations and/or industry alliances may be invited to join. Once a year, the ADP chair hosts a multi-stakeholder meeting.
The ADP promotes sustainably produced palm oil, for example through certification by voluntary certification standards which have cut-off dates for deforestation. These include RSPO, ISCC, and the Rainforest Alliance’s RA-SAN (Sustainable Agriculture Network).

The main indicator to monitor progress is “volume of Certified Sustainable Palm Oil (CSPO – palm oil and PKO) imported into the signatory countries”. This information is currently provided by the private sector or through voluntary standard schemes. Aggregated information from these sources is not currently available, so monitoring depends on information from the ESPO initiative. The status of use of CSPO in ADP countries as of 5 February 2019 was: Denmark 65%; France 99%; Germany 85%; Italy 43%; Netherlands 88%; Norway 99–100%; and United Kingdom 75%.

Key take-outs relevant to forests and palm oil from the most recent ADP multi-stakeholder meeting held on 13 June 2019 appear to describe deficiencies and needs, rather than concrete actions. They included:

**On forests:**
- The food system is broken with over- and under-consumption; this needs to change
- economic paradigm still supports expansion
- voluntary commitments are not enough
- public and private investments need to be aligned with climate and forest objectives
- stringent spatial planning is needed to ensure rights of indigenous peoples and customary land rights.

**On palm oil:**
- Transparency and access to data, particularly for civil society, are issues that must be addressed
- the Eurocentric nature of certain mechanisms and parameters such as ILUC should be kept in consideration
- European regulation can induce socioeconomic issues in producing countries.
- there should be an emphasis on understanding the complexity of the context in producing countries, i.e., post conflict development in Colombia and the millions of smallholders in Indonesia.

It remains unclear whether the ADP is a platform for information exchange or if concrete plans are being developed to coordinate members’ action.

12.2 France

Although France is a relatively minor importer of palm oil compared to other Member States, it has had strong policies aimed at tackling deforestation and restricting trade in palm oil. In 2012 the French Senate approved the so-called “Nutella tax”, an amendment that would quadruple the tax from around €100 to €400 per tonne, with the aim of curbing consumption of palm oil. The measure would have raised the tax to €500 in 2018, €700 in 2019 and €900 from 2020. However, in 2016 in the face of strong protests from Malaysia and Indonesia, the lower house voted to keep the tax at €90 per tonne.

More broadly concerning deforestation and rights, France has probably gone further than other Member States with its national deforestation strategy and corporate duty of vigilance law.

12.2.1 National Strategy to Combat Imported Deforestation

The French government has adopted a national strategy to combat unsustainable imports known to be key drivers of deforestation (Stratégie Nationale de Lutte Contre la Déforestation Importée 2018–2030). This aims to end deforestation caused by importing unsustainable forest and agricultural products by 2030, by encouraging all actors (producers, businesses, investors and consumers), to change their practices. The strategy is aimed primarily at agricultural commodities which contribute the most to imported deforestation, such as soy beans, palm oil, beef and beef co-products, cocoa, rubber, as well as timber and timber products.

Measures include:

- Allocation of €60 million per year through the Agence Française de Développement (AFD – French Agency for Development) to help exporting countries and regions produce more sustainable commodities, tackle deforestation and implement reforestation projects.

- Creation of a national platform for combating deforestation, bringing together businesses, NGOs and public authorities, to support the implementation and monitoring of private-sector commitments on “zero deforestation”, and including a “zero deforestation” label for consumer products, and review of the vigilance duty of businesses legislation.

- Inclusion of a “zero deforestation” objective in agricultural sector plans drawn up following the Food Convention (États généraux de l’alimentation) for the livestock sectors, as well as for vegetable oil and proteins, promotion of alternatives to imported vegetable proteins which may be derived from deforestation, and measures to diversify protein consumption that favour vegetable proteins, with the aim of establishing protein autonomy.

- Adoption of a “zero deforestation” public purchasing policy by 2022.

- Placing a cap on incorporating biofuels derived from raw materials which have a major indirect impact on deforestation (in accordance with RED II), until these have been completely eliminated by 2030.

- Adopting an action plan to tackle imported deforestation, including drafting EU regulations on importing raw materials which pose a risk to forests.

- Potentially seek to incorporate respect for sustainable production criteria in EU negotiation mandates for bilateral trade agreements.

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In January 2019, the French National Assembly voted against the government and passed a bill explicitly stating that palm oil “is not a biofuel” making it ineligible for a reduction in the general tax on polluting activities (Taxe générale sur les activités polluantes – TGAP) from January 2020. However, it is not clear that this decision will be permanent and lobbying from the French company Total, which currently processes 300,000 tonnes of imported palm oil annually, may see it reversed in 2020.

12.2.2 Corporate Duty of Vigilance Law

The French Corporate Duty of Vigilance Law (Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre) establishes a legally binding obligation for parent companies to identify and prevent adverse human rights and environmental impacts resulting from their own activities, from activities of companies they control, and from activities of their subcontractors and suppliers, with whom they have an established commercial relationship.

The law applies only to the largest French companies – those whose head office is located on French territory and which employ at least 5,000 employees within the company head office and its direct and indirect subsidiaries; or whose head office is located on French territory or abroad and which employ at least 10,000 employees within the company and its direct and indirect subsidiaries. These criteria would cover an estimated 100–150 companies.

The law covers the full spectrum of human rights enshrined in the UN Guiding Principles on Business and Human Rights – the health and safety of people, and the environment. It also covers all business sectors.

It requires them to prepare and implement annual, public vigilance plans assess and address the risks of serious harms to people and the environment under. Liability applies when companies default on their obligations, including the absence of a plan or failure in its implementation. Interested parties – including affected people and communities – are empowered to hold companies accountable. They can require judicial authorities to order a company to establish, publish and implement a vigilance plan, or account for its absence. Fines of up to €10 million can be imposed for non-compliance. Interested parties may also take civil action and request compensation if the violation of the legal obligation has caused damages. In addition to any compensation, a judge can impose a fine of up to €30 million.

A vigilance plan must include:

- mapping that identifies, analyses and ranks risks
- procedures to regularly assess, in accordance with the risk mapping, the situation of subsidiaries, subcontractors or suppliers with whom the company maintains an established commercial relationship
- appropriate actions to mitigate risks or prevent serious violations

120 Loi 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre

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- an alert mechanism that collects potential or actual risks, developed in working partnership with the trade union organisations representatives of the company concerned
- a monitoring scheme to follow up on the measures implemented and assess their efficiency.

The burden of proof falls on claimants, who need to prove both a fault resulting from violations of a company’s obligations, and a causal link between the fault and the damage they have suffered. A company should therefore not be held liable if damages occur and if it has implemented a compliant vigilance plan.

The Zoological Society of London’s SPOTT programme¹²³ (see Section 13.11.1), which assesses 70 major palm oil producers and traders on the public disclosure of their policies, operations and commitments to environmental, social and governance (ESG) best practice, does not list any companies that would fall within the law’s definition.

12.2.3 French development cooperation with Indonesia

The AFD website’s¹²⁴ information on Indonesia is headlined “AFD and Indonesia: striking a balance between growth and respect for biodiversity”. It states that “On the forestry side, we support projects that respect the quality of life of local communities and involve them in sustainable forest management”. However, a current project map shows 11 projects in Indonesia, none of which are linked to forests or agricultural commodities. Data submitted to the OECD show no projects in the agriculture, forestry or biodiversity sectors in 2017.¹²⁵

Proparco, France’s Development Finance Institution (DFI) “finances businesses that are instrumental in creating decent jobs that pay decent wages, in supplying essential goods and services and in battling climate change.”¹²⁶ Its exposure to investments in palm oil or forests in Indonesia is not clear from Proparco’s website, but appears to be limited. Participation in Falcon House Partners Fund II (FHP II) involves US$ 15m equity investment alongside several institutional investors, including other Development Finance Institutions and targets rapidly growing Indonesian middle classes which do not have access to a range of services to meet their needs, especially outside Java and includes agribusiness as one of the sectors in which it invests. The Aavishkaar Frontier Fund invests in companies in Bangladesh, Pakistan, Sri Lanka and Indonesia, which have an inclusive economic model and whose activities have a positive impact on low-income populations. It targets projects in the fields of agro-industry, renewable energies, education, health, water and sanitation, but it is not clear whether there are investments in palm oil.

¹²³ https://www.spott.org/palm-oil/
¹²⁴ https://www.afd.fr/en/page-region-pays/indonesia
¹²⁵ https://stats.oecd.org/qwids/
¹²⁶ https://www.proparco.fr/en
12.3 Germany

Germany has had a high profile amongst Member States on promoting sustainable forest management and it allocates the largest amount to international development cooperation in the sector.

12.3.1 Germany policy on palm oil trade and consumption

A 2016 WWF report\(^\text{127}\) suggested that Germany has not taken any specific national action concerning the links between trade and consumption of palm oil and its impacts on deforestation and human rights. The report recommended that the Federal Government should:

- endeavour to ensure that all palm oil imports into the EU will be conditional upon compliance with binding ecological and social sustainability criteria (RSPO minimum standards with additional criteria such as the Palm Oil Innovation Group (POIG) or the Forum for Sustainable Palm Oil (FONAP))
- work towards putting a halt to the use of palm oil as a biofuel and strive for consistent reductions in energy consumption.
- extend the obligation to label palm oil in all consumer goods
- make subsidies and project financing conditional upon compliance with ambitious social and ecological sustainability criteria
- use intergovernmental negotiations with palm oil-producing countries to call for stricter social and environmental standards in palm oil production and compliance with the rights of small farmers and IPs, and to offer incentives for the protection of rainforests by way of participative and transparent land-use planning and afforestation programs.

A news article published on 3 July 2019\(^\text{128}\) quoted the German government as calling for “globally coordinated measures to implement deforestation-free palm oil cultivation”, in response to a parliamentary inquiry. It stated that the German government did not fundamentally oppose the use or import of palm oil, but that the goal was “sustainable palm oil production without negative environmental and climate impacts, while respecting the rights of the local populations”.

The German Green Party is demanding an EU-wide import ban on palm oil which has been grown on former rainforest areas, with certificates on the ecological and social sustainability of the palm oil used, as well as full transparency and traceability in supply chains. The party called for the German government to present a strategy for reducing the overall consumption of palm oil.

\(^\text{127}\) Palm Oil Report Germany – Searching for alternatives (https://mobil.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/WWF_Report_Palm_Oil_-_Searching_for_Alternatives.pdf)
\(^\text{128}\) Germany calls for coordinated measures in deforestation-free palm oil production (https://www.poandpo.com/agrifish/germany-calls-for-coordinated-measures-in-deforestation-free-palm-oil-production-372019672/)
12.3.2 German development cooperation

German development cooperation with Indonesia focuses on three priority areas:\(^{129}\)

- energy
- sustainable economic development/technical and vocational education and training
- environmental protection.

Good governance, including measures to increase government revenue and to reduce corruption, is a cross-cutting issue in all areas of cooperation.

In May 2017, the minister for the German Federal Ministry of for Economic Cooperation and Development (BMZ) launched a palm oil initiative that aims to establish a sustainable procurement region in West Kalimantan. Training smallholders on farming practices that help to preserve the forests and learn how to process their products locally aims to create added value and secure farmers’ incomes. The minister’s statement underlined the need to include effective sustainability standards for oil palm cultivation in the EU free trade agreement with Indonesia and the possibility of incentives through tariff advantages for certified palm oil.

A 2015 publication on REDD+ by BMZ\(^{130}\) stated that German support included €1.4 billion for more than 240 initiatives in financial and technical assistance to more than 30 countries, including Indonesia. The €81 million Forests and Climate Change (FORCLIME) project seeks to lay political and institutional foundations for rethinking forest policy. It includes establishment of forest management units (similar to the German system) and supporting private enterprises to achieve certification. It supports forest authorities and local communities to jointly plan forest use in a way that mitigates climate change within an area of 380,000 ha in three districts in Kalimantan.

The website of the German Agency for Development Cooperation (GIZ) lists its current commissions in Indonesia (90% of which are funded by German cooperation, primarily BMZ). The values and terms of relevant projects are shown in Table 5.

\(^{129}\) https://www.bmz.de/en/countries_regions/asien/indonesien/index.html#section-31151852
Table 5. GIZ forestry, agriculture and environment projects in Indonesia

<table>
<thead>
<tr>
<th>Project</th>
<th>Duration</th>
<th>Value (€ million)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Forestry</strong></td>
<td></td>
<td></td>
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<tr>
<td>Forests and Climate Change (FORCLIME)</td>
<td>Nov 2008–Dec 2020</td>
<td>36.75</td>
</tr>
<tr>
<td>REDD-Programme for Early Mover (REM)</td>
<td>Dec 2011–Dec 2019</td>
<td>11.97</td>
</tr>
<tr>
<td><strong>Agriculture</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low-emissions oil palm development in Berau District, East Kalimantan</td>
<td>Sep 2017–Feb 2022</td>
<td>1.83</td>
</tr>
<tr>
<td>Sustainable Agricultural Value Chains</td>
<td>Feb 2019–Dec 2021</td>
<td>1.83</td>
</tr>
<tr>
<td>Programme Sustainability and Standards in global Agriculture Value Chains</td>
<td>Feb 2017–Dec 2020</td>
<td>4.0</td>
</tr>
<tr>
<td>Sustainable agrifood systems in the Asian Region (ASEAN Biocontrol)</td>
<td>Nov 2010–Dec 2019</td>
<td>12.20</td>
</tr>
<tr>
<td><strong>Environment</strong></td>
<td></td>
<td></td>
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<tr>
<td>Support to Indonesia’s Climate Change Response</td>
<td>Dec 2015–Jan 2019</td>
<td>6.50</td>
</tr>
<tr>
<td>Standardised MRV and Planning Tool in support of NDC implementation in Indonesia</td>
<td>Oct 2018–Oct 2020</td>
<td>1.60</td>
</tr>
<tr>
<td>Peatland management and rehabilitation</td>
<td>Sep 2018–Dec 2021</td>
<td>3.00</td>
</tr>
<tr>
<td>Policy Advice on Environment and Climate Change (PAKLIM)</td>
<td>Nov 2008–Mar 2020</td>
<td>26.09</td>
</tr>
<tr>
<td>SDG Implementation</td>
<td>Aug 2017–May 2022</td>
<td>5.00</td>
</tr>
</tbody>
</table>

Source: https://www.giz.de/projektdaten/index.action?request_locale=en_EN#region=2&countries=ID

Germany’s DFI, DEG, had €43.84 million investments in Indonesia in 2018 but its website does not provide access to its portfolio of individual investments.

