

The RSPO system as a tool to help companies comply with requirements of the EU Deforestation Regulation

Client



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1. Introduction

On 6 December 2022, the EU reached a preliminary agreement on the EU Deforestation Regulation (EUDR). This new legislation, which is scheduled to be formally adopted and come into force in the first half of 2023, aims to prevent companies from placing commodities linked with deforestation and forest degradation onto the EU market, or exporting them from the EU. Palm oil is amongst the commodities covered by EUDR.

By promoting the consumption of deforestation-free products and reducing the EU's impact on global forests, the EUDR is intended to bring down greenhouse gas emissions resulting from deforestation and assist in the fight against global biodiversity loss

Following the publication of EUDR, RSPO has commissioned Brinkmann Consultancy and Pasmans Consultancy to carry out a gap analysis between EUDR requirements and RSPO requirements. The primary objective of the gap analysis is to provide insight into the extent to which current RSPO requirements cover EUDR requirements, and where gaps exist. This insight should provide a basis for deciding if and how RSPO can facilitate its members with their compliance with (part or all of) EUDR requirements.

This report summarises the findings of the gap analysis and provides recommendations for RSPO. Chapter 2 specifies key features and requirements of the EUDR. Chapter 3 specifies gaps between RSPO P&C and the EUDR requirements. Chapter 4 specifies how the RSPO supply chain models and tools could facilitate transfer of EUDR relevant evidence through the supply chain. Chapter 5 summarises EUDR risk assessment requirements and how RSPO could further facilitate information collection. Chapter 6 summarises recommendations.

Related to this report is an Excel-spreadsheet, which contains full details of the gap analysis.

Approach to the gap analysis

The gap analysis was carried out in the period January – March 2023. For the gap analysis, the Deforestation Regulation text of 6 December 2022 was used, as well as the latest available version of RSPO standard documents (refer to Annex 1 'References').

In the gap analysis EUDR requirements were systematically compared with RSPO Principles and Criteria requirements and RSPO chain of custody requirements. This resulted in an overview of RSPO requirements that best relate to EUDR requirements, and of similarities and gaps between both sets of requirements. In a next step, recommendations were made on how RSPO could facilitate its members in ensuring compliance with EUDR. Detailed gap analysis results and recommendations were first listed in a spreadsheet model (Annex 3 to this report), and then summarised in the underlying report.

2. Key features and requirements of EUDR

2.1 Introduction

This chapter summarizes key features and requirements of the EUDR. This introduction to the EUDR aims to facilitate the understanding of the gap analysis results and the recommendations specified in the following chapters.

More specifically, this chapter specifies:

- which commodities and products are covered by EUDR (2.2);
- requirements that apply to relevant products (2.3);
- operators and traders that have to fulfill EUDR requirements (2.4);
- how EU national authorities will apply supervision and enforcement of EUDR obligated companies (2.5);
- the potential role of certification scheme in facilitating compliance with EUDR (2.6);
- the envisaged implementation timeline for EUDR (2.7).

2.2 Commodities and products covered by EUDR

The new regulation sets mandatory due diligence rules for operators which place specific commodities or products on the EU market or export them from the EU – that are associated with deforestation and forest degradation. ‘Operator’ is defined in the EUDR as ‘any natural or legal person who, in the course of a commercial activity, places relevant products on the Union market or exports them from the Union market’. And a ‘person established in the Union’ is defined as:

- (a) *in the case of a natural person, any person who has his or her residence in the Union;*
- (b) *in the case of a legal person or an association of persons, any person having its registered office, central headquarters or permanent business establishment in the Union.*

The EUDR initially includes seven commodities within its scope: soy, beef, oil palm wood, cocoa, coffee and rubber.

Within each commodity, the regulation defines which products are included within the scope of the law, according to a list of EU customs codes specified in Annex 1 to EUDR. By default, this means that any products, as listed in Annex 1 to the EUDR, that contain, have been fed with or have been made using relevant commodities, imported or exported under a different customs code is exempt from the regulation. Annex 2 of this document contains a copy of the relevant oil palm products included in Annex 1 of EUDR. Please note that this list includes custom codes of products in which oil palm derived products may be present but which may also consist of other vegetable oils (e.g. 382370 fatty alcohols, industrial, and 290545 glycerol).

2.3 EUDR requirements for relevant products

Products of the commodities included in EUDR may only be placed on, or exported from, the EU market if:

1. They are deforestation-free, meaning that the commodities shall not have been produced on land that has been subject to deforestation (or forest degradation) after 31 December 2020. This is the cut-off date;
2. They have been produced in accordance with the relevant legislation of the country of production;
3. They have been covered by a due diligence statement; a key requirement is the obligation for operators to implement a due diligence system to avoid sourcing of commodities or products which are not deforestation-free or have not been produced in accordance with the relevant legislation of the country of production. The due diligence system includes risk assessments and mitigating any risks which are not negligible, before placing commodities or products on the EU market or before exporting.

The regulation sets out an obligation to obtain geo-localisation coordinates where the commodities or products were produced, or harvested in the case of wood-products - as well as the date or time range of production. The geolocation is defined in the EUDR as *'the geographical location of a plot of land described by latitude and longitude coordinates corresponding to at least one latitude and longitude point and using at least six digits. For relevant other commodities other than cattle, for plots of land of more than 4 hectares, the geographical location shall be provided using polygons, meaning sufficient latitude and longitude points to describe the perimeter of each plot of land.'*

2.4 Obligated companies: companies and traders

The EUDR defines **'operators'** as companies that *place* relevant commodities on, or export them from, the EU market. Operators are obliged to implement a due diligence system, conducting risk assessments and mitigate any risks which are not negligible, before placing on the EU market or exporting. Operators are required to publicly report as widely as possible on an annual basis, including online, on their due diligence systems and the steps they have taken to ensure compliance with their obligations.

