

Gap Analysis Between the 2018 RSPO Principles and Criteria (P&C) and EU Deforestation Regulation (EUDR)

Q&A

WHAT ARE SOME OF THE MOST IMPORTANT GAPS IDENTIFIED BY THE ANALYSIS?

On **deforestation**, the analysis highlights three main gaps:

- I. The cut off date - 31 December 2020 (EUDR) versus November 2005 and November 2018 (RSPO P&C);
- II. The definition of “forest” as used by the Food and Agriculture Organization of the United Nations (FAO) with a quantitative general threshold value (EUDR) versus a qualitative site-specific methodology by using the HCS-HCV methodology (RSPO P&C); and
- III. The exemption for High Forest Cover Countries (RSPO P&C) versus non exemption (EUDR).

On **legality**, the analysis states that the RSPO requirements are largely in line with EUDR requirements and that 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”. However, caution is required as the EUDR provides little or no specification on the relevant pieces of national legislation and evidence that operators need to have available. A key gap between the EUDR and the 2018 RSPO P&C is that the EUDR requires that information on legality is transferred through the supply chain, whereas RSPO does not.

On **geolocation**, the analysis concludes that RSPO is in a good position to provide information on the EUDR geolocation requirement. Criterion 2.3.1 particularly provides a basis under which geo-location information can be made available for all Fresh Fruit bunches (FFB) certified and non-certified. However, to be fully aligned with EUDR requirements, the following gaps need to be filled:

- Geo-location requirements of polygon should be added to bring it in line with the EUDR for plots above 4 hectares;
- Definition of “FFB origin” should be added and aligned with EUDR definitions of “plot of land”;
- Special attention should be given to “an extension of land within a single real-estate property”;
- The transition period for mills going for the first year of certification to collect smallholder geolocations should be deleted.

WHAT ARE THE MAIN RECOMMENDATIONS FROM THE ANALYSIS AND HOW DOES THE RSPO RESPOND TO THESE?

The analysis concludes that the RSPO System can be used as a comprehensive tool to collect relevant EUDR information from oil palm growers and mills, and to effectively transfer this information through the supply chain.

Based on the analysis, there are three recommendations:

Recommendation 1: Align the RSPO Standards and IT traceability systems to assist RSPO Members with collecting the information required for EUDR compliance:

- A. Extend RSPO's IT (traceability) system so that the evidence relevant to the EUDR on geolocation, deforestation and legality can be uploaded by growers and mills and transferred through the supply chain;
- B. Develop a voluntary EUDR add-on standard or information system to the RSPO P&C, which includes the EUDR requirements not covered by the RSPO P&C;
- C. Develop an "EUDR information system" for conventional palm oil material within the Mass Balance supply; and
- D. Develop a modular approach allowing flexibility towards future legal requirements.

RSPO response to Recommendation 1:

- A. RSPO is currently working on a new digital platform for traceability which shall allow members to upload and trace relevant EUDR compliant information throughout the supply chain.
- B. The digital platform for traceability which is under construction shall serve as an information system allowing members to include information on requirements not covered by the P&C on a voluntary basis. The RSPO Standards are currently undergoing its five year review, which is a multi-stakeholder process. The degree to which there will be changes to the text of the P&C itself will depend on the discussion between the members taking part in this process.
- C. The digital platform for traceability which is in development shall also be able to contain information on the conventional material members source for their Mass Balance supply. Members will be responsible for their own due diligence on no deforestation and legality for the conventional material, but by providing the system to transfer the information, the RSPO aims to assist members with showing their compliance to National Competent Authorities.
- D. The RSPO monitors relevant legislative developments in all the geographical areas where it operates and aims to serve its members with tools which can help them with demonstrating their compliance, regardless of geographical location.

Recommendation 2:

- A. Position the RSPO to the European Commission and to member states' competent authorities as a reliable system to assist companies in fulfilling the obligations of the EUDR due diligence process.
- B. Decide on RSPO's position regarding procedures on "substantiated concerns".

RSPO response to Recommendation 2:

- A. The RSPO is in contact with the European Commission, national member states' delegations and National Competent Authorities to improve their awareness of the RSPO as one of the most robust schemes in agriculture and the leading certification scheme for certified sustainable palm oil and its procedures. Initial contacts with the National Competent Authorities show that they are willing to see RSPO Certification as a risk mitigation tool which will help them determine how to allocate their resources for the risk-based approach to their checks as prescribed by the EUDR.
- B. The RSPO Secretariat is reviewing its responsibilities with regards to possible requests from competent authorities in EU member states asking for information for their assessments of complaints. The Secretariat will always comply with legal requirements to provide documentation and reiterates that whilst the EUDR recognises good practice, certification or other third party verified schemes to be used in the risk assessment procedure, they do not substitute the operator's responsibility with regards to due diligence, which means the legal responsibility for compliance with the EUDR remains with the operators/traders regardless of information available in the RSPO System.

Recommendation 3: Reach out to RSPO Members with information relevant for their EUDR compliance.

RSPO response to Recommendation 3:

The RSPO is a membership organisation and the Secretariat aims to provide its members with the best possible support to help them with their questions around the EUDR. Among others, the RSPO organises an informal 'Monthly Member Update Meeting' on the second Thursday of each month (10:30 - 11:30 CET), where recent developments are discussed and members are invited to share information around EU dossiers. If you would like to be invited to these meetings, please send an email to ruben.brunsveld@rspo.org.

WHAT CAN THE RSPO DO WITH THE GAP ANALYSIS IN LIGHT OF THE EUDR?

RSPO Members can use the gap analysis to get a clear understanding of the ways RSPO can facilitate their information sharing obligations under the EUDR. The analysis can also serve as input for the ongoing review of the RSPO P&C. A second round of public consultation of the new text will commence mid May 2023 and the new version will be presented for voting at the RSPO's General Assembly on 23 November 2023.

Since the text of the regulation has been adopted by the European Parliament on 20 April 2023 and the Council gave its preliminary approval (awaiting formal approval) on 6 December 2022, the text of the regulation is set and RSPO can no longer lobby for amendments to the text. The Secretariat will continue to engage with the European Commission and National Competent Authorities as well as national ministries to explain the complications with the implementation of the regulation for the palm oil sector and to offer its support as a resource tool to facilitate a good implementation for RSPO Members.

WHY IS RSPO CERTIFICATION RELEVANT IN VIEW OF THE EUDR?

After the regulation's entry into force, RSPO Certification will be very relevant for companies as a means of support in showing compliance. In general, RSPO Certified companies will:

- Be better prepared and equipped to deal with EUDR as they will already have many relevant processes in place;
- Have a lower chance of checks and administrative burdens by member states' National Competent Authorities; and
- Be able to show that they go beyond the EUDR legal minimum requirements in many ways which instils trust with their stakeholders.
- Use the RSPO and its network for information, contacts, etc. across the supply chain as well as have a representative voice in the EU.

The regulation itself has several clear indications for voluntary schemes such as the RSPO to emphasise their added value.

- Article 10.2.j of the EU regulation on deforestation explicitly recognises third party verified schemes as tools which can be used by companies to be used in their risk assessment, without substituting the operators' legal responsibility with regards to due diligence. Certification is not an automatic access (green lane) to the market but it is one of the tools that companies can use to show compliance.
- Article 13.2.a of the regulation states that member states shall facilitate the exchange and dissemination of relevant information, in particular with a view to assisting operators in assessing risk as set out in Article 10, and on best practices regarding the implementation of this regulation. RSPO is broadly accepted as the leading and most recognised "best practice" in Europe for certified sustainable palm oil.

For further information, please contact info.eu@rspo.org