A DEG publication “A guidance note on managing legacy land (LL)\textsuperscript{131} issues in agribusiness investments”, prepared jointly with CDC,\textsuperscript{132} recognises that LL issues are not effectively addressed in existing environmental and social and human rights standards and guidance (e.g. those of the International Finance Corporation (IFC) Performance Standards (PS) and the UN Guiding Principles on Business and Human Rights) and that specific guidance is not provided in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT). The note provides guidance to help agribusiness operations in emerging markets identify existing and potential legacy land issues and tools to help address them.

\textsuperscript{131} “Legacy land” includes agricultural concessions and plantations (i) that are long established (a minimum of five years), (ii) where the details of acquisition/lease arrangements and baseline socioeconomic conditions are uncertain, (iii) where the ownership or lease has changed hands (so that the current owners/lessees were not involved in the original contracts), and (iv) where compensation arrangements for individuals and/or communities whose livelihoods were affected are uncertain or contested.

12.4 Netherlands

Although the Netherlands has been the biggest EU importer of Indonesian palm oil for most of the last decade and, despite recent declines, is still the second largest, government policy appears to focus mainly on encouraging rather than mandating private sector action – largely via promotion of RSPO.

12.4.1 Dutch policy and legislation

Dutch environmental criteria for sustainable public procurement of catering products require that animal products originate from animals fed with products of vegetable origin which, in the case of soy and palm oil, are produced in accordance with the RSPO and/or RTRS guidelines for 95% of their share in the volume of the feed.

Van de Griff and Van der Pol (2017) have analysed official Dutch policy concerning palm oil and concluded that the Dutch government has not proposed any additional national law-making and has not initiated or been involved in international treaties to regulate the palm oil industry. Instead, their research shows that four successive Dutch cabinets have officially expressed their strong support for the RSPO, as shown in relation to financial matters and diplomatic relations.

On being questioned why the Netherlands has not proposed additional laws banning palm oil derived from plantations where there are land rights conflicts or are related to fires, Liliann Ploumen, the then Minister for Foreign Trade and Development Cooperation (2012–17), responded that this was currently internationally unfeasible and that voluntary agreements provided more scope for wider involvement of all parties than legally imposed prohibitions. The paper suggested that Ploumen’s policy seemed to aim for collaboration to tackle the problem together, rather than “punishing” palm oil producing countries. Examples included funding NGOs such as Solidaridad, the Environment (AideEnvironment?) and the International Union for the Conservation of Nature (IUCN), which are working in producing countries for better legislation on deforestation, land rights, and working conditions.

12.4.2 Dutch development cooperation

The Netherlands’ approach to development cooperation focuses on people’s rights and opportunities. The Dutch government’s three ambitions for development cooperation are:

– eradicating extreme poverty in a single generation
– promoting sustainable, inclusive growth that also benefits the poorest and most vulnerable populations around the world
– enabling Dutch companies to succeed abroad.

It invests in themes that match its expertise, with particular attention paid to women’s rights, climate change and promoting entrepreneurship. Within this spectrum, themes include security, legal order, water management, food and agriculture and sexual and reproductive health and rights. Where possible, aid is linked to trade, including better access to international markets, strengthening the private sector, promoting trade and investment, fair taxation, and making production and marketing chains more sustainable.

134 Dr Liesbeth van de Griff and Arende Elise van der Pol (2017) The impact of the Roundtable on Sustainable Palm Oil on Dutch palm oil policy and regulation.
According to the website of the Ministry of Foreign Affairs, in Indonesia the Netherlands is supporting security and rule of law, food security and water – sectors in which Dutch expertise can add value to Indonesia’s efforts in achieving the SDGs. However, its development cooperation programme with Indonesia will be phased out in 2020, with increased focus on sustainable trade and investments. Under the heading “Climate and Energy” it is stated that “The Netherlands wants to promote the use of sustainable energy [and] endorses international agreements on reducing CO₂ emissions and the depletion of natural resources”. However, there is no specific reference to work in the palm oil or forest sectors.

A €53 million programme, National Initiatives for Sustainable and Climate-smart Oil Palm Smallholders (NI-SCOPS), to which the Dutch government is contributing €23 million, aims to increase the productivity of smallholder farmers in Indonesia, Malaysia, Ghana and Nigeria. IDH (see 13.6) is working together with Solidaridad and the Dutch government to respond to latest developments in palm oil sustainability, expanding IDH’s programme to be able to fully reach mainstream markets. The focus is to contribute to climate policy objectives and market access through testing and scaling sustainable and climate-smart oil palm cultivation by smallholders in the four countries and link them with markets in Europe, China and India, while strengthen IDH’s existing programmes on sustainable palm oil and landscapes.

The Netherlands DFI, FMO offers various forms of financing for agribusiness, among other sectors. It’s website includes press releases about its portfolio in Indonesia, and information on relevant papers it has produced, including “How Indonesia can meet its climate change mitigation goals” and “Profitability and sustainability in palm oil production”, a joint study with CDC and WWF. Relevant investments in Indonesia include the Gula Gula Food Forest Program in West Sumatra, involving €20,000 for scaling up of reforestation of degraded land with a view to purchasing CO₂ certificates to offset clients’ carbon footprints.

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135 https://www.dutchdevelopmentresults.nl/countries/indonesia
136 http://d-portal.org/q.html?aid=NL-KVK-41150939-Europe-P2086
137 https://www.fmo.nl/partner-with-us/agribusiness
139 https://www.fmo.nl/news-detail/143953dc-cf0f-47e7-bd1b-99987bb3a10a/fmo-study-sustainable-palm-oil-is-good-for-business
12.5 United Kingdom

12.5.1 UK policy on palm oil

The UK Government Buying Standard for Food and Catering Services required that from the end of 2015, all palm oil (including PKO and products derived from palm oil) used for cooking and as an ingredient in food must be sustainably produced. This defines sustainable production as meeting the RSPO standard. The UK government is also a signatory to the UK Statement on Sustainable Production of Palm Oil (see 13.6), which aims to encourage private sector action.

12.5.2 UK development cooperation

For the UK’s Department for International Development (DFID), the main development cooperation with Indonesia is delivered by its Climate Change Unit (UKCCU), which was established specifically to help Indonesia meet its emission reduction targets by promoting sustainable land use and better management of forests, recognising that up to 80% come from land use change and deforestation. This includes assisting the Indonesian government to improve environmental and social regulations in the palm oil sector, with the aim of building confidence in international markets and fostering stronger export trade by improving the sustainability of Indonesia’s domestic production.

Headline deliverables include:

- Supporting action on emissions: helping Indonesia meet its emission reduction targets by promoting sustainable land use and better management of forests, with the aim of emissions reductions of 10.2 million tons of CO2 by 2020.

- Promoting responsible production and consumption: helping ensure that 100% of all Indonesian exports of timber and wood products are certified as legal, enabling Indonesia to become the first country in the world to issue FLEGT licences, and extending lessons to palm oil.

- Building institutions: working with five national government ministries to improve the way climate change is integrated into national planning and budgets, and helping to tackle corruption and reduce conflict, including support to provincial governments, especially in Papua, to make more sustainable and transparent land use decisions.

A new three-year GBP 5 million project, Strengthening Palm Oil Sustainability in Indonesia, will support the government of Indonesia to strengthen sustainability in the palm oil sector, with the aim of reducing the risk of further palm-oil driven deforestation. The programme will address concerns that undermine sustainability, such as illegality and unsustainable practices, and implement measures that aim to encourage greater market acceptance for sustainably produced palm oil. The programme, implemented by the NGO, Kehati (the Indonesian Biodiversity Conservation Trust Fund), will focus largely on independent smallholder producers, with the aim of improving their prosperity.

A five-year GBP 32 million programme, Forestry, Land-use and Governance (FLAG) in Indonesia, which will conclude in 2020, aims to reduce greenhouse gas emissions and deforestation in Indonesia as part
of the UK’s efforts to avoid catastrophic climate change. Implementation has been shared by a range of NGOs and the World Bank.

DFID support also includes two forest sector specific programmes in Indonesia:

- The Multi-stakeholder Forestry Programme, Phase 4 (MFP4) is a continuation of three previous phases of cooperation that started in 2000 to support strengthening of forest governance. The current focus is sustainable timber production and community forestry. It aims to contribute directly towards the goals of DFID’s global Forest Governance, Markets, and Climate (FGMC) Programme, bringing about governance and market reforms that reduce the illegal use of forest resources and benefit poor people, while contributing to improved forest management for poverty reduction, biodiversity conservation and climate protection. A key aspect of the MFP has been support for Indonesia’s implementation of its FLEGT VPA with the EU, as well as growth in community-based forest businesses.

- Partnerships for Forests (P4F) is a global programme to support partnerships that deliver on commitments for deforestation-free commodities, to reduce the pressure on forests and improve livelihoods. It provides grant finance and technical assistance for alternatives to business-as-usual in the land-use sector by supporting the private sector in partnerships with the public sector and communities that depend on forests. In Indonesia, P4F is supporting the Ecosystem Restoration Concession (ERC) community to explore and develop a range of revenue sources and become self-sustaining commercial entities through development of value chains for wild forest products and ecosystem services.

Globally, P4F is supporting stakeholders, including major palm oil producing companies and NGOs, to work on integrating alternative methodologies for assessing high carbon stock (HCS) forest, and bring HCS, high conservation value (HCV) and free prior informed consent (FPIC) together into a single toolkit. This aims to streamline these elements of sustainably and responsibly produced palm oil and enable palm oil companies to meet their zero-deforestation commitments. Next steps include adaptation of the toolkit for smallholder farmers and how best to protect areas identified as high priority for conservation.

P4F also supports the Tropical Forest Alliance 2020 Africa Palm Oil Initiative and strengthening the Amsterdam Declarations’ Secretariat function, which aims to enable signatory countries to meet their commitments on stopping deforestation and producing sustainable palm oil (see Chapter 12.1). This includes the development of a monitoring framework to facilitate countries to report on progress.

CDC is the UK’s DFI. Although its portfolio includes investment in the palm oil sector, including United Palm Oil Industry Public Co Ltd in Thailand through the Actis Assets Fund 1, and oil palm plantations in Africa, it has no apparent direct exposure to palm oil in Indonesia.

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144 https://partnershipsforforests.com/
13. Private sector initiatives

13.1 Voluntary certification schemes

13.1.1 Round Table on Sustainable Palm Oil

The Round Table on Sustainable Palm Oil (RSPO) is a not-for profit organisation that includes stakeholders from the seven sectors of the palm oil industry: palm oil producers, processors or traders, consumer goods manufacturers, retailers, banks/investors, and environmental and social non-governmental organisations, to develop and implement global standards for sustainable palm oil. To produce certified sustainable palm oil (CSPO), companies must comply with RSPO’s environmental and social criteria that aim to reducing negative impacts of palm oil cultivation on the environment and communities.

Revised RSPO criteria\(^{145}\) were adopted at its General Assembly in November 2018. These include:

- prohibiting deforestation on area required to maintain or enhance HCV and identification, and maintenance and enhancement of HCS and HCV within plantations
- no planting on peat regardless of depth
- no use of fire for land preparation
- stronger protection of labour rights, including compliance with all legal requirements, payment of living wages and for all working family members, prohibition of recruitment fees, and better representation of women
- mechanisms for resolution of grievances, including access to independent legal and technical advice, and training and awareness raising on human rights to the workforce and relevant stakeholders
- protection for whistle-blowers
- legality of purchase of third-party fresh fruit bunches (FFB)
- controls of pesticide use
- shared responsibility amongst members concerning transparency, ethical code, legality, GHG emissions, energy use, workers’ rights and conditions, and respect for human rights.

Compliance with the revised standard should be implemented by certified companies by November 2019.

Adoption of this strengthened standard essentially makes “RSPO NEXT” – a voluntary initiative for RSPO member companies that exceeded previous RSPO requirements – redundant. RSPO NEXT categories include: No Deforestation, No Fire, No Planting on Peat, Reduction of GHGs, Respect for Human Rights and Transparency. RSPO’s November 2018 Impact Report\(^{146}\) stated that only two companies had achieved RSPO NEXT certification.