EUDR also defines **'traders'**: companies trading goods which *make available* (i.e. are *already* placed) on the EU market. Traders are responsible for storing and sharing information on their supply chains with national competent authorities (upon request). Large traders, i.e. traders which are not small to medium-sized Enterprises (SMEs) – are subject to the same obligations as operators (i.e. also required to conduct due diligence). This is due to their scale of influence in supply chains.

2.5 Coordination of enforcement activities

The European Commission will develop a central database of risk assessments or ‘country benchmarks’. This benchmarking system will categorise countries as posing a low, standard or high risk of commodities or products being associated with deforestation, to aid with due diligence and control.

Upon the entry into force of the EUDR, all countries will be assigned a standard level of risk. The list of countries or parts of countries that present a low or high risk will be detailed in implementing acts that will be published within 18 months from the entry into force of EUDR.

Operators sourcing from countries that the European Commission has designated as ‘low-risk’ will be allowed to conduct ‘simplified due diligence’, which means that they will be dispensed from carrying out the second and third steps of the due diligence process, i.e., risk assessment and risk mitigation. However, operators will still be required to conduct the first step of due diligence – collecting information on their supply chains. This includes obtaining geo-localisation information on forest/farm production plots.

Obligations for EU national authorities to enforce the regulation and carry out checks will also vary according to the level of risk assigned to the countries of production. This means enhanced monitoring for high-risk countries and reduced for low-risk countries.

Additionally, a central information system will also be developed to receive and record operators’ due diligence statements, which will accompany applications for customs clearance. This system will be accessible to national and customs authorities about operators and traders active in the EU, and is likely to include a series of functionalities such as: allowing the registration of operators; uploading and linking of due diligence statements with customs declarations, as well as permitting the risk profiling of operators and relevant commodities/products for the purpose of identifying high risk consignments.

2.6 The role of certification schemes in facilitating compliance with the EUDR

In its introduction chapter the EUDR makes reference to certification schemes, and highlights the role certification schemes may play in the risk assessment procedure of operators: ‘(35) *In order to recognise good practice, certification or other third party verified schemes could be used in the risk assessment procedure, however, they should not substitute the operator’s responsibility as regards due diligence.*

And in Article 10: ‘*Operators shall verify and analyse information collected in accordance with Article 9 and any other relevant documentation, and on this basis carry out a risk assessment to establish whether there is a risk that the relevant products intended to be placed on or exported from the Union market are non-compliant with the requirements of this Regulation.*

(...) The risk assessment shall take special account of the following risk assessment criteria:

(...)

(j) complementary information on compliance with this Regulation, which may include information supplied by certification or other third-party-verified schemes, including voluntary

schemes recognised by the Commission under Article 30(5) of Directive (EU) 2018/2001, provided that the information meets the requirements set out in Article 9;'

In other words: information provided via certification schemes may be used in the risk assessment carried out by operators, but a certificate alone is insufficient evidence to prove compliance with the EUDR requirements.

The EUDR approach towards certification schemes is different from the approach followed in for example the EU Renewable Energy Directive (RED2). The RED2 requires that operators use so called 'voluntary schemes' to show compliance of biomass with RED2 sustainability requirements. If an operator holds a valid certificate of an European Commission recognized certification scheme and also the biomass supplied comes with a valid 'proof of sustainability' then the biomass automatically qualifies as 'RED2 compliant'. In other words: no additional risk assessment is required by the company using the biomass for the production of biofuels or energy.

The above means that RSPO can potentially facilitate its members in collecting EUDR relevant evidence by including EUDR requirements in its standards and systems, but can not ensure legal EUDR compliance of oil palm products. This is the responsibility of individual operators.

From the Regulation text, it is unclear *to what extent* operators in their risk assessment can rely on certification schemes to provide relevant EUDR information, and what additional risk assessment activities are required once the operator has a valid certificate from a scheme that covers part or all of EUDR requirements. Also, it is not clear what requirements a certification scheme itself needs to fulfil in order to qualify as 'good practice'.

It is recommended that RSPO seeks to clarify these points with the European Commission and competent authorities of EU Member States, as it is fundamental in determining the additional value RSPO could have by implementing mechanisms and standards to facilitate members in collecting EUDR relevant evidence.

2.7 Entering into force of the EUDR

Having reached an agreement on 6 December 2022, the European Parliament and the Council will now formally have to adopt the new Regulation before it can enter into force. Formal adoption is expected in the first half of 2023. Once the Regulation is in force, operators and traders will have 18 months to implement the new rules. This means that the due diligence requirements on operators and traders are expected to become legally binding towards the end of 2024.

Micro and small enterprises will have a 24 months adaptation period, as well as other specific provisions.

3. Linking EUDR requirements to RSPO P&C

3.1 Introduction

Article 3 of the EUDR defines three key requirements for the relevant commodities and products (covered by Annex I to the regulation) which have to be fulfilled for them to be eligible to be placed on the EU market or exported from the EU market. They have to be:

- (a) deforestation-free;
- (b) produced in accordance with the relevant legislation of the country of production;
- (c) covered by a due diligence statement.

In addition, Article 9 of the EUDR specifies that they shall be traceable to the geolocations of the plots of land of production. For oil palm products this means where oil palm was grown. The mixing of batches of products that have been made commodities (such as palm oil) with and without EUDR relevant information is not allowed.

