

15th March 2022



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Minister for the Environment, Climate and
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We're asking the EU to be fair to the smallholder farmers and
the forests!

Dear Minister Ryan, Minister of State Hackett,

Fairtrade Ireland & **co-signatory supporters & organisations below**¹ are contacting you about the proposed EU regulations on Deforestation, Forest Degradation & Access to the EU market, published in November 2021².

We welcome the EU regulations as a necessary first step towards the ending of imported deforestation. However, we are asking for improvements in key areas so that the regulations better support & protect small holders & do not further marginalise them.

In terms of a just transition, it is accepted that developing countries have only contributed a tiny percentage of carbon emissions since 1850, & that they should be supported to meet emission targets & adaptation strategies made necessary by the actions of others. Equally in terms of deforestation, 50% of global deforestation in the last 9,000 years coincided with European industrial development since 1900³.

The world's forests provide for nearly four times as many livelihoods than the population of the European Union⁴. Fairtrade works with over 1.2 million cocoa & coffee smallholders, in over 40 countries. This is a subset of the millions of smallholder cocoa & coffee farmers who are reliant for income on selling to the European Union. The vast majority of these cocoa & coffee smallholders work on farms smaller than five hectares⁵, & are living in extremely vulnerable contexts⁶.

In cocoa & coffee supply chains, the deforestation regulation will only meet its objective to curb deforestation if the root causes are addressed. These include, smallholder poverty, poor land & forest governance, climate change, lack of access to information & finance. Social & environmental sustainability are two sides of the same coin: earning a living income is a key enabler as well as a precondition to secure the sustainable use of forests & to foster a just transition towards sustainable & deforestation free commodity production.

Fairtrade's specific recommendations, which the supporters & organisations below support, are listed below. We are asking that you raise the points below at the ENVI Council meeting on 17th March.

Yours sincerely,

Peter Gaynor
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¹ To be added before sending, add your name / organisation here <https://docs.google.com/document/d/1fHudvrbRMUkHIXUZZIkY6KsTtyQFxxS2/edit?usp=sharing&oid=103003623288252745296&rtpof=true&sd=true>

² https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_5919

³ <https://ourworldindata.org/world-lost-one-third-forests>

⁴ European Commission Climate Action: EU Action Forests and Agriculture https://ec.europa.eu/clima/eu-action/forests-and-agriculture_en#ecl-inpage-1686

⁵ <https://coffeebarometer.org/>

⁶ <https://www.kakaoforum.de/en/news-service/country-profiles/cocoa-producing-countries/>

A just transition for cocoa and coffee smallholders to access a deforestation-free and forest degradation-free European market

Fairtrade International positions and recommendations to the European Parliament and Council of the EU on the basis of the European Commission's proposal for a regulation on deforestation-free products

1. Assess the impacts on cocoa and coffee smallholders conducted before the regulatory proposal passes into law.

Position: Many cocoa and coffee smallholder farmers live in poverty or extreme poverty and rely on access to the EU market for their livelihoods. The impact assessment conducted by the European Commission and the subsequent Regulation recognizes that smallholders producing the relevant commodities may face adaptation challenges. However, the impact assessment fails to assess the specific impacts of the Regulation on these farmers.

The current timeline of the general review to evaluate the impact of the Regulation on farmers – in particular, smallholders, indigenous peoples and local communities – and the possible need for additional support for the transition to sustainable supply chains is scheduled for five years after the entry into force of the Regulation. This is not fit for purpose, as it will be much too late to prevent significant and foreseeable negative impacts.

Recommendations: In line with the indivisibility of the Sustainable Development Goals (SDGs), social and economic aspects should not unilaterally be overridden by environmental aspects. The EU should therefore conduct a focussed assessment of environmental, social and economic impacts on cocoa and coffee smallholders before the regulatory proposal passes into law.

A special focus should be put on assessing costs and capacities of cocoa and coffee smallholders and their producer organisations to comply with new requirements. The assessment should be gender-sensitive, taking into account different barriers, needs and capacities of women farmers.

This assessment should also include establishing the estimated number of cocoa and coffee smallholders who might be excluded from the EU market due to the proposed retroactive cut-off date for deforestation activities. With the Regulation's cut-off date, cocoa and coffee smallholders who participated in deforestation after 31 December 2020 would be excluded from the EU market, even if their actions were legal under their national legislation at that time.