\(^{145}\) RSPO P&C 2018 – A Renewed Commitment (https://rspo.org/publications/download/299981d18b38c42)

A further new RSPO smallholder standard proposes a simplified process including:

- easier eligibility criteria for entry into the RSPO system
- phased approach to compliance
- principles and criteria tailored to smallholder context
- simplified assessment and verification
- easier and quicker access to benefits – generating smallholder credits
- group certification.

This is expected to be ready for adoption in November 2019.

The 2012 “RSPO–RED Requirements for compliance with the EU Renewable Energy Directive requirements”,147 (RSPO–RED scheme) were designed as voluntary add-on to the previous RSPO standard. They allowed palm oil producers and processors to comply with requirements in the EU Directive 2009/28/EC on the promotion of the use of energy from renewable sources and were intended to be used in conjunction with the RSPO Principles & Criteria, the RSPO Certification System requirements, the RSPO Supply Chain Certification System requirements and the RSPO Supply Chain Certification Standard. Since the scheme pre-dates Directives Directive (EU) 2015/1513 and (EU) 2018/2001, the standard does not refer to ILUC, or to the requirements of related voluntary schemes for certifying the production of sustainable biofuels. Only one Malaysian producer (Sabahmas Palm Oil Mill) and a Finnish supply-chain certified actor (Neste Oy) had been certified under the scheme before RSPO RED’s EU recognition expired in 2017.

“RSPO PalmTrace”148 is RSPO’s traceability system for certified oil palm products. Certified members of RSPO can register their physical sales and processing activities of palm oil, palm kernel and its fractions under different supply-chain models: “Identity Preserved”, “Segregated” and “Mass Balance”. RSPO PalmTrace also offers a marketplace and the possibility to register off-market deals (Book and Claim) for RSPO Credits149 – proof that 1 tonne of certified palm oil was produced by an RSPO-certified company or independent producer, and has entered the global palm oil supply chain. RSPO Credits purchased by a buyer on RSPO PalmTrace can use the RSPO Credit trademark on their packaging. This scheme therefore allows a credit to be applied to non-certified and non-traceable palm oil.

Despite RSPO being the most widely recognised palm oil certification scheme, it has been subject to some criticism. Research in 2018 by the University of Queensland, the ARC Centre of Excellence for Environmental Decisions (CEED) and Borneo Futures150 assessed how effective RSPO had been in achieving its sustainability goals by comparing certified and non-certified concessions. The study created a map and dataset of RSPO-certified sites in Kalimantan which were used to assess the degree to which these plantations delivered on six of the eight central pillars of the RSPO’s principles and criteria: conservation of biodiversity, responsible development of new plantings, responsible

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147 https://rspo.org/certification/rspo-red
148 https://www.rspo.org/palmtrace
149 RSPO Credit has replaced the “GreenPalm” scheme, a certificate trading programme that allowed manufacturers and retailers to purchase certificates from an RSPO certified palm oil grower to offset each tonne of palm oil, palm kernel oil they used. RSPO-certified palm oil growers could convert their certified tonnage into certificates, with each tonne converting to one GreenPalm certificate. There was no guarantee that an actual end product contained certified sustainable palm oil.
consideration of communities, consideration of social impacts, economic viability, and commitment to best practice. It found no significant difference between certified and non-certified plantations for any of the sustainability metrics investigated; the only areas where certification had made a positive impact were in higher yields and share prices of certified companies.

The Changing Markets Foundation (2018)\textsuperscript{151} analysed the context in which voluntary initiatives including RSPO emerge, what their role is, and how they address some of the challenges identified. How each of the key schemes work was reviewed, including evaluation of their achievements and their failures, with the main focus being on environmental issues, as well as reports on human rights violations. The report found that none of the palm oil certification schemes had been effective at slowing down deforestation, peatland draining or the loss of biodiversity. RSPO (the pre-2018 standard) allowed the conversion of secondary forests and the draining of peatlands; it had not prevented human rights violations, and it did not require GHG emissions reductions. Different standards within the scheme had different levels of ambition (tailored to market destination) and different traceability requirements, ranging from full segregation of certified products to just selling green certificates via trading platforms.

These issues may be resolved when the new 2018 standard is in full operation; in this regard, much will depend on the quality of implementation and whether perceived conflict of interest (common to most certification schemes) where the auditee pays the auditor directly can be satisfactorily addressed.

### 13.1.2 International Standard for Carbon Certification

The International Standard for Carbon Certification (ISCC) certifies the biomass and bioenergy industries, oriented towards the reduction of greenhouse gas emissions, sustainable land use, protection of the natural biosphere and social sustainability. ISCC distinguishes between two different chain-of-custody models (Mass Balance and Segregation).

ISCC operates different certification systems for different markets. “ISCC EU” aims to demonstrate compliance with the legal sustainability requirements specified in the EU’s Renewable Energy Directive (RED) and Fuel Quality Directive (FQD), whilst “ISCC PLUS” is a certification system for all markets. The systems can be used to certify all types of biomass, including agricultural or forestry raw materials and waste and residues. It is applicable to entire supply chains and for different sectors and markets, including bioenergy, food, feed and bio-based products.

In August 2016, the European Commission adopted a decision to re-recognise ISCC EU as a certifier concerning the Biofuels element of RED.

ISCC’s sustainability principles include:

- Ecological sustainability
  - protection of land with high biodiversity value or high carbon stock
  - deforestation free supply chains
  - environmentally responsible production to protect soil, water and air

\textsuperscript{151} The false promise of certification (http://changingmarkets.org/wp-content/uploads/2018/06/THE_FALSE_PROMISE_OF_CERTIFICATION_FINAL_WEB.pdf)
– Social sustainability
  • Safe working conditions
  • Compliance with human, labour and land rights
– Compliance with laws and international treaties
– Monitoring of greenhouse gas (GHG) emissions
  • methods to calculate GHG emissions
  • monitoring of GHG reduction
  • compulsory for EU biofuels market
– Good management practices.

ISCC’s scheme was included in the critical 2018 report by Changing Markets Foundation, cited above.

13.1.3 Rainforest Alliance – Sustainable Agriculture Network (SAN)

The Rainforest Alliance’s Sustainable Agriculture Standard is used to certify farms and producer groups involved in crop and cattle production. The organisation’s partner, the Sustainable Agriculture Network (SAN) owns the 2017 SAN Standard and has granted the Rainforest Alliance an exclusive and perpetual licence. The standard comprises a set of environmental, social and economic criteria that promote sustainability on farms. It includes the following principles:

– Effective Planning and Management System: farms must implement an integrated farm-planning and management system, establishing procedures and systems for ensuring continuous improvement on the path towards sustainable agriculture.

– Biodiversity Conservation: farms must protect their natural ecosystems and not contribute to deforestation. They must also help to conserve the broader landscape of which they are a part by maintaining wildlife corridors and aquatic ecosystems, and by avoiding negative impacts to nearby protected areas.

– Natural Resource Conservation: farms must work to minimise soil erosion and compaction, improve soil fertility, treat wastewater, conserve water and energy, manage solid waste, and reduce the use of pesticides by applying integrated pest management techniques.

– Improved Livelihoods and Human Well-Being: farms do not use forced labour or engage in labour discrimination, and they protect the health and well-being of all their workers. Minors below the age of 15 years cannot be hired, and workers are paid at least the legal minimum wage and overtime rates, and they have access to safe drinking water, healthcare, and education. Community rights, including the rights of indigenous peoples, are fully respected.

13.1.4 Palm Oil Innovation Group (POIG)

The Palm Oil Innovation Group (POIG)\[152\] is a multi-stakeholder initiative that aims to achieve the adoption of responsible palm oil production practices by key players in the supply chain through developing and sharing a credible and verifiable benchmark that builds on the pre-2018 Roundtable on Sustainable Palm Oil (RSPO) standard. Its members include some major corporations and

http://poig.org/
In March 2016, the POIG launched a second version of its Charter verification indicators. These integrate feedback from trial audits, as well as the responses from a public consultation that took place in 2015. The indicators are used to verify compliance with the POIG Charter, which outlines leading standards for protecting forests, peatlands, biodiversity, and carbon, whilst upholding the rights of local communities and workers, and improving livelihoods for local communities. There are 76 indicators organised in three themes, which build on but exceed those of the RSPO:

- **Environmental Responsibility**
  - high Carbon Stock and High Conservation Values (6)
  - peatland (7)
  - greenhouse gas (GHG) accountability (3)
  - pesticide use minimisation (3)
  - chemical fertiliser (3)
  - GMOs prohibition (1)
  - water accountability (4)
  - protecting and conserving wildlife (3).

- **Partnerships with Communities**
  - Free Prior and Informed Consent (FPIC) (4)
  - food security (4)
  - effective conflict resolution (6)
  - social conditions (2)
  - workers’ rights (14)
  - support to smallholders (4).

- **Corporate and Product Integrity**
  - anti-corruption and transparency (2)
  - traceability (3)
  - report on social, labour and environmental performance (2)
  - RSPO certification and company operations (4)
  - responsible supply chains (3).

Since August 2018, auditors assessing POIG producer members’ compliance with the POIG Charter and indicators must follow requirements set out in Verification Audit Requirements.

Some observers have stated that the 2018 RSPO standard essentially incorporates POIG’s requirements.
13.1.5 Comparisons of certification schemes

Several studies have compared voluntary private palm oil certification schemes, and the two mandatory state-operated schemes of Indonesia and Malaysia. The most recent ones are summarised below.\textsuperscript{153}

\textit{Institut du développement durable et des relations internationales (IDDRI)}

A 2017 study by the French research institute IDDRI\textsuperscript{154} compared RSPO, RSPO–Next, ISCC, RA–SAN, ISPO, MSPO, POIG and No Deforestation, No Peat, No Exploitation (NDPE). It found that all schemes’ levels of stringency have gradually increased over the last five to ten years, following a positive “race to the top”. Their actual impact was found to be well below what they aim to achieve, and improvement would require developing independent audit systems, in which the direct client-supplier relationship between the auditee and the auditor is severed; strengthening dispute settlement procedures; ensuring the recognition of the protected status of forests, and more specifically of HCV and HCS forests. Other recommendations included better documentation of the negotiation processes between actors of the value chain to reinforce the effectiveness of corporate commitments, and strengthening international cooperation to transform agricultural and rural development policies.

The study found that: (i) with low price differentials between certified and uncertified product, there was a very low economic incentive for operators to comply and none in countries with low demand for certified products; (ii) that certification schemes do not really induce significant changes in actual practices on the ground, with operational practices representing less than a quarter of the RSPO’s (pre-2018) criteria and about half of ISCC’s criteria; and (iii) there are risks of conflicts of interest between auditees and auditors and the management of potential disputes is often slow and partial.

Specific comparisons of the schemes indicated that POIG had the highest level across the environmental and social criteria assessed but RSPO Next and RA–SAN compare favourably. This implies that, if the 2018 RSPO standard is now considered equivalent to RSPO Next, then it rates well in terms of the standard’s coverage.

\textit{IUCN Netherlands}

The most recent comparison is contained in a 2019 report by IUCN Netherlands.\textsuperscript{155} This covers only the standards’ measures to stop biodiversity loss and restore habitat for biodiversity conservation and their levels of assurance. It concludes that RSPO is the best overall, attaining almost 70% of the maximum score for biodiversity protection and slightly over 85% for level of assurance. ISPO could not be fully assessed for level of assurance criteria due to lack of information from primary sources, but the report concluded that the mandatory national standards, ISPO and MSPO, lagged behind in both benchmarks, with only 16% and 18% achieved respectively of the maximum score for biodiversity protection. These standards’ criteria on both biodiversity protection and level of assurance were

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\textsuperscript{153} See also Efeca (www.sustainablepalmoil.org/wp-content/uploads/sites/2/2015/09/Efeca_PO-Standards-Comparison.pdf) and Forest Peoples Programme (www.forestpeoples.org/sites/default/files/documents/Palm%202009%20Certification%20Standards_lowres.spreads.pdf)
\textsuperscript{154} Aubert et al. (2017) Implementation and effectiveness of sustainability initiatives in the palm oil sector: a review (https://www.iddri.org/sites/default/files/import/publications/st1117_pma_et_al_oil_palm_southeast_asia.pdf)
\textsuperscript{155} Setting the Biodiversity Bar for Palm Oil Certification (https://www.iucn.nl/files/publications/iucn_nl_setting_the_biodiversity_bar_for_palm_oil.pdf)
found to be far from satisfactory, raising concerns about certificates not backed by robust criteria and assurance. The two ISCC standards – ISCC Plus and ISCC–EU – showed almost equal results on biodiversity and level of assurance. Under ISCC-EU certified palm oil (RED compliant) there is a greater risk that certified palm oil from other EU-recognised (and possibly weaker) standards is included. Amongst the reports key recommendations were:

- ISPO and MSPO should be strengthened on both biodiversity protection and level of assurance criteria to utilise their role to attain sector-wide sustainability at a national level.
- Buyers and investors should demand RSPO-certified palm oil and, for biofuels imported into the EU, combined ISCC EU and RSPO certification should be demanded.
- ISCC should set stronger criteria to prevent weaker standards being used in the supply chain when selling under the “EU RED compliant” claim.
- Standards should involve civil society to improve audits, carry out truth finding and have effective early warning systems of conflict.