This detailed gap analysis has identified which EUDR requirements are of particular relevance to RSPO, i.e. where RSPO could facilitate its members in collecting and making available information that is required to show compliance with EUDR. In short, the gap analysis has shown that RSPO can facilitate its members in collecting EUDR relevant information on deforestation free and legal cultivation of oil palm, on geolocations where oil palm is grown, and on transferring this information through the supply chain. This information can also facilitate the operators' risk assessment and mitigation procedures necessary for the due diligence statement (refer to Chapter 5).

This chapter focuses on those EUDR requirements which are of particular relevance to RSPO. It summarises how these EUDR requirements are linked with RSPO Principles & Criteria, i.e. to which extent RSPO Principles & Criteria already cover EUDR information requirements on deforestation free (3.2) on legality (3.3) and on geolocation information (3.4). Section 3.5 highlights a couple of other EUDR requirements with a link to RSPO Principles & Criteria. Chapter 4 summarises how EUDR requirements are linked with RSPO Supply Chain Certification Standard and the IT traceability system.

3.2 EUDR requirement ‘Deforestation-free’

According to EUDR ‘Deforestation-free’ means that *‘the commodities shall not have been produced on land that has been subject to deforestation (or forest degradation) after 31 December 2020’*.

In this definition ‘forest degradation’ is only applicable to wood products and not to other products covered by EUDR, including oil palm products.

The EUDR uses the following definition of deforestation – *‘The conversion of forest to agricultural use, whether human-induced or not’*, in which a forest is defined as *‘Land spanning more than 0,5 hectares with trees higher than 5 meters and a canopy cover of more than 10%, or trees able to reach those thresholds in situ, excluding land that is predominantly under agricultural or urban land use’*. In other words, the EUDR requirement is an absolute threshold above which conversion is considered deforestation.

The RSPO Principles & Criteria do not use the definition of deforestation-free, but refer the terms: *‘halting deforestation’*, *‘does not cause deforestation’* or *‘no deforestation’*. The EUDR requirement on deforestation-free is most related to RSPO’s criterion 7.12 requiring that *‘Land clearing since November 2005 has not damaged primary forest or any area required to protect or enhance HCVs’* and *‘Land clearing since 15 November 2018 has not damaged HCVs or HCS forests’*.

The RSPO defines deforestation – based on and referring to Accountability Framework Initiative definitions – but refers to the prohibition to: *‘damage any area required to protect or enhance High Conservation Values (HCVs) or High Carbon Stock (HCS) forest’* in its P&C 7.12. To identify areas of viable tropical forest and differentiate it from land suitable for development the RSPO requires the use of HSCA Toolkit and HCV-HCSA Assessment Manual methodologies. This approach is based on dedicated assessments that are site and time specific.

Contrary to the EUDR, the RSPO approach is not dependent on general definitions of deforestation and forest. Nor does it further define the types of forest mentioned - such as ‘natural forest’ or ‘primary forest’ – or other types of land use (e.g. ‘agricultural use’ or ‘agricultural plantation’).

The RSPO also leaves room for exemptions for clearing in High Forest Cover Landscapes / Countries. The EUDR makes no exemption.

In summary, the main differences on ‘deforestation-free’ between EUDR and RSPO are:

1. Cut off date 31st December 2020 (EUDR) versus November 2005 and November 2018 (RSPO);
2. General threshold value (EUDR) versus site-specific methodology (RSPO);
3. No exemption (EUDR) versus exemption for High Forest Cover Landscapes / Countries (RSPO).

The above means that there is a misalignment between the 'deforestation-free' requirement of the EUDR and the RSPO Principles & Criteria approach using HCV and HCS assessments, including relevant definitions. Chapter 5 explains how RSPO could facilitate obligated companies to collect additional EUDR relevant information on 'deforestation-free' and transfer this information through the supply chain.

3.3 Compliance with relevant legislation of the country of production

The EUDR defines 'Relevant legislation of the country of production' as follows: *"the laws applicable in the country of production concerning the legal status of the area of production in terms of:*

- *land use rights,*
- *environmental protection,*
- *forest-related regulations including forest management and biodiversity conservation, where directly related to wood harvesting,*
- *third parties' rights,*
- *labour rights,*
- *human rights protected under international law,*
- *the principle of free, prior and informed consent, including as set out in the United Nations Declaration on the Rights of Indigenous Peoples,*
- *tax, anti-corruption, trade and customs regulations."*

The RSPO Principles & Criteria require relevant legislation to include:

- regulations governing land tenure and land-use rights;
- labour,
- agricultural practices (e.g. chemical use),
- environment (e.g. wildlife laws, pollution, environmental management and forestry laws),
- storage, transportation and processing practices.
- it also includes laws made pursuant to a country's obligations under international laws or conventions (e.g. the Convention on Biological Diversity (CBD), ILO Core Conventions, UN Guiding Principles on Business and Human Rights).

The RSPO requirements are similar to those required (at a minimum) by the EUDR and even more broad in terms of respecting international law. For some of the EUDR requirements on legality it is not clear whether they are sufficiently covered by RSPO Principles & Criteria:

1. RSPO does not explicitly refer to 'third parties rights' as specified in the EUDR requirement. However, EUDR does not further explain what is meant by this requirement. Potentially, elements of 'third parties rights' are included in RSPO rights recognised.
2. 'EUDR requirement on 'Tax, anti-corruption, trade and customs regulations' is not explicitly mentioned in RSPO but may indirectly be covered:

'Anti-corruption' is covered in guidance to P&C 1.2, as could be 'tax, trade and custom regulations' under 'respect for fair conduct of business' and 'a proper disclosure of information in accordance with applicable regulations and accepted industry practice'.

