**BRIEFING**

**Working dinner with H.E. Luhut Binsar Pandjaitan, Coordinating Minister of Maritime Affairs of Indonesia**

**and H.E. Siti Nurbaya Bakar, Minister of Environment and Forestry of Indonesia**

**23 April 2018 (19.00-21.00)**

**Palm oil**

1. **Scene setter**

As regards **Palm Oil**, the issue will be one of the main points for discussion during the dinner as part of the long-standing, intensive lobbying effort by Indonesia (and Malaysia) over the last year in response to ongoing developments related to palm oil in Europe. These includes notably the EP Resolution on palm oil and deforestation of rainforests adopted in April 2017 and, more recently, the ongoing legislative process on the recast of the Renewable Energy Directive (REDII) and the proposed amendment by the EP that would see palm oil-based biofuels being no longer eligible towards renewable energy targets from 2021. **Palm oil** producer countries, in particular Indonesia and Malaysia, have repeatedly expressed strong concerns about the EP approach to palm oil and the latest proposals by the EP in the context of the REDII legislative proposals have been strongly criticized as an unbalanced and discriminatory approach, singling out palm oil compared to other vegetable oils. Several letters expressing such concerns have been sent to both President Junker and President Tusk by Indonesian President Jokowi, who has also issued strong statements. Aggressive and somewhat misguided media campaigns have been also raising the temperature at a time when Indonesia is heading for presidential election in 2019 and the millions of smallholders engaged in palm oil cultivation are an important constituency for all aspiring candidates.

The Commission has repeatedly stressed its position that there is a need to adopt a balanced approach regarding palm oil, which recognises both the environmental and social challenges, and the opportunities and important role in economic development of producer countries, and that it intends to engage constructively with and support producer countries' efforts.

However, concerns about possible unilateral measures by the EU remain high and are compounded by a perceived unfair campaign against palm oil in the EU (e.g. anti-dumping duties, palm oil free labels, etc.). Indonesia has been strongly calling for the inclusion of palm oil in the ongoing FTA negotiations. They have expressed in numerous occasions their willingness to work closely with the EU on setting up a FLEGT-like arrangement for palm oil, based on the existing Indonesia Sustainable Palm Oil scheme (ISPO) which the Indonesia government is willing to strengthen using the same multi-stakeholder approach that has been at the foundation of the FLEGT VPA.

1. **Speaking points**
* The EU is mindful of the environmental and social implications of palm oil production, such as deforestation and biodiversity loss, greenhouse gas emissions, and indigenous rights issues. Addressing the challenges of deforestation remains indeed an important matter for the EU, including as part of the implementation of the 2030 Agenda and the SDGs, as well as the Paris Agreement. But we are also aware of the opportunities that palm oil presents in Indonesia as a significant development opportunity, including for rural communities and smallholders.
* As you may have seen from the Commission's response released last September to the European Parliament resolution on palm oil, we defend balanced positions on the matter. The Commission believes that it is essential to cooperate and support the efforts of producing countries to minimise deforestation and achieve sustainable production of this commodity.
* We are interested in the efforts made by the Indonesian government to strengthen your national palm oil certification scheme, and we welcome your engagement to export 100 % sustainable palm oil by 2020. We look forward to continuing exchanges on avenues for your national scheme – ISPO, Indonesian Sustainable Palm Oil – becoming mandatory to all producers. We also look forward to the future Presidential Decree on ISPO, and hope that the Ministry of Environment will play an active role in implementing the Decree and ensuring robust enforcement of the scheme.
* I trust that the working group on Environment and Climate Change under our EU-Indonesia Partnership and Cooperation Agreement provides a valuable platform for exchanges on the matter. In addition, I am aware that palm oil is an important topic under the ongoing negotiations on the EU-Indonesia FTA (CEPA).
* At the same time, the EU is aware that deforestation has multiple causes, including but not limited to palm oil production. We are in this context contemplating the possibility of launching an EU initiative on deforestation, looking in particular at avenues for engaging more closely with producing countries on how to ensure sustainable production and consumption of agricultural commodities, including palm oil. I trust that, should such an initiative materialize, it would provide us with additional opportunities to collaborate with Indonesia on the matter.