**Friends of the Earth Europe**

A coalition of Indonesian and European NGOs, through Friends of the Earth Europe, engaged the non-profit organisation Profundo to perform an independent investigation,\(^{156}\) based on a desk study and an interview, of NGO concerns relating to RSPO and ISPO and possible consequences of incorporating palm oil into CEPA based on these certification schemes. Concerns were related to perceptions of weak certification standards and poor governance. Respondents claimed that certified companies are violating the certification schemes’ standards, and neither RSPO nor ISPO were conducting proper monitoring or imposing sanctions on members that commit violations.

The investigation related to the pre-2018 version of the RSPO standard, so that findings related to the quality of the standard may now have been addressed; however, issues related to quality assurance, such as complaints, robustness of audits, monitoring, traceability of fresh fruit bunches and sanctions for non-compliance were also found inadequate.

ISPO received far less media attention and criticism, because its coverage is limited to Indonesia and the fact that it has been more recently introduced. However, issues with the standard included workers’ rights, protection of HCV forest, lack of transparency and overall quality assurance issues such as complaints and poor enforcement of compliance.

**European Commission**

A 2017 report for the European Commission, DG Environment,\(^{157}\) examined RSPO, ISCC, ISPO and MSPO standards with regard to their coverage of deforestation, biodiversity, peat land conversion, GHG emissions, burning, air pollution, water pollution, rights and well-being, land-use rights, treatment of smallholders, forced and child labour, and labour terms and conditions. It also assessed each scheme’s audit and certification process, independence auditor accreditation, complaints

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157 Study on the environmental impact of palm oil consumption and on existing sustainability standards (https://ec.europa.eu/environment/forests/pdf/palm_oil_study_kh0218208enn_new.pdf)
procedures, transparency and product claims.

The report found that the ISCC–EU scheme generally addressed the environmental objectives of a range of EU and UN policies, principally because of its stringent definition of HCS forests. The RSPO scheme (pre-2018) was strongest in addressing policy objectives relating to human, land, and labour rights. The current ISPO standard was weakest in addressing the study’s policy objectives with limited protection for forests, while the MSPO scheme occupies an intermediate position. There was variation in the governance and transparency of the four schemes, hence their level of independence vis-à-vis relevant interest groups, with RSPO and ISCC performing better than the two national schemes, of which ISPO was the weaker of the two, failing to achieve best practice requirements in relation to accreditation, complaints and transparency.

13.2 The European Palm Oil Alliance

The European Palm Oil Alliance (EPOA) is a business initiative of 10 palm oil refiners and producers and associations. It promotes sustainably produced palm oil as a key food ingredient and advocates transformation of the sustainable palm oil market, supporting initiatives committed to sustainable palm oil across Europe. EPOA aims to have 100% of the palm oil in the food its members manufacture and use certified sustainable by 2020.

13.3 The European Sustainable Palm Oil Initiative

The European Sustainable Palm Oil (ESPO) Initiative was established in 2015 by the Netherlands Oils and Fats Industry (MVO) and the Sustainable Trade Initiative (IDH). It aims to unify supply chain actors from ten countries – Belgium, Denmark, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden and the United Kingdom – and to work with governments and other stakeholders to develop specific action plans to achieve 100% certified sustainable palm oil in Europe by 2020. It includes national alliances from the participating countries, plus the Association of Chocolate, Biscuit and Confectionery Industries of Europe (Caobisco), European Vegetable Oil and Protein meal Industry Federation (FEDIOL) and European Margarine Association (IMACE).

Its third annual report, published in January 2019, assesses progress across 10 countries at the end of 2017. It found that 99% of palm oil entering Europe is now traceable to oil mill level and 84% is covered by company sustainability policies that focus on “No Deforestation, No Peatland and No Exploitation” (NDPE). However, only 74% of palm oil imported into Europe for the food, feed and oleochemical sectors was certified sustainable (to the RSPO standard), leaving a large gap to be filled to meet the 2020 targets.

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158 https://palmoilalliance.eu/
159 Members are Bunge Loders Croklaan, Cargill, Indonesian Palm Oil Association, Fedepalma, Lipidos Santiga, Malaysian Palm Oil Council, MVO – The Netherlands Oils and Fats Industry, Olenex, Sime Darby Oils and Unigra.
161 National initiatives included: the Belgian Alliance for Sustainable Palm Oil (BASP), the Danish Food and Drink Federation Initiative for Sustainable Palm Oil, French Alliance for Sustainable Palm Oil (now Alliance for the Preservation of Forests), the Forum for Sustainable Palm Oil (FONAP), the Italian Union for Sustainable Palm Oil; Dutch Bakery and Confectionery Industry (VBZ), the Dutch Convenience Food Association (AKSV), the Dutch Food Retail Association (CBL), the Dutch Food Industry Federation (FNLI), the Dutch Potato Processors Association (VAVI), the European Margarine Association (IMACE-NL), the Netherlands Oils and Fats Industry (MVO), the Dutch Feed Industry Association (Nevedi), the Association of Dutch Producers of Edible Oils and Fats (Vernof), Norwegian Initiative for Sustainable Palm Oil (NISPO), Spanish Foundation for Sustainable Palm Oil, Swedish Food Federation, and the UK Roundtable on Sourcing Sustainable Palm Oil.
The report concluded that:

- a landscape approach is critical to achieving ESPO goals by creating Verified Sourcing Areas (VSAs) – an area-based mechanism to accelerate the production and uptake of sustainable commodities, by which companies can source large volumes of commodities in line with their sustainability commitments at a competitive scale and price; and
- better supply chain transparency is crucial for monitoring and engaging by palm oil growers and buyers that are not yet participating.

### 13.4 IDH – the Sustainable Trade Initiative

IDH convenes companies, CSOs, governments and others in public-private partnerships to design, co-fund and prototype new economically viable approaches to realise green and inclusive growth at scale in commodity sectors and sourcing areas. Its Palm Oil programme supports the production of traceable and sustainable palm oil at scale through partnerships with local and international companies and governments in Indonesia and Malaysia, and by working on the demand side in Europe, with the eventual aim of achieving 100% sustainable palm oil sourcing in Europe by 2020.

IDH’s strategy to achieve this goal includes:

- Convening public–private partnerships at European and national levels, through the European Sustainable Palm Oil (ESPO) with MVO and EPOA, to enable shared commitment on targets on sustainable sourcing, to strengthen policy frameworks and create an enabling environment which supports the mainstream uptake of sustainably produced palm oil.
- Publishing periodic/yearly market data reports on the uptake of sustainably produced palm oil to monitor the delivery on targets by governments (with a focus on ADP signatories), companies and sectors for Europe and individual countries.
- Developing strong supply chain connections between the stakeholders on the market end and producing countries via the creation of Verified Sourcing Areas (VSAs), where sustainable palm oil is produced at increasing levels.

IDH has developed a three-pronged approach, “Production, Protection & Inclusion” (PPI), for investment in sustainable landscape management. This aims to mitigate risks of depletion and deforestation that are likely to arise without effective coordination between users.

- Increased production is a first step to establishment of VSAs where agricultural production is de-linked from deforestation, thereby supporting companies’ commitments to sourcing deforestation-free products.
- Protection involves measures to conserve forests and other natural resources that include supporting local governments to enforce forest protection laws, implementing deforestation monitoring systems, capacity building projects for communities, and providing conditional loans or tax reductions to farmers in exchange for protection.
- Inclusion encompasses improving farmers’ and forest-dependent communities’ livelihoods, thereby reducing their incentives to encroach in forests.
13.5 The Palm Oil Transparency Coalition

The Palm Oil Transparency Coalition (POTC) is formed of businesses working together in a pre-competitive coalition to remove deforestation and exploitation from the palm oil production sector.\(^{162}\) It seeks to secure a palm oil supply that:

- complies with RSPO principles as a minimum
- is traceable back to plantation by importers
- preserves high carbon stock (HCS) forests and high conservation value (HCV) areas and does not expand on peatland
- respects the right of indigenous and local communities to give or withhold their free prior and informed consent (FPIC)
- protects human rights
- engages and supports smallholders.

Members include 11 major EU-based corporations in the consumer sector, mainly supermarkets. Its approach aims to promote transparency and encourage progress beyond certification by engaging and reviewing major international first importers of palm oil, to determine how they are tackling deforestation and exploitation in their palm oil supply chains.

13.6 Member State national private sector initiatives

In some EU Member States, private-sector organisations have launched their own initiatives to improve the image of palm oil by adopting standards and goals. These generally use RSPO as a basis and, to varying degrees, express ambitions for improving sustainability criteria. A selection of these is described below.

The Belgian Alliance for Sustainable Palm Oil (BASPO)\(^{163}\) includes food sector federations and nine companies, which together produce nearly 60% of all palm oil used in the Belgian food sector. Its company members achieved the goal of purchasing only RSPO-certified palm oil at the end of 2015, and its 2020 goal is to include the protection of all HCS forests and peatlands, to achieve full traceability (100% segregated) and to support smallholder farmers.

The Dutch Alliance for Sustainable Palm Oil (DASPO)\(^{164}\) members include nine sector associations as well as IDH. While acknowledging and supporting the work of certification systems such as RSPO and using these as a baseline, DASPO seeks continuous improvement of these standards and agree to having the following criteria included:

- protection of HCS areas
- protection of peat lands and the use of Best Management Practices (based on RSPO 2012) for existing peat land plantations

\(^{162}\) https://www.palmoiltransparency.org/
\(^{164}\) http://www.taskforceduurzamepalmolie.nl/uploads/media/Dutch_Alliance_Sustainable_Palm_Oil_-_commitment_english.pdf
- support for sustainable palm oil production by (independent) smallholders to prevent them from being excluded from a sustainable palm oil supply chain.

- initiatives that contribute to greater transparency and traceability in the palm oil supply chain.

**The French Alliance for Sustainable Palm Oil (L’Alliance Française pour une Huile de Palme Durable)** is an association of 12 French companies and associations whose goal is to develop and expand the use of sustainable palm oil – defined as palm oil that prevents deforestation, is environmentally friendly and respects local populations. This includes oil that:

- has known, and therefore traceable, origins

- has no impact on deforestation and respects ecosystems with high conservation value

- is sourced through cultivation practices that respect high carbon value forests

- is sourced through farming practices that fully preserve and protect all peatlands

- does not come from plantations resorting to slash and burn

- protects the rights of local workers, populations, and communities, respecting the principle of free prior and informed consent of those communities

- promotes development of independent producers farming small plots.

The Alliance’s members commit to ensuring the palm oil used in their products is 100% sustainable by 2020 and to use 100% RSPO-certified palm oil by 2015. However, their aim is to go further, including supporting the RSPO in the evolution of principles and criteria that give greater protection to high carbon stock forests, peatlands and wildlife corridors.

**The Forum for Sustainable Palm Oil (FONAP)** aims to significantly boost the proportion of certified palm oil, PKO and their derivatives and fractions on the German, Austrian and Swiss markets. Its current members include 27 small, medium-sized and multinational companies from the food, chemicals, detergents and cleaning products sectors and the cosmetics industry as well as non-governmental organisations, consultancy and certification companies, associations and the German Federal Ministry of Food and Agriculture (BMEL). They are working towards the goal of ensuring that all the palm oil and PKO available on these markets is certified as soon as possible.

One of FONAP’s main aims is to improve existing certification systems, which some members regard as unsatisfactory, particularly with regard to transparency and specific criteria for production and the sustainability of supply chains. FONAP members have voluntarily accepted additional criteria, which include:

- a ban on plantations on peatlands and other carbon-rich land

- a ban on the use of highly hazardous pesticides (Rotterdam and Stockholm Conventions, WHO class 1a and 1b pesticides and Paraquat)

- the application of strict reduction targets for greenhouse gases

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165 https://www.huiledepalmedurable.org/lalliance-francaise-pour-une-huile-de-palme-durable/?lang=en

166 https://www.forumpalmoel.org/our-members
a guarantee that, when certified palm oil mills purchase non-certified raw goods (Fresh Fruit Bunches), these are obtained exclusively from legal cultivation

more transparency in complaints procedures.

The UK Statement on Sustainable Production of Palm Oil was agreed in October 2012, by UK sector associations with a significant membership interest in the supply or use of palm oil, together with NGOs and government. This set out the overarching commitment that “The United Kingdom is working towards achieving 100% sourcing of credibly certified sustainable palm oil by the end of 2015”. Sustainable palm oil is defined as that certified according to the RSPO standard. A statement by the Minister of the Department, Food and Rural Affairs (Defra) stated that that the UK had achieved 75% certified sustainable palm oil in 2017.167

13.7 Tropical Forest Alliance 2020

The Tropical Forest Alliance 2020 (TFA 2020)168 is a global public–private partnership in which partners take voluntary actions, individually and in combination, to reduce the tropical deforestation associated with the sourcing of commodities such as palm oil, soy, beef, and paper and pulp. This aims to reduce global greenhouse gas emissions significantly, improve the livelihoods of millions of smallholder farmers, conserve natural habitats, and protect tropical landscapes. These goals are seen as key aspects of delivering sustainable and inclusive rural economic development in tropical forest countries.

TFA 2020 and its partner countries, companies and civil society organisations work together to:

- improve planning and management related to tropical forest conservation, agricultural land use and land tenure
- share best practices for tropical forest and ecosystem conservation and commodity production, including working with smallholder farmers and other producers on sustainable agricultural intensification, promoting the use of degraded lands and reforestation
- provide expertise and knowledge to assist with the development of commodity and processed-commodity markets that promote the conservation of tropical forests
- improve monitoring of tropical deforestation and forest degradation to measure progress.