The EUDR requirement of 'principle of free, prior and informed consent' as set out in the United Nations Declaration on the Rights of Indigenous People' is also required by the RSPO. The RSPO has developed specific guidelines and indicators that can provide information and evidence on FPIC compliance.

In conclusion, RSPO requirements on legality are at least largely in line with EUDR requirements. However, caution is required as the EUDR provides little or no specification of the relevant pieces of national legislation and evidence that operators need to have available. Still the RSPO is in a good position to facilitate information on legality as Criterion 2.12 requires that a *'documented system for ensuring legal compliance is in place. This system has a means to track changes to the law and also includes listing and evidence of legal due diligence of all contracted third parties, recruitment agencies, service providers and labour contractors.'*

A key difference between the EUDR and RSPO Principles & Criteria is that the EUDR requires that information on legality is transferred through the supply chain, whereas RSPO does not require this. Chapter 5 explains how RSPO could facilitate the transfer of information on legality through the supply chain.

3.4 EUDR requirements on traceability: geolocation details

Article 9 of EUDR requires that operators placing oil palm derived products on, or exporting from, the EU market to collect information, documents and data demonstrating that oil palm derived products are compliant with Article 3, i.e. deforestation-free and legal. In order to do this, various pieces of evidence shall be collected at the grower/palm oil mill and subsequently be transferred through the supply chain. This includes e.g. information on the country of production, the type and quantity of oil palm products, contact details of suppliers and sellers. These requirements are covered by RSPO Principles & Criteria and RSPO Chain of Custody requirements.

A specific EUDR requirement is on the collection of information on the geolocation where the oil palm was grown: *'geolocation of all plots of land where the relevant commodities that the relevant product contains, or has been made using, were produced, as well as date or time range of production. Where a relevant product contains or has been made with relevant commodities produced in different plots of land, the geolocation of all different plots of land shall be included. Any deforestation or forest degradation in the given plots of land shall automatically disqualify all products and commodities from those plots of land from being placed and made available on the market or exported therefrom.[...]*'

The EUDR defines 'geolocation' as follows: *'the geographical location of a plot of land described by means of latitude and longitude coordinates corresponding to at least one latitude and longitude point and using at least six decimal digits. For relevant commodities, other than cattle, for plots of land of more than 4 hectares, the geographical location shall be provided using polygons, meaning sufficient latitude and longitude points to describe the perimeter of each plot of land.'*

And 'plot of land' as *'an extension of land within a single real-estate property, as recognised by the laws of the country of production, and which enjoys sufficiently homogeneous conditions as to allow to evaluate on the aggregate level the risk of deforestation and forest degradation associated with commodities produced on that extension of land'.*

RSPO Indicator 2.3.1 requires that *'For all directly sourced FFB, the mill requires on the information on geo-location of FFB origins'* and Indicator 2.3.2 *'For all indirectly sourced FFB, the unit of certification obtains from the collection centres, agents or other intermediaries, the evidence as listed in Indicator 2.3.1'*. (with a specific exemption for smallholders: *'where the unit of certification has smallholder suppliers, for existing RSPO certified mills, the time requirement to fulfill this Criterion for all their smallholder suppliers is three years from [15 November 2018]. For mills that are not yet certified/ mills going for first year of certification, the time requirement is three years from initial point of certification for their smallholder suppliers.'*)

The above mentioned term 'FFB origins', used in Criterion 2.3.1 is not further specified. RSPO does also not specify a definition of 'plot of land'. Instead, production level companies are defined as 'unit of certification': *'The unit of certification shall be the mill and its supply base and shall include both directly managed land (and estates) and Scheme Smallholders and outgrowers, where estates have been legally established with proportions of lands allocated to each'*. Specific for the land on which oil palm is grown (defined by RSPO as 'plantation') or more specifically a 'managed area' is: *'The land containing oil palm and associated land uses such as infrastructure (e.g. roads), riparian zones and conservation set-asides'*.

The RSPO definition of 'managed area' and 'plantation' come close to what is meant by the EUDR 'plot of land'. However, the RSPO definition does not refer to legal and ownership status of the land. Nor is it limited to being a 'single' property, meaning that managed areas in RSPO could include scattered, not necessarily physically connected, plots of land. 'Managed area' also contains land not used for oil palm. 'Plantation' by RSPO is limited for the land that contains oil palm - this is more in line with the EUDR that defines 'plot of land' to evaluate risks "with commodities produced on that extension of land".

It needs to be noted that the shapefiles/geolocations submitted to RSPO by growers/units of certification are almost always broken down by individual estates/properties, each of which would be the holder of the 'single real estate title'.

In conclusion, RSPO is in a good position to provide information on the EUDR geolocation requirement. Especially Criterion 2.3.1 provides a basis under which geo-location information can be made available for all FFB (certified and non-certified). However, for full alignment with EUDR requirements the following gaps needs to be covered:

1. geolocation requirements of polygon should be added to bring it in line with the EUDR for plots above 4 hectares;
2. definition on 'FFB origin' should be added and aligned with EUDR definitions of 'plot of land'. Special attention should be given to the 'an extension of land within a single real-estate property';
3. the transition period for mills going for first year of certification to collect smallholder geo-locations should be deleted.

3.5 Future extension of the EUDR scope to 'other wooded land' and other ecosystems

Article 32 of the EUDR refers to future reviews to extend the scope of the EUDR to other natural ecosystems and land with high carbon stock. Of special relevance to the RSPO will be the reviews on 'other wooded land' (after 1 year) and other ecosystems (after 2 years) – both on the basis of the cut-off date in Article 2. Note that the article only mentions that 'an evaluation should be undertaken' to extend the scope of the EUDR. It does not speak of an scope extension of the EUDR as such.