**III. Defensives**

***The Commission has proposed under the recast of the Renewable Energy Directive (RED) that the share of food-based biodiesel in the EU’s renewable target be almost halved by 2030, and that member states can arbitrarily lower the use of biodiesel from oil crops because of indirect land use change. Such measures are deliberately in favor of European rapeseed producers.***

* EU support for biofuels as per the current RED has provided and continues to provide huge opportunities for the palm oil industry.
* The Commission proposal on the revision of the RED includes a phase-down over time of ALL conventional biofuels (not just biodiesel, and not just palm oil) and the possibility for MSs to go lower on oil crops. This is because oil crops have by far the highest indirect land use change (ILUC) emissions, as recognised already under the ILUC Directive. But there is no distinction made between different oil crops (of which rapeseed is one), and there is nothing in the proposal which targets crude palm oil specifically.
* The Commission's proposal also seeks to incentivise waste and residue use in biofuel production, and the palm oil industry would benefit from that as palm oil mill effluents and empty palm fruit bunches (both residues from processing palm oil) are included in the list of products to count as advanced biofuels in the RED revision proposal.

***Does the EP vote imply that the European Union is planning to impose a ban on imports of palm oil?***

* The vote by the European Parliament does not mean that the EU has adopted a final decision. So far the EP has voted but the position will now be subject to discussions with the Council and the Commission (the so-called 'trilogue'), whereby the Commission has an important technical and brokering role.
* To be clear, the EP has not voted in favor of a ban of palm oil-based biodiesel. Instead it has voted in favor of excluding biofuels produced from palm oil from being accounted towards the EU Renewable Energy targets as of 2021. This would by no means limit the amount of biofuels from palm oil that can be produced or imported and consumed in the EU.

***What is the Commission aiming to achieve in the trilogue?***

* The Commission will examine closely into the proposals adopted by the European Parliament and the Council. The overall objectives pursued by the Commission remain those put forward in its proposal of November 2016.
* With specific regard to biofuels, the Commission's proposal foresees the introduction of a 7% cap (to be gradually reduced to 3,8% by 2030) on the contribution of all crop-based (i.e. including but not limited to palm-based) biofuels to reaching the EU renewable energy targets.
* However, MS should have the possibility to distinguish between different types of conventional biofuels taking into account indirect land use change, for instance by setting a lower limit for biodiesel produced from oil crops.

***What effects would the proposal voted by the EP have on palm oil imports from Indonesia?***

* It is important to understand that the text voted by the EP does neither limit imports of palm oil or palm oil-based biodiesel nor represents a ban for the consumption or use of palm oil oil-based biodiesel.
* The EU target for renewable energy constitutes an objective the EU aims to achieve collectively but in principle Member States decide themselves which types of renewable energy they want to promote. Excluding palm oil from counting towards this objective would mean that this target will need to be achieved by other means. However, this does not stop the MS to continue promoting biodiesel from palm oil if they wish to. Compliance with the sustainability criteria for biofuels and state aid rules would remain the only condition for applying public support.

***Will RED II be WTO compatible?***

* The proposal for the REDII issued by the Commission in November 2016 is fully compatible with the EU WTO obligations as it does not include provisions discriminating imports or affecting trade. The Commission remains committed to ensure that EU law is consistent with the WTO rules.

***Will the EU facilitate palm oil imports under the EU-Indonesia FTA? Or are you intending to restrict them based on sustainability criteria?***

* We note that palm oil is of particular relevance to Indonesia. Palm oil, like any other product will be part of the negotiation. The EU stands ready to achieve an ambitious outcome.
* The EU is committed to making trade contribute to sustainable development. In the negotiations with Indonesia the EU is pursuing an ambitious and comprehensive chapter on Trade and Sustainable Development, addressing labour and environmental issues of relevance in a trade context.
* We want to have in the FTA a good framework to address the root causes of concerns on the sustainability impacts of palm oil production - e.g. ensure sustainable management of forests, protection of biodiversity, sound working conditions, responsible business practices.
* The EU also follows closely the work undertaken by Indonesia towards enhancing the sustainability of palm oil, including with regard to the Indonesian objective of achieving 100% sustainable palm oil value chains by 2020.