TFA 2020's Southeast Asia Initiative aims to accelerate the progress on reducing deforestation and forest fire in a manner that boosts economic growth and people's well-being through four main workstreams:

- bolstering international sustainable investment in Southeast Asia's economies
- supporting smallholder farmers and independent third party suppliers
- championing a new narrative for deforestation-free growth
- supporting peat restoration efforts in Indonesia.

Regional priorities include:

- supporting jurisdictional leadership for sustainable commodity production
- engaging smallholder farmers and independent third party suppliers in deforestation-free supply chains
- partnering with the Indonesian government on peat conservation and restoration efforts.

The Initiative includes 41 partners, comprising companies, national governments (including those of the Netherlands, the UK and Indonesia), multilateral institutions, and NGOs, mainly in the area of conservation and including FPP and Fern.

13.8 The Decent Rural Living Initiative

The Decent Rural Living Initiative (DRLI),\(^{169}\) convened by international sustainability non-profit Forum for the Future, brings together palm oil companies Cargill, Musim Mas, Sime Darby Plantation, Wilmar and Golden Agri-Resources, whose concessions cover thousands of hectares of land in Indonesia, in pre-competitive collaboration to address systemic labour rights challenges within the sector. Under DRLI, the companies plan to address challenges facing casual workers, by (among other things) developing contracts that minimise the uncertainty of casual and flexible work.

Four potential areas for collaboration have been identified:

- developing a rights awareness platform, with a focus on occupational health and safety
- increasing telecommunications connectivity in rural locations
- spearheading a social dialogue process with unions and workers across South Sumatra in support of a Collective Bargaining Agreement
- improving family well-being on concession lands.

13.9 Palm oil company rating initiatives

13.9.1 Sustainability Policy Transparency Toolkit

The Sustainability Policy Transparency Toolkit (SPOTT),\(^{170}\) developed by the Zoological Society of London (ZSL), is a free online platform that supports sustainable commodity production and trade. By tracking transparency, SPOTT aims to incentivise the implementation of corporate best practice. Its assessments follow two comprehensive frameworks of best practice indicators for palm oil producers and traders and timber and pulp producers. Each framework consists of detailed research protocols for more than 100 indicators divided across ten categories. The SPOTT indicators are intended to be closely aligned with related initiatives including the SDGs. Assessments are based on the public disclosure of their policies, operations and commitments related to environmental, social and governance (ESG) issues.

\(^{169}\) https://www.forumforthefuture.org/decent-rural-living-initiative
\(^{170}\) https://www.spott.org/about/
SPOTT’s palm oil indicator framework (revised in 2017) includes 125 ESG indicators across ten categories. The most recent assessment (November 2018) rated 70 companies, including 16 headquartered in Indonesia and 14 others – mainly registered in Singapore – with their major activities in Indonesia. Twenty-one of these are RSPO members.

The latest results show that ten companies with operations in Indonesia were assigned scores of 66% or better, 11 were rated in the range 33–66%, and nine below 33%. All the best-scoring companies were RSPO members, as were eight of those in the mid-rank, and two in the low-rank range.

13.9.2 Carbon Disclosure Project

The Carbon Disclosure Project (CDP) focuses on action by investors, companies and cities on their action to build a sustainable economy by measuring and understanding their environmental impact. Its system enables organisations to measure and manage their environmental impacts through a comprehensive collection of self-reported environmental data. The project’s network of investors and purchasers represents over US$100 trillion of turnover. CDP’s work with forests includes over 525 signatory investors, with US$96 trillion in assets, who wish to understand how companies are addressing their exposure to deforestation risks.

CDP’s 2017 Forests Report rates companies with scores ranging from “A” to “F” according to the actions they take to tackle climate change linked to forests through disclosure, awareness, management and leadership. Results on palm oil are summarised in Table 6. Companies scoring “A” were Firmenich SA, Switzerland; Fuji Oil Holdings Inc., Japan; Beiersdorf AG, Germany; and L’Oréal, France. Only four companies with plantation activities in Indonesia scored C or better, and 12 of the 20 worst-performing companies were based in Indonesia.

Table 6. Summary of CDP scoring of companies declaring palm oil in their supply chains 2018

<table>
<thead>
<tr>
<th>Rating</th>
<th>Total no of companies</th>
<th>EU-based companies</th>
<th>Companies with activities in Indonesia</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>4</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>A-</td>
<td>14</td>
<td>8</td>
<td>Golden Agri Resources</td>
</tr>
<tr>
<td>B</td>
<td>15</td>
<td>2</td>
<td>PT Musim Mas</td>
</tr>
<tr>
<td>B-</td>
<td>9</td>
<td>3</td>
<td>Asian Agri, Wilmar</td>
</tr>
<tr>
<td>C</td>
<td>24</td>
<td>6</td>
<td>Bumitama Agri Ltd</td>
</tr>
<tr>
<td>D</td>
<td>10</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>D-</td>
<td>1</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>F</td>
<td>823</td>
<td>212</td>
<td>&gt;20; 12 based in Indonesia</td>
</tr>
<tr>
<td>Not available</td>
<td>12</td>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>

171 https://www.cdp.net/
172 https://www.cdp.net/en/companies/companies-scores
13.9.3 **Forest 500**

Forest 500, a programme of the NGO Global Canopy, identifies and ranks the most influential companies and financial institutions in forest-risk commodity supply chains. It identifies and ranks 500 major companies annually with the aim of holding them accountable for their actions. In 2018, 350 companies, including 196 in the palm oil sector, were assessed. The Indonesian companies, Sinar Mas (the parent of GAR) and Musim Mas, were included in the top ten, both with scores of 87 out of a possible 100.

13.9.4 **Greenpeace Cutting Deforestation out of the Palm Oil Supply Chain Scorecard**

In December 2015, Greenpeace surveyed 14 global consumer goods manufacturers with “no deforestation” policies in place in order to understand the practical actions they were taking to implement their policies, and the impact those actions are having on the ground in Indonesia. Three criteria were assessed to understand progress towards deforestation-free supply chains:

- **Responsible sourcing**: the practical steps each company is taking towards ensuring that the palm oil it buys is not linked to deforestation
- **Transparency**: how open each company is about its palm oil suppliers, including how it is tackling suppliers that breach its “no deforestation” policy
- **Industry reform**: how each company is supporting wider industry reform.

Scores for each criterion were assessed qualitatively on companies’ performance across each criterion, including an assessment of publicly available policies and reports and summarised as “strong”, “decent” or “failing”. The survey found that none of the companies were able to say that there was no deforestation in their supply chain, and most were unable to say how much of their palm oil comes from suppliers that comply with their own sourcing standards. Four companies – Ferrero, Danone, Ikea and Unilever – are EU-based, with Ferrero scoring the best of all companies assessed.

13.9.5 **WWF Palm Oil Buyers’ and Supply Chain Scorecards**

In 2016 WWF assessed 137 retailers, manufacturers and food service companies, which combined, use about 10% of the world’s palm oil, on the commitments they have made and the actions taken to support the RSPO and to source certified sustainable palm oil. Criteria were scored out of a possible total of 10 points and included:

- RSPO membership and annual progress reporting (2 points)
- Time-bound commitments to buying certified sustainable palm oil (CSPO) (2 points)
- Whether companies know and disclose how much palm oil they use (1 point)
- How much CSPO companies actually use (4 points)

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173 https://forest500.org/rankings
175 https://palmoilscorecard.panda.org/
Results for EU-based companies are summarised below:

<table>
<thead>
<tr>
<th>Category</th>
<th>“Leading the way”</th>
<th>“Well on the path”</th>
<th>“Started the journey”</th>
<th>“Not yet in the starting blocks”</th>
<th>“Non-respondent”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retailers</td>
<td>-</td>
<td>8</td>
<td>11</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
<td>Food service</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Manufacturers</td>
<td>4</td>
<td>7</td>
<td>11</td>
<td>8</td>
<td>6</td>
</tr>
</tbody>
</table>

The leading EU-based manufacturers were Danone (France), Ferrero (Italy), Lotus (Belgium) and Arla (Denmark).

13.9.6 Trase

Transparent supply chains for sustainable economies (Trase)\textsuperscript{176} seeks to transform understanding of agricultural commodity supply chains by increasing transparency, revealing the links to environmental and social risks in tropical forest regions, and creating opportunities to improve the sustainability of how these commodities are produced, traded and consumed. It uses publicly available data to map the links between consumer countries via trading companies to the places of production, and shows how commodity exports are linked to agricultural conditions – including specific environmental and social risks. This allows companies, governments and others to understand the risks and identify opportunities for more sustainable production.

The website currently tracks CPO from Indonesia for the years 2013 and 2014 for ten major exporters via importers in different importing countries. For example, it shows that the major sources of supply for the Netherlands, which was then the largest importer, were Buana Wiralestari in Indonesia via Dumai Port in Riau Province, Sumatra, and Golden Agri International Pte Ltd in Singapore. The trade flows can be linked to information on the performance of the companies provided by other rating systems.

13.9.7 Supply change

Supply change\textsuperscript{177} is an initiative of Forest Trends that tracks the commitment of companies in commodities sectors and progress towards achieving them. These include 285 companies that produce and trade palm oil and products containing palm oil.

The structure of the initiative’s web site allows examination of each company’s performance (e.g. commitment and progress), and a series of relevant assessments, for palm oil including Forest 500, Greenpeace Cutting Deforestation Palm Score, WWF Palm Oil Buyers Scorecard and WWF Supply Chain Score. There is no overall ranking or league table with combined scores.

Possible commitments examined include zero deforestation, certification, peatland protection, traceability, HCS management/protection, FPIC, transparency, HCV area protection, human rights protection, use reduction, sustainability/responsibility, legality, biodiversity/wildlife protection, support for smallholders, reduced GHG emissions from operations, reduced pesticides or toxins, and respect for animal welfare.

\textsuperscript{176} https://trase.earth/about
\textsuperscript{177} http://supply-change.org/
14. Options for consideration to improve coherence

14.1 Context

Increased attention on the imminent danger of climate change has thrown into sharp focus the role that forests have in mitigating it, and the urgency of stopping and reversing deforestation. The impacts of palm oil production in Indonesia, including conversion of forest and peatland and the use of fires to clear land, together with accusations of land grabbing and poor labour practices, combined with the EU’s Renewable Energy Directive’s perceived “ban” on the use of palm oil for biofuel and its ongoing CEPA negotiations with Indonesia, potentially combine to form a combustible political mix, especially in relation to EU–Indonesia trade. However, these circumstances also provide opportunities for stakeholders to work together to develop innovative solutions.

The newly released EU Action Plan to Protect and Restore the World’s Forests has the potential to catalyse action by the EU Commission and Member States, as well as civil society and private sector stakeholders, together with Indonesian counterparts, to address seemingly intractable problems linked to palm oil production and trade. The Action Plan’s large number of possible actions, however, risks undermining its effectiveness.

To be effective in the specific case of Indonesian palm oil it is therefore critical to carefully consider all options set out in the Action Plan, to analyse which ones would have the greatest impact, and what conditions would be necessary to make those actions effective.

From the outset, all EU actions must respect Indonesia’s sovereignty and support Indonesia in implementing its own laws and regulations, including all international human rights and environmental conventions it has ratified or is party to.

Second, any EU action should not lead to increased forest conversion, as that would violate both the EU’s own commitments to halt deforestation, and Indonesia’s commitment to reduce its GHG emissions as expressed in its COP-21 NDCs and its forest conversion and oil palm plantation expansion moratoria.

Third, any EU action must strengthen and support Indonesia’s commitment to respect human rights, specifically indigenous customary rights to land as confirmed by its 2012 Constitutional Court decision and labour rights commitments.

Lastly, EU action must be based on an inclusive, transparent and deliberative process in both the EU and Indonesia, to ensure that actions are widely supported and understood by all stakeholders including private sector, NGOs and representatives of communities and smallholders. EU–Indonesia joint action on timber could be used as an example of such a process.
Priority 1 – “Reduce the EU consumption footprint on land and encourage the consumption of production from deforestation-free supply chains in the EU” – is seen as the key priority. It has a clear focus and aim and also contains the most action points. Therefore EU action concerning palm oil and Indonesia should be framed to reinforce this aim. This would mean ensuring that EU consumption of palm oil no longer contributes to deforestation or increased emissions of GHGs.

Priority 2 – “Work in partnership with producing countries to reduce pressures on forests and to ‘deforest-proof’ EU development cooperation” – has to be seen in conjunction with Priority 1. This priority should describe the joint EU–Indonesia working relationship (and the conditions to make this work) and indicate what the EU and Member States can do to support Indonesia in meeting its no-deforestation commitments and respect community tenure rights, including looking critically at their own development cooperation policies and practices.

Priority 3 – “Strengthen international cooperation to halt deforestation and forest degradation and encourage forest restoration” – should focus on how ongoing EU–Indonesia trade negotiations can be used to develop an agreement that incentivises Indonesia to meet its no-deforestation commitment and respect community and labour rights. It should clarify how actions under this priority will be coherent with and support actions developed under Priority 2. And it should describe how the EU and Indonesia can bring other major consuming countries such as China and India to the table to support by looking at their own trade impacts and financing activities.

Priorities 4 and 5 – “Finance for sustainable land-use practices” and “Information on forests and commodity supply chains” – are not objectives in their own right but should be seen as “supportive” actions to provide the finance and information needed to achieve Priority 1 and support Priorities 2 and 3.