'Other wooded land' is defined by the EUDR as 'land not classified as 'forest' spanning more than 0,5 hectares with trees higher than 5 metres and a canopy cover of 5 to 10%, or trees able to reach these thresholds in situ, or with a combined cover of shrubs, bushes and trees above 10 percent, excluding land that is predominantly under agricultural or urban land use'.

An extension of the EUDR with 'other wooded land' would broaden the scope of land which conversion to oil palm is not possible under EUDR requirements. If a review leads to the adoption of this 'other wooded land' the RSPO would need a new alignment with the current HCV and HCS assessments.

'Other ecosystems' are not defined in the EUDR, but would include ecosystems such a grasslands, peatlands and wetlands. Especially peatlands are relevant to palm oil. The RSPO already covers peatland with P&C 7.7 stating that: *'No new planting on peat, regardless of depth after 15 November 2018 and all peatlands are managed responsibly'*. Although special attention should be paid to final definitions of these 'other ecosystems' the RSPO is well placed to anticipate these reviews should they lead to the extension of the EUDRs scope.

4. Linking EUDR requirements to RSPO Supply Chain Certification requirements

4.1 Introduction

This chapter summarises how EUDR requirements are linked with the RSPO Supply Chain Certification Standard and RSPO's IT traceability system. Section 4.2 elaborates EUDR requirements on traceability of oil palm products. Section 4.3 explains how the EUDR relevant information shall be attributed to batches of oil palm when a mix is split. Section 4.4 specifies how EUDR requirements impact on specific RSPO calculation rules for oleochemicals.

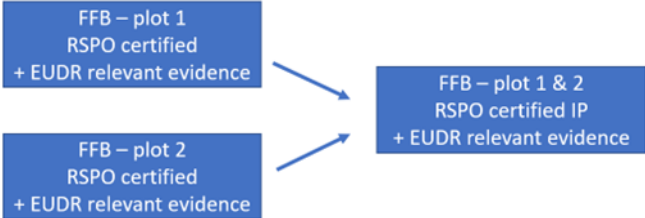
4.2 EUDR requirements on traceability of oil palm products: segregation

The EUDR does not allow mixing of products derived from plots of land for which relevant EUDR evidence is available with products derived from plots of land for which relevant EUDR evidence is not available. In case palm oil or other oil palm derived products from plots of land for which the relevant EUDR evidence is available are mixed with palm from plots of land for which relevant EUDR evidence is not available, then the total mix shall be counted as not having the relevant EUDR evidence.

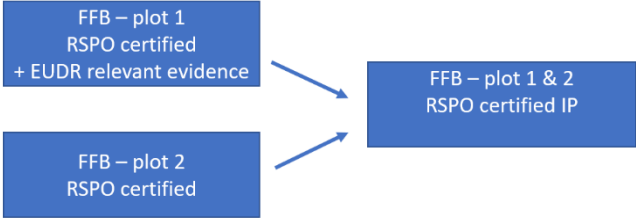
RSPO Principles & Criteria include a chapter on 'supply chain requirements for mills'. It specifies the requirements for mills which are identified as complying with the Identity Preserved (IP) module and Mass Balance (MB) module. A mill is deemed to be IP if all FFB processed by the mill are sourced from plantations/estates that are certified against the RSPO P&C, or against the Group Certification scheme. A mill is deemed to be Mass Balance (MB) if the mill processes FFB from both RSPO certified and uncertified plantations/estates.

The above leads to the following possible situations:

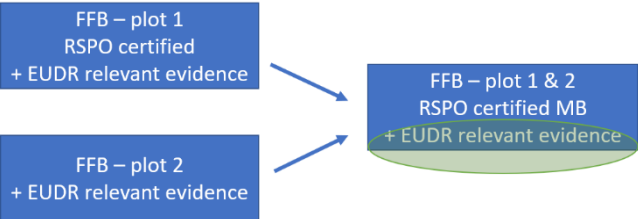
Situation 1: A RSPO certified mill receives FFB from two plots: plot 1 and plot 2. Both plots are RSPO certified, and for both plots EUDR relevant evidence is available. The mixture is both RSPO certified IP and has EUDR relevant evidence. This means that the product can be placed on the EU market.



Situation 2: A RSPO certified mill receives FFB from two plots: plot 1 and plot 2. Both plots are RSPO certified, but EUDR relevant evidence is only available for one plot. The mixture is RSPO certified IP, but does not have all EUDR relevant evidence. Oil palm products processed from the mixture are not allowed on the EU market.