Prohibiting EU market access for these cocoa and coffee smallholders will not resolve deforestation, as they still need to earn a living. The impacted smallholders may still convert forest or existing land to unregulated export crops, or sell their cocoa or coffee to unregulated or less regulated consumer markets, or be forced into other undesirable activities such as illegal logging or illegal gold mining.

Based on the outcome of the assessment, the European Parliament and Council will understand the scale of support needed for cocoa and coffee smallholders to meet the new requirements of the Regulation. For instance, a time-bound mechanism or grace period for cocoa and coffee smallholders who have deforested in a nationally legal way will likely be needed.

This time-bound grace period mechanism should include EU support for the cocoa and coffee smallholders, many of whom are in poverty or extreme poverty, to carry out the necessary remediation⁷. During this grace period, the cocoa and coffee smallholders should maintain access to the European market to ensure they are not left destitute.

The EU should pay special attention to high-risk areas identified through the EU's own country benchmarking system when designing support programmes.

2. Tackle root causes of deforestation as a precondition to reduce the EU deforestation footprint.

Position: In cocoa and coffee supply chains, the Regulation will only meet its objective to curb deforestation if the root causes, including smallholder poverty, complex land and forest governance, climate change⁸ and lack of access to information and finance are referenced and adequately addressed.

There will be no environmental sustainability without social and economic sustainability: farmers being able to earn a living income is a key enabler as well as a precondition to secure the sustainable use of forests and foster a just transition towards sustainable and deforestation-free cocoa and coffee smallholder production.

Recommendations: The Regulation must explicitly recognise the specificities of cocoa and coffee smallholder-driven deforestation by referring to its root causes. Working jointly with partner countries to find relevant solutions to these indirect drivers should be a transversal priority of future partnerships and cooperation mechanisms.

These engagements need to be backed by a complementary and ambitious upcoming EU Human Rights and Environmental Due Diligence (HREDD) law and guidelines setting out how companies placing cocoa, chocolate and coffee on the EU market should deliver on the right to an adequate standard of living for smallholders. Such guidance should highlight the importance of companies addressing their purchasing practices and paying prices that enable a living income as part of a holistic approach to living incomes.⁹

3. Engage responsibly with cocoa and coffee smallholders and their producer organisations.

Position: Unintended adverse consequences of the EU country benchmarking system coupled with the concept of "simplified due diligence" should be further assessed to reduce the likelihood of "cut

⁷ For example, the significant commitments of US\$19.5 billion made at COP26 in 2021 for projects to address deforestation, and the commitment that at least 25% of this money be made available to locally run initiatives, could be followed by the EU.

⁸ Climate change is both caused by deforestation and one of its key drivers: as traditional lands become less and less usable (drier or more pest-prone, for instance), farmers seek new virgin lands to maintain their livelihoods.

⁹ Fairtrade Living Income Strategy https://files.fairtrade.net/2017-10-23_Fairtrade_Living_Income_strategy_EN.pdf

and run” – companies simply abandoning higher-risk countries in favour of lower-risk countries, regardless of specific producer actions.

Recommendations: To mitigate this risk, the Regulation should include explicit due diligence requirements on responsible engagement.

Specifically, the Regulation should support long-term sourcing relationships between retailers, brands and traders with cocoa and coffee smallholders and their producer organisations, address counterproductive purchasing practises, provide the right support and enable the environment for smallholders to invest in sustainable and deforestation-free cocoa and coffee production.

Furthermore, operators should be required by the EU legislation to ensure meaningful engagement and participation of all relevant stakeholder groups, including smallholders, at all stages of their due diligence process.

Where disengagement by companies does happen, the Regulation should mandate that they follow the OECD Due Diligence Guidance for Responsible Business Conduct.¹⁰

The EU country benchmarking system should recognise countries and areas in which cocoa and coffee smallholders and their producer organisations have credible and supported programmes in place to reduce and remediate deforestation, and give these programmes time to be effective.