To ensure overall coherence of actions across all five priorities, a time-bound roadmap or action plan with clear results and indicators that can be monitored should be developed. The multi-stakeholder group described under Priority 1 could play a role in to developing such a roadmap.

Based on this background, the key steps the EU should take to improve coherence of actions to avoid further deforestation and human rights abuses related to Indonesian-EU palm oil trade and consumption could include the actions described in the following sections. Detailed discussion actions identified for each priority is provided in Annex 1.

14.2 Priority 1

Reduce the EU consumption footprint on land and encourage the consumption of production from deforestation-free supply chains in the EU

14.2.1 Develop a due diligence regulation that covers palm oil

Following the examples of regulation of illegal timber, fish and conflict minerals, the EU should develop a due diligence legislation that aim at avoiding placing palm oil (and other vegetable oil) products on the EU market produced from plantations established by converting HCS or HCV forest, on peat, or without respecting human rights standards, including customary rights.
Such legislation would not ban trade in legally produced palm oil but it would require importers to be able to demonstrate that they could trace their supplies back to source, and that they had eliminated unacceptable performers, with respect to both environmental and human rights standards, from their supply chains. The adopted OECD Guidelines for Agricultural Supply Chains could be a good basis for such a due diligence regulation. Concerning deforestation, such legislation would possibly require a cut-off date to cover only plantations established after a defined date, and may also have to cover all like products to comply with WTO rules.

To further develop such a regulation, the creation of a deliberative process through a multi-stakeholder platform with equal representation of government private sector, local NGOs and communities (including Indonesian smallholders) both in Indonesia and the EU is advisable.

14.2.2 Clarify acceptable standards

Clarification of which standards and processes concerning certification of palm oil are acceptable is important. This is necessary to get buy in from civil society organisations and private sector. Until the 2018 RSPO standard is fully implemented, certified products from plantations that involve conversion of forests will still be traded.

The advantage of ISPO is that it is a home-grown Indonesian system that is not perceived as being externally imposed. Currently, however, it is not seen as credible by the private sector, or either local or EU NGOs. But if the Indonesian Government were willing to open up ISPO to create an inclusive and participative deliberative process to revise and further develop the standard and system so that it goes beyond legal requirements and has stronger accountability mechanisms, this may be a way forward. Ideally the process of developing the ISPO system and its principles and criteria should address modified provisions of CEPA’s TSD chapter (see 9.3), EU RED II requirements and a potential EU palm oil or commodities due diligence regulation.

Comparisons of certification schemes have found that both the previous RSPO standard and ISCC required stronger recognition of tenure rights of local communities. This has been addressed in the 2018 RSPO standard. The most logical way forward would therefore be for the EU to only accept only product which has been certified to standards equivalent to or exceeding the new RSPO standard as sufficient evidence of due diligence. This may also encourage ISCC (and others) to improve principles in their standards concerning rights.

Lastly, the standard that the EU is currently developing for certifying RED II conformity related to ILUC should include human rights as well as forest and ecosystem criteria, and also be developed in a multi-stakeholder deliberative process.

14.3 Priority 2

Work in partnership with Indonesia to reduce pressures on forests and to “deforest-proof” EU development cooperation with Indonesia

Within the parameters of no deforestation and strengthening rights, Indonesia should set the agenda for the financial and technical support it needs to meet its commitments. It seems clear though that
two areas are of key importance for EU support – related to strengthening human rights and reducing deforestation – and that better overall coordination of EU and Member States' programmes is needed.

14.3.1 Implementation of the 2012 Constitutional Court decision

As many human rights violations are linked to tenure, support should focus on progress with the implementation of the 2012 Constitutional Court decision in returning tenure to indigenous communities. This progress is hampered by inadequate maps and unwillingness to share details of existing agricultural concessions – despite high-level promises to expedite the process. There is also a need to recognise customary rights to non-forest land (APL) as well as land within the forest estate (*kawasan hutan*).

EU and Member State development cooperation efforts with Indonesia, including contributing support for implementing Indonesia’s “OneMap” Initiative, is important. Providing funds through the Tenure Facility to support indigenous communities in land demarcation could be another important avenue to support progress.

14.3.2 Reduce exceptions to the forest conversion moratorium

EU and Member States’ trade and development cooperation should encourage Indonesia to tighten the exceptions to its moratorium on clearing primary forests, especially those that currently allow expansion of palm oil plantations in Papua. Following the review planned under the current oil palm expansion moratorium, it should also encourage cancellation of existing illegal and non-performing permits. This would apply to the significant areas of existing oil palm plantation in Indonesia have been established illegally, due to allocating land in non-permitted areas, illegal permitting, use of fire for land clearing and illegal labour practices, as well as around 6 million ha that remain undeveloped in West Papua and areas in other parts of Indonesia.

The three-year window under the current oil palm expansion moratorium to evaluate plantations and to develop approaches to increasing productivity is very limited. Assistance with development and implementation of an evaluation programme should be considered, as well as encouraging extension of the moratorium if the evaluation and proposals for solutions to issues identified cannot be completed satisfactorily within the allotted time.

14.3.3 Improve coordination of EU and Member State development cooperation

EU development aid is currently not well coordinated with a tendency to support a series of projects without a coherent plan of action. The EU Delegation should play a strong role in convening regular meetings with Member State development partners to agree a framework for cooperation and

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178 https://www.wri.org/tags/understanding-indonesias-onemap-initiative
180 https://thetenurefacility.org/country/indonesia/
encourage better coordination between their development cooperation programmes so that they are working towards a series of common goals, which prioritise halting deforestation and strengthening community tenure rights.

14.4 Priority 3:

Strengthen international cooperation to halt deforestation and forest degradation and encourage forest restoration

14.4.1 Strengthen parties’ obligations under CEPA

To be coherent and in line with Indonesia’s implementation of its no deforestation and human rights commitments and the Paris Climate Change Agreement, and to meet its own no deforestation commitments, the EU and Indonesia should use the ongoing CEPA negotiations to strengthen their obligations – specifically to include commitments to develop supply- and demand-side measures that encourage production and consumption of palm oil products from deforestation-free supply chains and that respect human rights, including community tenure rights. The CEPA text should also include language aimed at strengthening the implementation and enforcement of existing environmental and social provisions, including those which flow from MEAs that the parties have ratified. There should also be more specific provisions for companies to adhere to existing standards of corporate social responsibility. Such measures should be deliberated through multi-stakeholder processes.

The FERN paper “Forests and forest people in EU Free Trade Agreements” gives detailed suggestions, and specific recommendations for the CEPA text have been provided by Client Earth. Further suggested topics are provided in Annex 1.

14.4.2 Work with other consuming countries

Although the EU is an important destination for Indonesia’s palm oil products, it currently accounts for only around 14% by value of exports and its share is declining. It is therefore important to encourage other major importers to take action. The two key destinations are India and China. The EU’s Bilateral Cooperation Mechanism for Forest Law Enforcement and Governance (BCM–FLEG) has provided a platform for the EU and China to discuss approaches to tackling the trade in illegal timber products and may provide a model for a similar mechanism in respect of palm oil.

UK–China cooperation on International Forest Investment and Trade (InFIT) aimed to reduce the negative impacts of China’s international trade and overseas investment in timber and other commodities that impact on forests. This initially included palm oil and rubber components in addition to timber products, with the Chinese Chamber of Commerce for Import & Export of Foodstuffs, Native Produce and Animal By-Products (CFNA) having a role of cooperation partner for the palm oil component. This could be another model for cooperation.

Cooperation with India has proved more elusive, partly because unlike China, India has less exposure to international export markets and associated standards. One possible avenue where the EU and

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184 http://www.euflegt.efi.int/about-china
185 https://www.ltsi.co.uk/project/china-uk-collaboration-on-international-forest-investment-trade-infinit
Member States could consider support is the Sustainable Palm Oil Coalition for India,\(^\text{186}\) launched in 2018 by WWF-India, RSPO and the Rainforest Alliance.

Other potential approaches are to address palm oil trade and consumption in political level dialogues with China and India, for example, building on Leaders’ Statement on Climate Change and Clean Energy in 20th EU–China Summit,\(^\text{187}\) and the India–EU Partnerships for Sustainability, Clean Energy and Climate Action.\(^\text{188}\)

### 14.5 Priorities 4 and 5

These priorities covering finance and information can be seen as tools for implementation of the actions below and should be treated as such. Specific actions should include:

- Support for Indonesia’s efforts to meet its expanded NDC targets, including strengthening of associated governance mechanisms
- Monitoring application of the Action Plan for Sustainable Finance, especially its provisions related to agricultural investments
- Under defined monitoring action plan, make use of remotely sensed information in combination with other information on the extent and locations of oil palm plantations, in relation both to forest and peat land and IPs’ claims
- Support for research in improving small-holder productivity

Detailed comments related to these are provided in Annex 1.

\(^\text{186}\) https://www.wwfindia.org/?17861/Sustainable-Palm-Oil-Coalition-for-India


Annex 1: Detailed recommendations for addressing EU trade and consumption of Indonesian palm oil products

This Annex considers all aspects identified under each of the five priorities set out the 2019 EU Action Plan to Protect and Restore the World’s Forests and identifies their relevance and priority for addressing production of palm oil in Indonesia and EU trade in and consumption of Indonesian palm oil.

Priority 1: Reduce EU consumption footprint on land and encourage consumption of products from deforestation-free supply chains in the EU.

Within Priority 1, Action c is the most important. Activities a and b, if well executed, could complement and support Action c.

<table>
<thead>
<tr>
<th>Proposed EU Action in Action Plan</th>
<th>Recommended action concerning a coherent approach re EU–Indonesia and palm oil</th>
<th>Comments, priority and obstacles</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Establish a multi-stakeholder and MS platform for dialogue.</td>
<td>The ADP is a European multi-national platform in which there is a strong focus on palm oil, backed by the governments of most major palm oil consuming countries. More Member States – especially those with significant imports – should be encouraged to join the ADP. Its members should commit to setting and achieving specific targets in relation to 100% CSPO imports using at least the current criteria (RSPO or ISCC). In order to ensure a level playing field for the best operators, EU market regulation (see below) should be on the agenda. Without a clear action plan, ADP risks remaining a talking shop. TFA2020, which is a multi-stakeholder platform, including the Governments of the Netherlands and the UK and Norway as well as the government of Indonesia and the main palm oil producers and NGOs, could be another useful platform. To date it risks being a talking shop but as its director recently called for Government regulatory action to create a level playing field (link) this may change, if its members put their weight behind it. Neither of these platforms deals only with palm oil and Indonesia. Creating a multi-stakeholder platform, either linked with the ADP or TFA2020, or separately, to advise the EU in relation to the ongoing CEPA negotiations – or more generally the Action Plan – may be a constructive and fruitful way forward. Many NGOs in the EU and some in Indonesia strongly oppose inclusion of palm oil in CEPA because they believe that this will lead to increased palm oil imports with negative social and human rights impacts. However, others believe that including palm oil in the CEPA text will create opportunity to discuss the issue more effectively. Creating a multi-stakeholder platform to develop a roadmap in an inclusive, transparent and participatory way in Indonesia and the EU that shows how CEPA could support Indonesia economically while halting palm oil-related deforestation could be an important pre-condition for concluding a successful trade agreement and also a potentially powerful tool to address deforestation and community tenure rights. The EU-ASEAN Working Group on Palm Oil may also provide opportunities to involve a broader range of stakeholders. However, since its establishment, little information has been provided on its role and functioning.</td>
<td>Priority action but linked to Actions 1c and 3a. Not a self-standing action. Creating platforms for dialogue is important but to prevent any platform from becoming a “talk shop”, concrete goals with milestones should be formulated and tasks allocated to its participants. Multi-stakeholder platforms, where stakeholder groups feel empowered to set the agenda, make decisions through a deliberative process and collectively move forward, are likely to have greater impact than those which include only governments.</td>
</tr>
</tbody>
</table>
### b) Strengthen standards and certification schemes.

The impacts on the ground of certification remain disputed, leading to criticisms of all palm oil certification schemes. The revised RSPO is now considered to set the highest standard and ISPO the lowest. To have any positive impacts, efforts under this heading need to be at least two-pronged.

Currently ISPO is not seen as credible either by private sector or local and EU NGOs. If, however, the Indonesian government were to open up the ISPO process and create a deliberative inclusive and participative process to revise and further develop the ISPO standard so that it goes beyond legal requirements and becomes acceptable to local and EU NGOs and the private sector, this might be a way forward. Ideally the process of developing the system and the principles and criteria should also address CEPAS TSD (modified) provisions, EU RED II requirements and a potential EU palm oil or commodities due diligence regulation (see point c).

Second, the EU and Member States should encourage other certification schemes, including ISCC, to require stronger recognition of tenure rights of local communities.

Furthermore the standard that the EU is developing for certifying RED II conformity related to ILUC should include human rights as well as forest and ecosystem criteria and be developed in a deliberative multi-stakeholder process.

Not a priority action but could be supportive to action 1c.

As with Indonesia's "SVLK" for timber, strengthening ISPO would help development of a home-grown standard and verification system that meets international best practices. However, this would need considerable work with markets and NGOs to demonstrate at least its equivalence to RSPO.

However, given that only about 20% of palm oil currently produced meets the current RSPO standard, the choice of increasing requirements, versus encouraging wider use of current standard, needs careful consideration.