***The palm oil study recently released by the European Commission is too critical on ISPO and Indonesia's legislation and production system.***

* The Commission carried out a study on the environmental impacts of palm oil production, as well as on certification schemes and legislation in place in producing countries, including Indonesia. We believe indeed that, considering on-going debates on palm oil in Europe, it was important to provide an objective assessment of the situation to inform discussions. Whilst this study provides useful information on palm oil, the report remains analytical and does not provide policy recommendations.
* At the same time, the study - recently released on the Commission's website - was carried out by an independent consultant and does not represent the official views of the Commission. The contributions provided by the Indonesian authorities to our consultants during the drafting of the report were very useful in that regard.
* We trust that the final report provides a robust analysis of the strengths and weaknesses of the main palm oil certification schemes, including ISPO, and that the study can now serve as a basis for future exchanges and consolidation of these schemes. We would in particular be interested in hearing about on-going work by Indonesia to address existing gaps (e.g. regarding enforcement of the peatland moratorium, lack of independent accreditation of certification bodies, lack of transparency regarding documents on audits and complaints – not publicly available, forest clearance permitted under certain conditions).

***EU imports of palm oil are decreasing. This is due to campaigns criticising palm oil in the EU, as shown by declarations of the French Minister of Environment Nicolas Hulot last July. How will the EU address this situation?***

* We acknowledge Indonesia's objective to ensure that palm oil is treated in a non-discriminatory manner. The latest statistics for the exports of palm oil from Indonesia towards the EU have seen a 45% increase in value between January and November 2017 over the same period in 2016. This illustrates well that the EU market remains open to your country’s exports of this product. In addition, the EU import duties on palm oil are considerably lower than those of other major export markets for Indonesian palm oil (such as India).
* At the same time, trade (and thus potential import restriction) is an EU competence, which means in practice that individual EU Member States are not in a position to adopt national trade restrictions on palm oil.
* "Palm oil free" campaigns and labelling by various EU producers or brands are fully voluntary, and there is no legislation in the EU barring a company or a consumer from labelling a product “palm oil free” for marketing purposes, if this claim is indeed accurate. For instance, European wheat producers are not satisfied with the rise of "gluten free" products, but that is a reality that they have to deal with. The best means for producer countries to react to such campaigns is therefore to engage with the critics, which several companies have done by strengthening their supply chains and buying sustainable palm oil.

***The European Parliament resolution on palm oil and deforestation is disproportionately negative against palm oil. Will it lead to import restrictions on the EU side?***

* The resolution of the European Parliament on palm oil represents a useful contribution to the broader debate on palm oil and deforestation, which we believe should also fully involve producer countries. The resolution reflects the views and concerns put forward by various parts of the EU public opinion as part of our democratic process. This resolution is nonetheless not part of a legislative initiative and is not binding on the Commission.

***Will the EU endorse the European Parliament's call for a single certification scheme for palm oil which ignores ISPO, the national sustainable palm oil scheme of Indonesia?***

* The EU is aware of the large number of certification schemes and sustainability standards for palm oil (ISPO being one of these), which can sometimes appear as complex to end consumers. The EU recognizes also the efforts made by Indonesia to strengthen its national certification scheme, ISPO.
* As indicated in the Commission's response to the EP resolution on palm oil, we do not see the need for developing a single certification scheme for palm oil. National certification schemes have in some cases been developed to address the specificities of the palm oil sector at national level. We are rather keen on building on existing schemes, and continuing to work jointly with palm oil producer countries to see how existing certification schemes can best be strengthened.

***The European Parliament's resolution singles out palm oil while a Commission study from 2013 recognizes that palm oil is not the main driver of deforestation. Adopting import restrictions on palm oil would be unfair and would not address the main drivers of deforestation.***

* The EU is fully aware that a range of agriculture commodities is associated with deforestation, and the Commission is reflecting comprehensively on the challenges of deforestation with no intention to single out palm oil. Studies show nonetheless that palm oil is one of the drivers playing a role in the broader issue of deforestation (coming after soy and beef), and palm oil was therefore looked at in the framework of recently published studies by the European Commission.