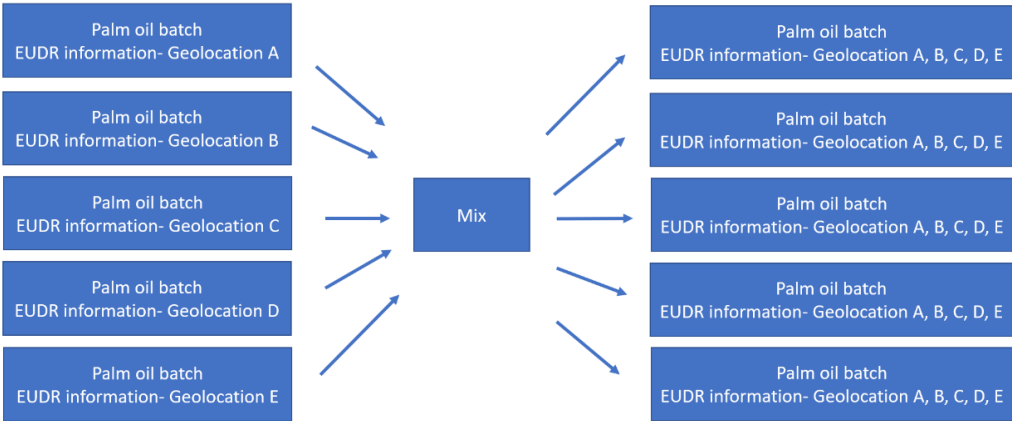
Situation 3: A RSPO certified mill receives FFB from two plots: plot 1 and plot 2. Plot 1 is RSPO certified, plot 2 is not. For both plot 1 and 2 EUDR relevant evidence is available. Part of the mixture is RSPO MB certified (following MB calculation rules). For the mixture all EUDR relevant evidence is available, meaning that it could be placed on the EU market.



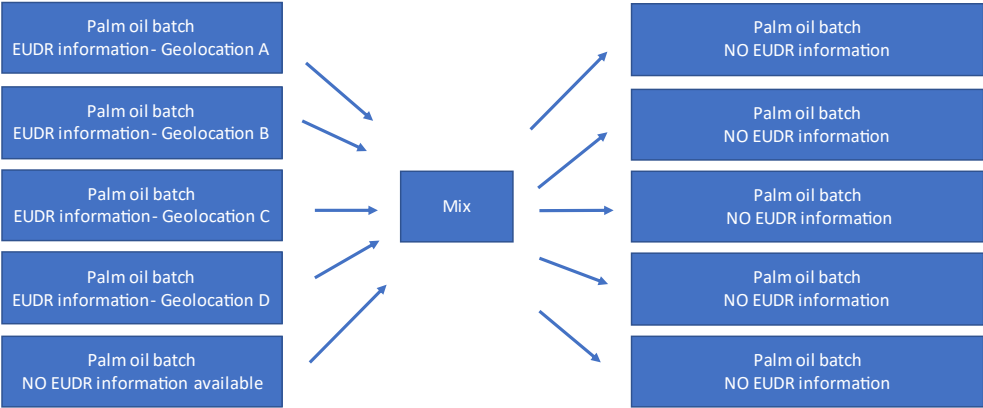
The same principle as outlined for FFB mixing at mills applies for oil palm (products) along the supply chain. If a batch of oil palm (product) for which EUDR relevant information is available are mixed with a batch for which this information is not available, the mixture does not comply with the EUDR requirements and can not be imported to the EU market or exported from the EU market.

4.3 Allocating the EUDR characteristics when splitting batches of oil palm products

If several batches of oil palm derived products with distinctive EUDR characteristics are mixed and then again split into new batches, all of the EUDR characteristic of the original batches shall be allocated to all of the new batches. This information shall be transferred through the supply chain and be considered by the obligated operators in their risk assessment. The following example illustrates this: 5 batches of palm oil, each with different geolocation information (A-E), are mixed. This mixture is then split into 5 new batches. The EUDR required information related to geolocations A-E shall then be transferred with all the new batches, as illustrated below:



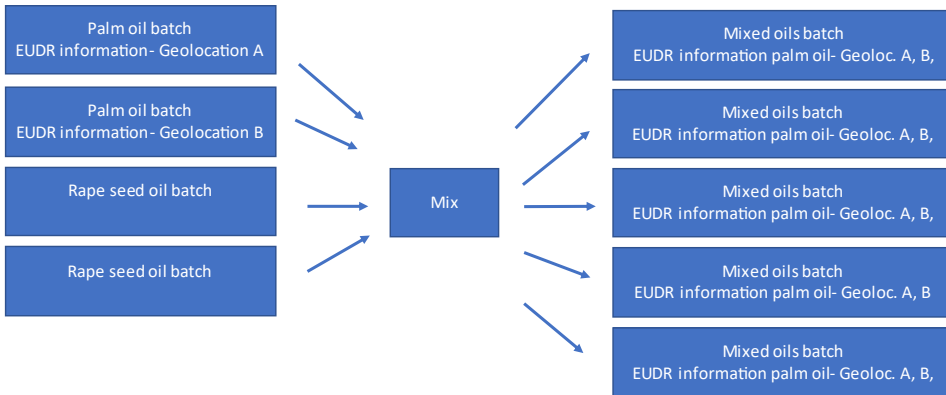
If one or more of the batches going into the mix does not contain EUDR information, all of the batches extracted from the mix shall be designated as not having the required EUDR information. This has been illustrated below:



4.4 Other calculation rules

The 'RSPO Rules for Oleochemicals and its Derivatives' specify mass balance calculation rules for primary oleochemicals and secondary oleoderivatives. In relation to EUDR relevant information, the same principles apply as explained in the previous sections: all oil palm products used for processing of primary oleochemicals or secondary oleoderivates shall have all relevant EUDR evidence if the products are to be imported to the EU or exported from the EU. If this is not the case, the products can not qualify as EUDR compliant.

If an oil palm product is mixed with an equivalent product made from another vegetable oil which is not subject to EUDR requirements, then the EUDR relevant information related to the oil palm product shall be attached to all batches taken from the mixture. This has been illustrated below:



If an oil palm product is mixed with a soy oil product for which EUDR requirements apply, then EUDR relevant information from both the palm oil product and the soy oil product shall be attached to batches taken from the mix.