4. Refer explicitly to international standards of human rights.

Position: The legality requirement in the regulatory proposal on its own does not provide the needed guarantee to ensure that products placed on the EU market won't be linked to human rights violations. The current proposal could result in products reaching the EU market that do not respect internationally recognised human rights – such as land rights of indigenous communities – in the name of addressing deforestation.

Recommendations: The Regulation should require companies placing products on the EU market to respect land and tenure rights of local communities and indigenous and traditional peoples, as well as the right to Free, Prior and Informed Consent (FPIC). Furthermore, future partnerships with producer countries should look into ways to reinforce or reform relevant national policies and legislation to secure these rights if needed.

5. Combine traceability requirements with adequate support and safeguards on data ownership for cocoa and coffee smallholders and their producer organisations.

Position: The Regulation should prevent reinforcing existing power imbalances in supply chains and instead lead to empowerment. While increased geolocation requirements can be a positive step towards better traceability and transparency in supply chains, cocoa and coffee smallholders and their producer organisations will need to be provided with adequate technical and financial support to meet these requirements and avoid being excluded from EU supply chains.

Providing the geolocation coordinates of the plot of land where commodities were produced as well as

¹⁰ <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>

the specific time or period of time of production will require significant updating of many producer organisations' management systems, a transition to digitalisation, as well as requiring intensive capacity-building measures of smallholder cocoa and coffee farmers and equipping their producer organisations with digital devices and technologies.

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the specific time or period of time of production will require significant updating of many producer organisations' management systems, a transition to digitalisation, as well as requiring intensive capacity-building measures of smallholder cocoa and coffee farmers and equipping their producer organisations with digital devices and technologies.

If producer organisations are not assisted with this upgrading, there is a high risk that the Regulation will lead to access to the EU markets being controlled by transnational corporations – or their subsidiaries – who do have access to these management systems and technologies and treat their usage and the data within as proprietary.

Recommendations: The Regulation must explicitly ensure data ownership for producer organisations and their cocoa and coffee smallholder members through guaranteed ownership of geolocation coordinates. This needs to be combined with EU funding for producer organisations and their cocoa and coffee smallholder members to access the management system software to manage geolocation and first mile traceability data, as well as secure the necessary technical support and capacity building to manage these systems.

8. Leverage partnerships, cooperation mechanisms and other financial tools to support smallholders' compliance with new requirements and jointly address root causes of deforestation.

Position: Accompanying strong supply-side measures are key constituents of the smart mix needed for the Regulation to be able to deliver on the ground. We welcome the EU's willingness to step up engagement with partner countries and aim at inclusive and wide stakeholder participation.

However, the current lack of clarity regarding the type of engagement and expected timeline as well as the limited scope of the announced Forest Partnerships – which are not targeted at major forest- and ecosystem-risk commodity-exporting countries and thus disconnected from the Regulation – is regrettable and should be addressed.

Recommendations: The EU should engage with main producing countries to develop strong partnerships and cooperation mechanisms aimed at tackling the underlying root causes of deforestation. The EU should secure dedicated financial resources to support cocoa and coffee smallholders in partner countries to comply with the EU requirements. Cocoa and coffee smallholder communities cannot be expected to meet high standards for sustainable farming and forestry when they are living in poverty or extreme poverty and cannot access their basic human rights.

Various forms of cooperation are mentioned in Article 28 of the proposal. To create the right enabling environment and foster a just transition towards sustainable and deforestation-free practises, the EU should start by assessing jointly with producer countries the capacity of cocoa and coffee smallholders and their producer organisations to comply with new EU market access requirements. This will help identify main barriers and needed technical and financial support to overcome the latter. To that end, we encourage the EU to build upon existing dialogues with producing countries (e.g., cocoa talks) and support efforts already underway.

The potential power of other existing EU financial tools should also be taken into account, such as the Multi-annual Indicative Programmes (MIPs) and related Team Europe Initiatives (TEIs), so that they will effectively contribute to improving the capacity of cocoa and coffee smallholders and their producer organisations to comply with new EU sustainability requirements.

In addition to support measures, the EU and producing countries should also jointly put in place positive incentives for cocoa and coffee smallholders by creating the business case for sustainable practices. This could include trade incentives or rewarding mechanisms for smallholders to participate in forest regeneration programmes, or for maintaining other ecosystem services.