***Will the EU endorse the Indonesian Sustainable Palm Oil?***

* The EU follows with interest the work by the Indonesian government and stakeholders towards enhancing the sustainability of palm oil production. The commitment by the Indonesian government to render ISPO mandatory for all producers by the end of 2019 is an encouraging sign from our perspective.
* While there is no legal basis for the EU to endorse ISPO, we remain interested in exchanging views with Indonesia on action taken to strengthen ISPO and ensure its robust implementation and enforcement.

***EU requirements to inform consumers about the presence of palm oil in food are discriminatory. Will you change them?***

* The EU legislation aims at informing consumers about the food they purchase and requires the indication of the vegetable oil/fat content on the product's label.
* It applies to all oils (olive, palm, sunflower, rapeseed etc.), without distinction, and does not discriminate against palm oil.

***Does the Commission intend to prohibit the use of palm oil in foods? This would have no scientific basis.***

* The Commission has no such intention at this stage. It may however take appropriate regulatory measures to limit the presence of dangerous substances in food products.
* The Commission is for example closely following scientific studies on the presence of contaminants (such as glycidyl esters and 3-monochloropropanediol (3-MCPD)) in all vegetable oils, including palm oil, and will assess on this basis the need to set limits to protect human health.

***Peatlands are heavily threatened in Europe, and there is evidence that peatland destruction is still on-going in a number of EU Member States. Europe should look at its domestic situation before criticizing peatland destruction in Indonesia.***

* Peatland habitats are indeed precious natural habitats, which are generally protected in Europe under the EU Habitats Directive. The Commission monitors closely implementation of the Directive by EU Member States, and has, when necessary, launched infringement procedures towards EU Member States insufficiently protecting peatlands.
* At the same time, such a defensive approach on peatlands in Europe does not provide much added-value when it comes to looking at avenues for ensuring sustainable palm oil production. We would instead invite Indonesia to engage in a constructive dialogue and look at future cooperation with the EU to reassure palm oil consumers.

***Why does the EU focus so much on tropical deforestation, when deforestation is equally problematic in Europe, with unsustainable forest management happening in several EU Member States, such as Romania, Poland, Sweden and Finland?***

* Scientific evidence shows clearly that, over the last decades, deforestation happened mainly in the tropics, with Southeast Asia appearing as one of the deforestation hotspots. According to FAO, while loss of natural forests remains an alarming problem in many tropical regions, Europe shows positive trends in its forest cover. Europe has in that regard gained about 0.4 Mha of forest annually from 2010 to 2015.
* At the same time, we remain vigilant about ensuring that forest management is sustainable in the EU, including through our EU Forest Strategy and the Common Agriculture Policy which provides significant funding to support sustainable forest management in EU member States. We have also adopted and implemented robust legislation, such as the EU Timber Regulation, under which the European Commission monitors closely that any timber placed on the EU market is of legal origin, with infringement measures adopted towards non-compliant EU Member States as necessary.

**IV. Background**

**Palm oil and Indonesia**

Palm oil is a key economic sector for Indonesia: it represents 14% of its total exports to the EU, is a key employment sector and the main source of income for millions of smallholders. Indonesia is the world's largest producer, accounting for more than 50% of the global output of palm oil (32.5 million tons, 2015); it is also a major exporter of crude palm oil (26.4 million tons, 2015) and its derivatives – as well as the second consumer of palm oil worldwide. The palm oil industry generates 4 million direct and 12 million indirect jobs in Indonesia. The EU is the second largest export market for palm oil (after India, ahead of China). After a relative stagnation between 2013 and 2016, EU total imports of palm oil (excluding biofuels) over the first 8 months of 2017 are up by 24% in value and 9% in volume. EU imports from Indonesia have increased even more, by 36% in value and 19% in volume in 2017 compared to the same period in 2016. The market share of Indonesia in the EU's imports of palm oil increased to 52.4%.

Indonesia has long expressed strong (and often disproportionate) concerns on the debate on palm oil in the EU, alleging that, under the cover of sustainability/health considerations, there is a deliberate attempt to spread a negative image of palm oil to the benefit of other (EU-produced) vegetable oils/fats. However, over the last months there has been a change of gears in the Indonesian attitude on the matter, triggered both by domestic politics (regional elections are scheduled in 2018, and presidential elections in 2019, and palm oil is seen by the government as instrumental in gaining the votes of millions of smallholders) and by the increasing focus on the matter in the EP, with repeated calls for the adoption of restrictive measures by the EU.