5. Recommendations

The EUDR sets requirements for oil palm derived products imported to the EU or exported from the EU. These requirements are relatively aligned but in some cases go beyond or have a different approach compared to the current RSPO requirements. In order to remain relevant for RSPO certified companies importing to and/or exporting from the EU, RSPO must consider how to best facilitate companies in complying with EUDR requirements.

The RSPO certification cannot be used by the EUDR obligated companies as a 'green lane' to show compliance with EUDR requirements. However, the RSPO system can be used as a comprehensive tool to collect EUDR relevant information from oil palm growers & mills, and to effectively transfer this information through the supply chain. In order to do so, we recommend RSPO to:

1. Align the RSPO Standards and IT traceability systems to facilitate RSPO members in collecting information required for EUDR compliance:
 - a. Extend RSPO's IT (traceability) system so that the EUDR relevant evidence on geolocation, deforestation and legality can be uploaded by growers/mills and then be transferred through the supply chain;
 - b. Develop a voluntary EUDR add-on standard/information system to the RSPO Principles & Criteria, which includes the EUDR requirements not covered by the RSPO P&C;
 - c. Develop an 'EUDR information system' for the not RSPO certified part of oil palm products that follow SCCS requirements for 'mass balance';
 - d. Develop a modular approach allowing flexibility towards future legal requirements
2. Position the RSPO to the European Commission and to Member States competent authorities as a reliable system to assist companies fulfill the obligations of the EUDRs due diligence process.
 - 2b. Decide on RSPO's position in procedures on 'substantiated concerns'.
3. Reach out to RSPO members with information relevant for their EUDR compliance.

These recommendations have been further elaborated below. Please note that these recommendations have been developed on the basis of the contents of the EUDR, while exact requirements for the reporting formats of the due diligence statements have not yet been published by the European Commission and/or Member States. These requirements should be considered by RSPO when detailing the tools and activities listed in the recommendations.

Recommendation 1a: Extend RSPO's IT (traceability) system so that the EUDR relevant evidence on geolocation, deforestation and legality can be uploaded by growers/mills and then be transferred through the supply chain.

This information should be made available for:

- Batches of RSPO certified oil palm products complying with RSPO SCCS requirements for 'segregated';
- Batches of RSPO certified oil palm products complying with RSPO SCCS requirements for 'mass balance'. The EUDR relevant information should be transferrable for both the certified part of the MB batch, and for the non-certified part of the MB batch. This is because EUDR does not allow the mixing of oil palm products for which EUDR relevant information is available with oil palm products for which EUDR relevant information is not available. In other words: RSPO MB can only be applied if for all oil palm products EUDR in the mix relevant information is available.

Note: Given the EUDR requirement on detailed polygon data it is likely that the number of data that need to be uploaded and transferred in the system will increase significantly. This is not a fundamental problem, but may be an initial technical challenge for RSPO.

RSPO Digital Framework

The RSPO Secretariat has developed a Digital Framework concept to enhance its Certification and Trading & Traceability platforms. One explicit goal of the Framework concept is to gather the evidence necessary for RSPO members to perform due diligence per EUDR requirements and transfer that information along the supply chain.

The Digital Framework is currently a concept and the RSPO Secretariat has been given the green light to work together with potential technology partners in transforming the concept into a workable solution. Development of the critical elements of the Digital Framework in relation to the EUDR is targeted to be completed by Q4 2024.

Recommendation 1b: Develop a voluntary EUDR add-on standard/information system to the RSPO Principles & Criteria, which includes the EUDR requirements not covered by the RSPO P&C.

Compliance with the EUDR add-on standard/information system should be verified in conjunction with a RSPO P&C audit. This should also include the checking that the EUDR relevant evidence has been correctly uploaded in the RSPO traceability system:

- Evidence on deforestation-free (which is verified through the add-on standard);
- Evidence on legality and on geolocations (which is verified through the 'standard' P&C audit).

Note: The term 'add-on standard' emphasizes that EUDR data are independently verified as an add-on to the 'standard' P&C audit, which may provide confidence to operators and to competent authorities in the EU that the oil palm products are 'low-risk' or even 'negligible

risk'. On the other hand, the term 'standard' might wrongly suggest that oil palm products comply with EUDR requirements: as mentioned previously this is not something which can be decided by RSPO or by RSPO auditors. The term 'add-on information system' or alike may be more neutral than 'add-on standard'.

Recommendation 1c: Develop an 'EUDR information system' for the not RSPO certified part of oil palm products that follow SCCS requirements for 'mass balance'.

This information system should facilitate the collection of the EUDR relevant evidence at non RSPO certified growers/mills, that this evidence is independently verified and subsequently uploaded in the RSPO IT traceability system. This should include the EUDR relevant evidence on deforestation- free, legality and geolocations. Via this approach, it can be ensured that the RSPO MB system can still be applied for EU markets: part of an oil palm product batch may be RSPO certified (following a MB approach) while for all oil palm products in the batch all EUDR relevant information is available ('EUDR information checked').

Note: We recommend to not refer to this approach as an 'standard', as this may suggest that all RSPO Principles & Criteria are complied with while this is not the case. The name for the 'information system' should reflect that it facilitates collection of EUDR relevant evidence, but does not ensure compliance with EUDR or any RSPO standard.

Recommendation 1d: Develop a modular approach allowing flexibility towards future legal requirements

It is likely that in the coming years the EU, the US and possibly also other jurisdictions will develop additional legal (sustainability) requirements for palm oil products and other commodities. If RSPO wishes to facilitate its members in compliance with those additional requirements, it may need to develop other add on standards/information systems. We recommend RSPO to consider this when extending the IT/information system and developing the add on standards/information systems for EUDR (Recommendations 1a-1c). Ideally, these systems should be developed such that additional 'modules' with additional requirements can be added relatively easy in future.