### c) Assess additional demand-side regulatory measures to create a level playing field.

Due diligence legislation should be applied to palm oil imports with the aim of avoiding placing palm oil products on the EU market produced from plantations established by converting HCS or HCV forest, on peat, or without respecting human rights standards. This would follow logically from regulations concerning illegal timber, fish and conflict minerals.

Such a regulation would not ban trade in legally produced palm oil, but would require importers to be able to demonstrate that they could trace their supplies and could eliminate unacceptable performers with regard to environmental performance and human rights from their supply chains. Like the EU Regulation on Conflict Minerals, which was based on OECD Guidelines, the OECD Guidelines for Agricultural Supply Chains could be a good basis for such a Due Diligence Regulation. Concerning deforestation such legislation would possibly require a cut-off date to cover only plantations established after a defined date and may also have to cover all vegetable oils to comply with WTO rules.

Priority action

Implementation of the EUTR has shown that requiring EU operators to demonstrate that they have control over their supply chains to minimise the risk of placing non-compliant products on the market is an effective way to change behaviour.

Such a Regulation would also complement legislation adopted by some Member States to tackle human rights and environmental violations, e.g. the Dutch law on child labour in supply chains; France's Loi de Vigilance and the EU Non-Financial Reporting Directive.
And enhanced implementation of:

<table>
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<tr>
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<th>Priority and obstacles</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Assessing the need to require corporate boards to develop and disclose a sustainable strategy and promoting the integration of forest related considerations into corporate social responsibility/responsible business conduct practices.</td>
<td>The legislation mentioned under c) should include requirements for companies to develop a sustainability strategy and their boards to sign off on this. The EU Non-Financial Reporting Directive lays down rules on disclosure of non-financial and diversity information by requiring large companies to report on the policies they implement in relation to environmental protection, social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery etc. The non-legally binding guidelines for reporting climate change impacts include agriculture, food and forest products. Additions to these guidelines could be made more specific to palm oil, linking RED II, relevant trade agreements and private sector initiatives such as the ADP. As mentioned above, laws in some Member States already require boards or directors to report on human rights abuses like child labour etc.</td>
<td>Linked to Action 1c.</td>
</tr>
<tr>
<td>b) Further integrating deforestation considerations within EU Ecolabel and supporting and developing information and education materials.</td>
<td>The effectiveness of the EU Ecolabel is doubtful. The following action would, however, improve consistency. User Manuals for application of the EU Ecolabel to detergents and cleaning products and for rinse-off cosmetic products include criteria for sustainable sourcing of palm oil and their derivatives. This states that ingoing substances used in the products which are derived from palm oil or palm kernel oil shall be sourced from plantations that meet the requirements of a certification scheme for sustainable production that is based on multi-stakeholder organisations that have a broad membership, including NGOs, industry and government, and which address environmental impacts including on soil, biodiversity, organic carbon stocks and conservation of natural resources. Evidence may include RSPO certificates. For chemical derivatives of palm oil and for palm kernel oil, it is acceptable to demonstrate sustainability through book and claim systems such as GreenPalm certificates or equivalent by providing the Annual Communications of Progress (ACOP) declared amounts of procured and redeemed GreenPalm certificates during the most recent annual trading period.</td>
<td>Not a priority action.</td>
</tr>
<tr>
<td>c) Reviewing relevant aspects of Commission Delegated Act and accompanying report.</td>
<td>The report accompanying the Delegated Act treats all biofuel derived from palm oil as ineligible to be counted in Member States’ 2030 target, unless certified as low-ILUC risk. This has been criticised in that it limits the acceptance of plantations which are not expanding, or which are not expanding into HCV or HCS forest or peatland. The criteria for certifying low-ILUC risk and the qualifications of certification bodies have not yet been published. In order to incentivise producers to move to consistent standards with regard to forests and human rights, the review should consider criteria which allow for inclusion of standards that are equivalent to or exceed the revised RSPO standard.</td>
<td>Priority action to bring coherence.</td>
</tr>
<tr>
<td>d) Implementing the FLEGT work-plan.</td>
<td>There is a body of evidence showing that significant areas of oil palm plantation in Indonesia have been established illegally, including a new report from the government’s Audit Board. This may be due to allocating land in non-permitted areas; illegal permitting, use of fire in establishment and illegal labour practices. Timber products coming from this type of forest land conversion that are exported to the EU, would need to be covered by FLEGT licences, which automatically meet EUTR due diligence requirements. Therefore use of FLEGT instruments in relation to Indonesian palm oil production would need to focus on the robustness of the licensing of palm oil concessions by Indonesian authorities and production of timber from them in the conversion process. Working through the VPA Joint Implementation Committee, EU efforts should include requesting Indonesian authorities to increase the transparency of information, including that resulting from the moratorium review, concerning the boundaries and other details of oil palm plantations and their legality (or otherwise) in order to strengthen independent monitoring.</td>
<td></td>
</tr>
<tr>
<td>Priority action, the large area of forests alleged to have been illegally allocated or cleared for palm oil concessions.</td>
<td>Past increases in commodity prices have led to allocation of forest land for concessions in many cases illegally, and often in violation of community tenure rights. Subsequent decreased demand has made developing significant areas of such land economically unviable and forest cover is still intact. There is a risk that this land will be developed in future and the forests lost. Where there is evidence of illegality or otherwise non-performing concession licences, the land should be returned to the forest estate.</td>
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**Priority 2: Work in partnership with producing countries to reduce pressures on forests and to 'deforest proof EU development cooperation.'**

Financial and technical support should be focused on supporting the Indonesian Government and forest peoples in implementing its commitments on halting deforestation and respecting rights.

<table>
<thead>
<tr>
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</table>
| a) Deforestation is included in political dialogues and national frameworks on forests. | Given the significance of palm oil in the CEPA and the likely impacts of RED II, there is a clear need for the EU and Member States development cooperation programmes in Indonesia to focus on Indonesian palm oil production. EU and Member States’ current cooperation programmes in this area currently appear to be unfocused and uncoordinated. The EU Delegation should play a strong role in convening regular meetings with Member State development partners to agree a framework for cooperation and ensure that different donor programmes are well-coordinated and working towards a series of common goals including halting deforestation and strengthening community tenure rights. An example can be the FLEGT Action Plan, where coordination in partner countries working towards implementing VPA was well planned, with regular meetings of a FLEGT working group and acceptance of lead roles by Member States in different partner countries, with technical support provided by the EU FLEGT Facility. A similar approach to working with Indonesian palm oil could be considered. Key elements could include:  
  - planning and achievement of NDC targets aimed at the higher-level ambition through conservation and restoration  
  - strengthening land allocation and management regulations, including better mapping and greater transparency of concessions. Priority should be given to ensuring that information is available on the ownership, extents and exact locations of oil palm plantations to determine their legality with regard to both forest and peat land, and also Indigenous Peoples’ claims related to the 2012 Constitutional Court decision  
  - supporting implementation of the Constitutional Court decision and Indonesia’s “OneMap” Initiative and demarcation of indigenous lands  
  - support for strengthening ISPO and making the system more accountable – if the government is open to creating a truly deliberative process, including participation by community representatives and smallholders. | Priority action. |
<table>
<thead>
<tr>
<th>b) EU support for agriculture, infrastructure, mining etc. does not contribute to deforestation and degradation.</th>
<th>This action area is likely to be directly relevant only where EU and Member State support is for investment in palm oil production, for example, where DFIs are investing in oil palm estates or palm oil processing; or where development cooperation aims to help smallholders increase production. In these cases, safeguards to protect forests and ensure human rights are respected should be built into project design. However, it could also include support for planned switches from fossil fuels to biofuel in relation to Indonesia’s transport and energy policies. In these cases, impacts on forests and human rights of any EU or Member State support for implementation of Indonesia’s “B30” or more ambitious policies would need careful scrutiny.</th>
<th>DFIs financing already excludes destruction of HCV areas and support to businesses involved in child labour or forced labour. They also aim to “Ensure a preventive and precautionary approach with respect to the environmental and social impacts of our investee companies, giving high attention to the interests of affected people. If negative environmental or social impacts are unavoidable, they must be appropriately mitigated or compensated for.”[9] Despite this, there are several case studies of DFIs being involved in projects involving forest destruction and forced labour.</th>
</tr>
</thead>
<tbody>
<tr>
<td>c) Help partner countries implement sustainable forest-based value chains and promote sustainable bio-economies.</td>
<td>This should go hand in hand with action 1c and 2a.</td>
<td></td>
</tr>
<tr>
<td>d) Develop and implement incentive mechanisms for smallholders to maintain and enhance ecosystem services.</td>
<td>This should go hand in hand with actions 1c and 2a.</td>
<td>A prerequisite is registering and organising smallholders as small business entities. This will legalise them and help them play more positive roles in the supply chain.</td>
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</table>
And enhanced implementation of:

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<th>Priority and obstacles</th>
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<tbody>
<tr>
<td>a) Supporting rights of forest peoples and environmental defenders.</td>
<td>Progress made with implementing the 2012 Constitutional Court decision in returning tenure to indigenous communities has been slow, hampered by inadequate maps and unwillingness to share details of existing agricultural concessions — despite high-level promises to expedite the process. EU and Member State development cooperation efforts with Indonesia, including contributing support for implementing Indonesia’s “OneMap” initiative is therefore important. Providing funds through the Tenure Facility to indigenous communities for land demarcation is another opportunity to support this.</td>
<td>Priority action. Without clarification of tenure rights deforestation is more likely as is an increase in (violent) conflicts over land.</td>
</tr>
<tr>
<td>b) Strengthening policy and regulatory framework for SFM and land use planning.</td>
<td>See bullet point above: EU and Member States' trade and development cooperation should encourage Indonesia to tighten the exceptions to its moratorium on clearing primary forests, especially those that currently allow expansion of palm oil plantations in Papua. Encouragement should also be given to taking firm action linked to the 3-year palm moratorium, in particular the design and implementation of the review of concessions and the resulting steps that arise from its findings.</td>
<td>Priority action for Indonesia. The EU can only look at ways to encourage Indonesia to act. However, the current apparent political climate in Indonesia, emphasising growth over environmental regulation, may be a significant obstacle to this.</td>
</tr>
<tr>
<td>c) Promoting forest restoration.</td>
<td>See action 2a.</td>
<td>Deforestation, restoration are all part and parcel of land use planning which in turn is linked to forest peoples' rights to land.</td>
</tr>
<tr>
<td>d) Supporting forest conservation through protected areas.</td>
<td>See action 2a.</td>
<td>Conservation is a problematic concept, especially in countries where rights to land are in dispute and establishment of protected areas displaces local communities. Joint management by and for local people is critical. Care is needed to avoid heavy-handed tactics by conservation organisations.</td>
</tr>
<tr>
<td>e) Scaling up actions for use of wood fuels</td>
<td>See point 2b above.</td>
<td>Not a positive action.</td>
</tr>
</tbody>
</table>

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191 [https://www.wri.org/tags/understanding-indonesias-onemap-initiative](https://www.wri.org/tags/understanding-indonesias-onemap-initiative)
194 [https://thetenurefacility.org/country/indonesia/](https://thetenurefacility.org/country/indonesia/)
196 Indonesia calls on palm oil industry, obscured by secrecy, to remain opaque ([https://news.mongabay.com/2019/05/indonesia-calls-on-palm-oil-industry-obscured-by-secrecy-to-remain-opaque/](https://news.mongabay.com/2019/05/indonesia-calls-on-palm-oil-industry-obscured-by-secrecy-to-remain-opaque/))
197 See for example The truth about "sustainable" palm oil ([https://www.sapiens.org/culture/palm-oil-sustainable/](https://www.sapiens.org/culture/palm-oil-sustainable/))
Priority 3: Strengthen international cooperation to halt deforestation, forest degradation and encourage forest restoration

There are two key elements to this priority:

– Ensuring CEPA does not contribute to deforestation and respects human rights, including community tenure rights.
– Working to get China and India on board or interested to work with Indonesia and the EU.

<table>
<thead>
<tr>
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<th>Priority and obstacles</th>
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</thead>
</table>
| a) Strengthen cooperation in international forums. | Although the EU is an important destination for Indonesia’s palm oil products, it currently accounts for only around 14% by value of exports and its share is declining. It is therefore important to encourage other major importers to take action. The two key destinations are India and China. (It is equally important to ensure that Indonesia’s own growing consumption of palm oil is in line with its no deforestation commitments)

The EU’s Bilateral Cooperation Mechanism for Forest Law Enforcement and Governance (BCM–FLEG) with and UK–China cooperation on International Forest Investment and Trade (InFIT) may provide opportunities for opening cooperation on palm oil, but there is a need to link any initiative with high-level political dialogue, such as the Leaders’ Statement on Climate Change and Clean Energy in the 20th EU–China Summit.

Cooperation with India in tackling trade in timber has proved more elusive, partly because, unlike China, India has less exposure to international export markets and associated standards. This is expected to be similar in the case of palm oil. One possible avenue where the EU and Member States could consider support is the Sustainable Palm Oil Coalition for India, launched by WWF–India, RSPO and the Rainforest Alliance in 2018 and linking efforts to the India–EU Partnerships for Sustainability, Clean Energy and Climate Action.

The EU and Member States should also ensure that strengthening palm oil standards is on the agendas of various international forums concerned with stopping deforestation. Apart from the ADP these include TFA2020 and the Global Platform of the New York Declaration on Forests (NYDF). See Actions 1a and b. | Priority action.