The adoption of the EP own-initiative (non-legislative) Resolution on palm oil and deforestation in April 2017 spurred very vocal reactions, which have further escalated in the context of the EP discussions on the recast of the Renewable Energy Directive (RED II). The inclusion in the official EP position (adopted on 17 January 2018) of an amendment to the Commission's proposal in order to exclude biofuels produced from palm oil from being taken into account in the EU renewable energy targets - by 2021 (while, according to the same amendment, biofuels from other vegetable oils would continue to count until their phase-out in 2030) - is expected to trigger yet another wave of strong reactions by palm oil producing countries.

Indonesia has also generally expressed repeated concerns regarding other aspects of the EU policy, in particular regarding vegetable oils labelling, private sector "palm oil-free" labels (in particular in France and Belgium), health considerations (EFAS advice of May 2016 on glycerol-based process contaminants in palm oil), announcements by individual EU MS of possible import restrictions (cf. Nicolas Hulot's declarations of July 2017).

**Measures by Indonesia to improve palm oil sustainability**

Palm oil plantations licenses continue being granted, especially in Papua and Papua Barat. A palm oil and mining moratorium plan was announced by President Jokowi in April 2016.

In 2016, the Indonesian Government announced it would strengthen the ISPO scheme, given increasing global demand for sustainable, deforestation-free palm oil, and lack of market uptake for ISPO certification. The coordinating ministry of economic affairs (KEMENKO) of Indonesia recently shared with EU DEL a draft for a Presidential regulation (PerPres) on strengthening ISPO, which contains severe flaws in terms of clarity, ambition, level of details, governance, and feasibility of the ISPO standard certification.

Specifically, it appears that the Ministry of Environment and Forestry (MoEF) is not involved to the extent that it should in the drafting process. MoEF should lead on the operational definition, quantification and limitation of palm oil's environmental impacts (deforestation, forest degradation, forest fires, biodiversity, water quality, GHG emissions) which should be included in the regulation.

Therefore, even though the EU has no prescriptive position on sustainable palm oil certification, it cannot be recommended to use or promote ISPO certification as a basis for EU policies aimed at achieving Sustainable Development Goals, Paris Agreement contributions and other climate or environment goals.

The timeline for finalizing the draft is yet unclear.EU DEL offered further collaboration with Indonesia on the text of the draft regulation, possibly providing future insight and in-depth collaboration with KEMENKO on the matter.

**PSF project – "Defining and tracking "deforestation-free" palm oil – analysis of supply chains and opportunities for area based verification" – 0.7 M EUR**

To contribute to transparency and accountability along major palm oil supply chains, to identify key operators and levers that could help to address this major driver of (reducing) deforestation and other harmful socio-environmental impacts. The implementation with a total duration of 18 months was kicked off in February 2018.

The project is divided into 2 interlinked components. Component 1 is implemented by TRASE and will undertake port-level traceability and supply chain analysis for palm oil in Indonesia and a second palm oil producing country (possibly Malaysia). The data will be visualised within the online beta platform on palm oil in the TRASE platform.

Component 2 is implemented by the European Forest Institute. It will deliver an analytical study based on the results of Component 1 and undertake stakeholder outreach and networking in Indonesia to help the EU nurturing a platform for technical exchanges and awareness raising on the sustainability of palm oil production. EU DEL, EFI and Inobu (NGO) met KEMENKO on 1 March to present the study, explaining that one of the main objectives was to deliver a screening of feasible and efficient evaluation/monitoring of sustainable palm oil production, via group certification options (e.g. village, district or province rather than farm by farm). The purpose of the meeting was to involve KEMENKO from the start and to avoid potential misunderstanding when the report is ultimately delivered. Together with the TRASE initiative, this study could also serve as a working base to improve ISPO.

**Palm oil in the EU – Indonesia Comprehensive Economic Partnership Agreement**

Negotiations for an EU – Indonesia Comprehensive Economic Partnership Agreement (CEPA) started in September 2016. In February, Parties concluded the fourth round of the talks.