Alternative options?

There are a couple of alternative options to the voluntary add on and the information system suggested above. The first option is to add additional EUDR requirements as a 'standard requirements' to the Principles & Criteria applicable to all oil palm growers and palm oil mills. This option has a couple of major drawbacks: it puts additional requirements on all oil palm growers and palm oil mills, while only part of growers and mills supply palm oil to the European Union. Furthermore, including EUDR requirements and related definitions in the existing P&C may lead to confusion about different definitions and requirements. Another option is that RSPO only facilitates transferring of EUDR relevant information through its traceability system. In this option, growers and mills would be allowed to collect and transfer through the supply chain EUDR relevant information without a third-party audit. A

major drawback of this option is that there is no independent control of the EUDR relevant information which growers and mills put in the traceability system, which entails a risk to the integrity of the RSPO system.

Recommendation 2: Actively market the RSPO system to the relevant competent authorities in the EU member states as a reliable tool to provide EUDR relevant information. This should at least include the contents of RSPO Standards and EUDR add-ons (see above), RSPO assurance system including requirements for CBs and audit procedures, and RSPO's complaints and appeal procedures. It should link to a number of the aspects that need to be covered in the obligated companies' risk assessment (in particular items (d), (f), (g) (ia) and (j) mentioned in Table 4.1).

This marketing should ideally lead to a situation where the RSPO system is accepted by competent authorities as 'quality assurance' for the EUDR relevant information, possibly leading to less stringent controls. Active marketing might include personal contacts/presentations complemented by dedicated documentation (factsheets or alike).

Recommendation 2b: Decide on RSPO's position in procedures on 'substantiated concerns'

Under Article 29 of EUDR, third parties can submit 'substantiated concerns', in relation to the possible non-compliance with EUDR requirements by obligated companies. Competent authorities shall assess substantiated concerns, including checks and hearings of operators and traders.

In their assessment of complaints, competent authorities may want to use RSPO and information from RSPO complaint procedures in their assessment. Within the scope of this study it has not been possible to analyse what consequences active involvement of RSPO in those assessment should have. We recommend that RSPO develop a position towards possible requests from competent authorities in EU member states asking for information for their assessments of complaints.

Recommendation 3: Provide EUDR background information and data to RSPO members.

This may include general EUDR information, maps on prevalence of deforestation in relevant countries and areas (as per item (b) and (c) of the risk assessment that EUDR obligated operators need to undertake (see box below).

EUDR risk assessment requirement

The EUDR requires that operators placing oil palm products on the EU market or exporting from the EU market undertake a risk assessment:

'Operators shall verify and analyse information collected in accordance with Article 9 and any other relevant documentation, and on this basis carry out a risk assessment to establish whether there is a risk that the relevant products intended to be placed on or exported from the Union market are non-compliant with the requirements of this Regulation. Unless this risk assessment reveals no or only negligible risk that the relevant products are not compliant with Article 3(a) or (b), operators shall not place the relevant product on the Union market nor export it.'

Examples of elements that shall be included in the EUDR risk assessment and where RSPO could provide information to obligated operators include the following:

- ' - the presence of forests in the country and area of production of the relevant commodity*
- prevalence of deforestation, or forest degradation in the country, region and area of production of the relevant commodity;*
- conclusions of the meetings of the Commission expert groups supporting the implementation of this Regulation, as published in the Commission's expert group register'.*

Annex 1 References

Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No. 995/2010. Date: 21 December 2022

RSPO (2018) Principles & Criteria for the Production of Sustainable Palm Oil 2018 (Revised 01 February 2020 with updated Supply Chain Requirements for Mills).

RSPO (2020). RSPO Supply Chain Certification Standard. For Organisations Seeking or Holding Certification 2020.

RSPO (2016). RSPO Rules for Oleochemicals and its Derivatives.

RSPO (2022). Free-Prior-and-Informed-Consent-FPIC-Guide-2022.

RSPO (2021). New Planting Procedure -2021.

Annex 2 Oil palm products covered by EUDR

<i>Relevant commodity</i>	<i>Relevant products</i>
<i>Oil palm</i>	<p><i>1511 Palm oil and its fractions, whether or not refined, but not chemically modified</i></p> <p><i>1207 10 Palm nuts and kernels</i></p> <p><i>1513 21 Crude palm kernel and babassu oil and fractions thereof</i></p> <p><i>1513 29 Palm kernel and babassu oil and their fractions, whether or not refined, but not chemically modified (excluding Crude oil)</i></p> <p><i>2306 60 Oilcake and other solid residues of palm nuts or kernels, whether or not ground or in the form of pellets, resulting from the extraction of palm nuts oils or kernels oils</i></p> <p><i>382319 fatty acids, industrial, monocarboxylic; acid oils from refining (excl. stearic acid, oleic acid and tall oil fatty acids)</i></p> <p><i>291590 saturated acyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulphonated, nitrated or nitrosated derivatives (excl. formic acid and acetic acid, mono-, di- or trichloroacetic acids, propionic acid, butanoic and pentanoic acids, palmitic and stearic acids, their salts and esters, and acetic anhydride)</i></p> <p><i>382370 fatty alcohols, industrial</i></p> <p><i>382311 stearic acid, industrial</i></p> <p><i>290545 glycerol</i></p> <p><i>291570 palmitic acid, stearic acid, their salts and esters</i></p> <p><i>382312 oleic acid, industrial</i></p>

Annex 3 Detailed gap analysis

The detailed gap analysis is reported in an Excel-spreadsheet, available as separate document.