Consumption in China and India are expected to have a large and growing impact and strong demand is expected in Bangladesh, Pakistan and other countries. However, lack of progress by these countries should not be a reason to limit EU action. |
b) Promote trade agreements include conservation and SFM and encourage deforestation free trade of agricultural and forest-based products.

Significant changes are required in the way CEPA is being negotiated, both in terms of process and priorities to address the risks associated with palm oil production identified in the Sustainability Impact Assessment and other reports. The EU’s and Indonesia’s current text proposals do not adequately address environmental and human rights issues associated to palm oil supply chains, including the concerns raised in the SIA, or by local and international NGOs. Neither are they coherent with EU policies and deforestation commitments including the EU Action Plan.

Moreover, given the importance of palm oil in bilateral trade and Indonesian perceptions that RED II is a technical barrier to trade, it is likely that amendments to the current EU draft text to take Indonesia’s concerns into account, without compromising either party’s commitments, are likely to be needed to conclude the agreement.

As mentioned under 1c, developing a multi-stakeholder dialogue to deliberate the relevant CEPA provisions, and also develop a roadmap on how to address palm oil in the agreement, seems the most constructive way forward. Such a group would not only have to address the TSD text but look at relevant provisions in other chapters of the agreement. Issues to discuss could include:

- Including a specific article on palm oil (or vegetable oils in general) in CEPA’s TSD chapter that ensures palm oil imports do not have negative impacts on forests and people. It is important to address widespread concerns that increased palm oil trade under CEPA will have negative environmental and social impacts and ensure it does not; and/or:

- Including a specific article on forests and palm oil in the TSD chapter. Client Earth’s recommendations for the TSD chapter related to protection of forests and the rights of forest-dependent people should be considered in this regard.

- Including structural provisions including core environmental provisions as guiding principles to the overall agreement and a commitment to ratify and effectively implement a core list of environmental and human rights agreements and Indonesia’s NDCs before the CEPA enters into force.

- The possibility of suspension of termination of the agreement if ex-post impact assessments of its implementation are negative.

- Dispute resolution process. Although a dispute resolution mechanism has not yet been proposed for CEPA, if the Mercosur FTA is a precedent, there is likely to be a need also for a strengthened mechanism in the case of CEPA – especially if more attention is to be given to vegetable oils in the chapter. Client Earth’s recommendations for a formal complaint mechanism should be considered in this regard.

- The use of differential tariffs that give preference for CSPO has also been proposed as a potential trade instrument in CEPA.

- The use of quotas, increasing or decreasing with meeting commitments made by both parties, e.g. NDC commitments of both parties could be a creative way forward to use trade as an incentive to implementing commitments made by both parties.

Priority action.

The EFTA–Indonesia CEPA and Indonesia’s draft text for the EU–Indonesia CEPA’s TSD chapter both include language specific to vegetable oil, clearly aimed at specifying conditions for trade in palm oil products. Palm oil was a major sticking point in EFTA negotiations and the reason it took eight years to finalise. Switzerland has included a bilateral quota of 10,000 increasing to 12,500 tonnes per year, and also imposed traceability requirements on imports.

With few exceptions, however, tariffs are already low. CEPA is likely to see a progressive reduction in tariffs. Acceptability of different tariffs for specific products or sectors based on production methods is also understood not to be favoured by the European Commission.
And enhance implementation of:

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<tr>
<td>a) Assessing the impacts of trade agreements on deforestation in SIAs and other assessments.</td>
<td>See action 3b. The Sustainability Impact Assessment report for CEPA projects an increase in trade in palm oil products (despite RED II and recent declining trends), replacing imports from other countries, and highlights the need to mitigate significant negative social and environmental impacts that are likely to result from such changes. These conclusions call for the need to reconsider the TSD chapter (or other chapters of the agreement) and also how EU and Member State cooperation with Indonesia can be more closely coordinated to focus on improving the sector’s performance in relation to protecting forests and human rights.</td>
<td>This is already a requirement.</td>
</tr>
<tr>
<td>b) Addressing the sustainability of supply chains, in context of relevant international commodity bodies.</td>
<td>See point 1c above. It is doubtful whether international commodity bodies have a role to play here. The Council of Palm Oil Producing Countries (CPOPC) is an intergovernmental organisation for palm oil producing countries, whose current members are only Indonesia and Malaysia. There is little evidence on its website that it has any ambitions to promote better standards in the industry. The statement that the countries face “a few situations, primarily those relating to sustainable practices and trade impediments”, and its motto “either we hang together, or we will be hanged separately” suggest a defensive approach to environmental and social challenges. Working with CPOPC, rather than directly with Indonesia, is therefore unlikely to result in much progress in the immediate future. However, with regard to cocoa, where the EU, represented by the Commission, participates in the International Cocoa Organisation (ICCO), the Commission has stated the EU could support efforts of the producer countries (Côte d’Ivoire and Ghana) to increase world prices, if an increase (and thus the national resources generated by the sector), also entailed a clear commitment to stop the process of deforestation.</td>
<td>Not a useful action.</td>
</tr>
<tr>
<td>c) Within bilateral dialogues sharing information and experience on policy and legal frameworks and identify joint activities to inform policy developments concerning deforestation and degradation.</td>
<td>See action 3a.</td>
<td></td>
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</tbody>
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198 http://www.euflegt.efi.int/about-china
199 https://www.itsi.co.uk/project/china-uk-collaboration-on-international-forest-investment-trade-inf
201 https://www.wwfindia.org/71761/Sustainable-Palm-Oil-Coalition-for-India
203 The NYDF Global Platform seeks to increase ambition, forge new partnerships and accelerate progress on the NYDF goals by responding to NYDF endorsers’ requests for a dedicated, multi-stakeholder platform to re-invigorate political endorsement of the NYDF, to facilitate coordination and communication, to share best practices, resources and lessons, and to support ongoing monitoring of progress. Endorsers include palm oil producers and users (https://nydfglobalplatform.org/).
204 https://www.clientearth.org/eu-indonesia-trade-deal-risks-accelerating-deforestation/
205 https://www.cpopc.org/about-us/
206 Commission email to sector colleagues.
### Priority 4: Redirect finance to support more sustainable land-use practices

This priority should be a list of actions directed towards implementation of specifically Priority 1, but also the actions under Priorities 2 and 3 that support Priority 1.

<table>
<thead>
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<tbody>
<tr>
<td>a) Assess possible mechanisms to catalyse green finance for forests.</td>
<td>Indonesia has indicated that it will accept more ambitious targets for its NDC related to forests and land-use change if international support is provided. Efforts in to help Indonesia reach these targets should be supported. In 2010 Norway committed to providing up to US$1 billion to compensate Indonesia for progress made in reducing its deforestation rate. In February 2019, based on data showing a reduction in in 2017, Norway announced a first results-based payment, expected to be US$20 million, based on estimates of forest emissions and official Indonesian government deforestation data.237 To be effective in the long term, it is important that payments contribute to improving governance and strengthening mechanisms to ensure palm oil production meets high standards with regard to both forest conservation and human rights and do not necessarily go through the Government (as can be seen with the Tenure Facility).</td>
<td>While Norway’s money can be seen to be a useful reward for Indonesia’s recent performance that could contribute to implementing improved standards in the palm oil sector, the amount is dwarfed by the value of the palm oil sector. Moreover, the long-term effectiveness of such payments can be questioned: payments made under a similar arrangement with Brazil were rewards for reductions in its deforestation rate, but recent a change in forest policy under its current government’s administration risks undermining previously made gains.</td>
</tr>
<tr>
<td>b) Improving company reporting on impacts of company activities on forests.</td>
<td>To be included in action 1c.</td>
<td>Major companies already issue sustainability reports, some with publicly accessible dashboards.</td>
</tr>
</tbody>
</table>
And enhanced implementation of:

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<tbody>
<tr>
<td>a) Integrating forest assessment in project impacts and consider guidance on measurement approaches to better understand forest values and forest risk financing.</td>
<td>See actions 2a and b.</td>
<td>Risks often are linked with conflict (see Munden initiative), and so clarification and strengthening of tenure is a key requirement.</td>
</tr>
<tr>
<td>b) Paying consideration to deforestation in Action Plan for Sustainable Finance, including creation of an EU taxonomy for economic activities.</td>
<td>The EU Taxonomy Technical report (June 2019) presents a framework for evaluating activities and their contribution to climate change mitigation and adaptation. This report provides a common language on what constitutes sustainable activities. Of relevance to palm oil, the Taxonomy requires that to be recognised as delivering substantial contributions (and hence be financed), agricultural investments should: – result in reduced emissions from ongoing land and animal management – result in increased removals of carbon from the atmosphere and storage in above- and below-ground biomass through ongoing land and animal management, up to the limit of saturation levels – not being carried out on land that was previously deemed to be &quot;of high carbon stock&quot;. A reference to palm oil under the heading &quot;Manufacturing&quot; states that products and processes will be excluded from sustainable financing if the &quot;products are derived from new, greenfield oil palm tree plantations&quot;, with exceptions for small-scale palm oil cultivators operating in forest plantations.</td>
<td>To be monitored to ensure coherence.</td>
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207 Norway starts payments to Indonesia for cutting forest emissions (https://www.reuters.com/article/us-indonesia-climatechange-forests/norway-starts-payments-to-indonesia-for-cutting-forest-emissions-idUSKCN1Q70ZY)
208 https://landscape.info/
Priority 5: Support the availability of, quality of, and access to information on forests and commodity supply chains. Support research and innovation.

This priority should be a list of actions directed towards implementation of specifically priority one but also the actions under Priorities 2 and 3 that work in tandem with Priority 1.

<table>
<thead>
<tr>
<th>Proposed EU Action in Action Plan</th>
<th>Recommended action concerning a coherent approach re EU–Indonesia and palm oil</th>
<th>Priority and obstacles</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Establish an EU observatory on deforestation, degradation and changes in forest cover and associated drivers.</td>
<td>Observing only makes sense if it is clear how and by whom the data will be used and it is not clear what an EU observatory could add to already existing initiatives; e.g., if a company wants to know if there is deforestation in its concessions, they could buy Starling satellite data and take action. Should such a facility be established – and if more stringent conditions on forests and human rights were to be incorporated into CEPA – it could possibly be used to monitor compliance. Priority should be given to ensuring that information is available on the ownership, extents and exact locations of oil palm plantations to determine their legality with regard to both forest and peat land, and also Indigenous Peoples’ claims related to the 2012 Constitutional Court decision.</td>
<td>Priority not clear. Only useful if linked to concrete objectives and building on expanding existing initiatives as Starling and WRI. A clearing house mechanism for data and information related to oil palm plantations and Palm oil trade may have potential in increasing transparency. The SILK system developed for the SVLK may have lessons for the palm oil sector.</td>
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<tr>
<td>b) Explore feasibility of Copernicus to strengthen existing forest monitoring and establishing EU leadership.</td>
<td>See 5a. The 2019 “Blue Book” for EU–Indonesia cooperation specifically mentions a project to use Copernicus Remote Sensing for improved peatland mapping. There is, however, no indication on the Copernicus web site that this project has started. Its application could be made broader to provide a cross-reference for Indonesia’s data on deforestation and the degree to which and the locations where oil palm cultivation is contributing, but this only makes sense if incorporated in a concrete plan of action that requires data monitoring.</td>
<td>Priority not clear.</td>
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<tr>
<td>c) Improving coordination among research institutes.</td>
<td>EU and Member State support for research on sustainable oil palm production by smallholders and how to make certification systems more accessible to them could be considered under this action.</td>
<td>Priority not clear. Improving the sustainability of smallholder plantations is very important and should be a priority for building a robust palm oil production system – but this should not be considered a research subject to be coordinated by research institutions.</td>
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<tr>
<td>d) Share innovative EU practices on circular economy, sustainable bio-economy, renewable energy, smart agriculture etc.</td>
<td>Possibly useful, depending on whether there are any relevant EU practices to share.</td>
<td>Priority not clear.</td>
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And enhanced implementation of:

<table>
<thead>
<tr>
<th>a) Assisting producer countries in tracking progress in policy implementation, including forest-related NDCs; no deforestation commitments and related trade and step up of information on forest resources and land use change to inform multi-stakeholder policy making.</th>
<th>If lack of tracking progress were a reason for lack of action to address deforestation, this could have some use. In that case priority should be given to ensuring that information is available on the ownership, extents and exact locations of oil palm plantations to determine inter alia their legality with regard to both forest and peat land, and also Indigenous Peoples' claims related to the 2012 Constitutional Court decision. It is, however, more likely that there are other reasons for lack of progress.</th>
<th>Priority not clear.</th>
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<tbody>
<tr>
<td>b) Supporting development of global and regional information systems to monitor effect of forest fires.</td>
<td>Forest fires are a global issue but it is not clear that increased information or monitoring would do much to reduce them. With regard to Indonesia there are already initiatives aimed at identifying where dry conditions increase fire risk and to help decision-makers take action to prevent fires.(^{211}) The root causes of the fires have been analysed and proposals for addressing these suggested.(^{212})</td>
<td>Priority not clear.</td>
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\(^{210}\) [http://www.starling-verification.com/](http://www.starling-verification.com/)

Comprehensive Economic Partnership Agreement (CEPA) negotiations provide an opportunity for EU policy coherence and for the EU to offer support to Indonesia for implementation of its NDC and its commitments to end deforestation and protect human rights. This would also help the EU meet its own no deforestation commitments.