The EU tabled rules on the sustainable management of forests, biodiversity and climate change in the draft Trade and Sustainable Development chapter (TSD) of CEPA. Certain aspects of these proposals cover palm oil, however, there are no explicit rules covering it in TSD.

Market access, i.e. the level of duties applied in the EU to Indonesian palm oil will be covered in the Agriculture part of the Trade in Goods chapter.

During the fourth round in Solo, Indonesia presented its updated ISPO certification scheme.

**Recast of the Renewable Energy Directive**

The Renewable Energy Directive establishes an overall policy for the production and promotion of energy from renewable sources in the EU. It requires the EU to fulfil at least 20% of its total energy needs with renewables by 2020 – to be achieved through the attainment of individual national targets. All EU countries must also ensure that at least 10% of their transport fuels come from renewable sources by 2020.

On 30 November 2016, the Commission tabled a proposal for a revised Renewable Energy Directive (REDII) to make the EU a global leader in renewable energy and ensure that the target of at least 27% renewables in the final energy consumption in the EU by 2030 is met.

The Commission has proposed as part of the new Renewable Energy Directive to introduce after 2020 an incorporation obligation requiring fuel suppliers to sell a gradually increasing share of renewable and low-emission fuels, including advanced biofuels and renewable electricity but not conventional biofuels. The obligation would further include a specific sub-quota for advanced biofuels. Advanced biofuels are defined as all biofuels that are produced based on a positive list of feedstocks (mostly lignocellulosic material, wastes and residues).

The exclusion of conventional biofuels reflects the growing evidence that conventional biofuels do not contribute towards achieving greenhouse gas emission savings due to the issue of indirect land use change (ILUC). Biodiesel produced from palm oil is likely to cause ILUC and causes particularly high emissions. ILUC occurs when the cultivation of crops for biofuels displaces traditional production of crops for food and feed purposes. This additional demand increases the pressure on land and can lead to the extension of agricultural land into sensitive areas such as forests, wetlands and peat land causing massive greenhouse gas emissions eliminating the direct emission savings of crop-based biofuels. While a high degree of uncertainty about the degree of the risk of ILUC emissions remains there is growing evidence that in particular the drainage of peatland to produce palm oil cause substantial greenhouse gas emission due to the oxidisation of the soil. The latest study conducted on behalf of the Commission estimated that the ILUC emissions alone (excluding emissions related to the production of the diesel itself) are more than double than any potential savings gain by replacing fossil fuel.

Against this background the Commission further proposed that the share of crop-based biofuels that could account towards the EU renewable energy target would gradually decrease to 3.8% in 2030. Member States would be able to set a lower cap based and to distinguish between differ types of biofuel based on ILUC. The proposal does not establish a differentiation between palm oil and other vegetable oils.

On 17 January, the EP adopted its initial position on the recast of the EU Renewable Energy Directive (RED II). With regard to provisions on biofuels and bioliquids produced from food or feed crops, the EP position includes the proposal for a total exclusion of biofuels and bioliquids produced from palm oil from being able to qualify towards the EU renewable energy target as of 2021.

The first trilogues took place on 27 February and 27 March, and the next one is scheduled for 17 May (palm oil will be on the agenda). During the first trilogue, the ENVI rapporteur stressed the broad support in the EP for phasing out palm oil from biofuels to be accounted against renewable energy targets. The Council recalled its position on 1st generation biofuels (7% cap) and stressed concerns on WTO-compatibility of the EP's position on phasing out palm oil. The Commission indicated that it was examining WTO consistency of the proposed amendment on palm oil.

**EP Resolution on palm oil and deforestation**

The European Parliament resolution on palm oil and deforestation of rainforests was adopted on 4 April 2017. The resolution reflects the EP critical approach to palm oil, focusing on the detrimental aspects of palm oil production on the environment and human rights in producer countries.

The resolution calls on the Commission to adopt a wide range of measures to address deforestation linked to oil palm cultivation, in particular by:

* establishing a single certification scheme and minimum sustainability criteria,
* phasing out the use of palm oil in biofuels,
* addressing the issue of palm oil and related deforestation through FTAs, as well as through its development cooperation policy,
* developing an EU action plan against deforestation, as well as an EU action plan on palm oil,
* providing better information on palm oil sustainable origin through the labelling of products containing palm oil,
* increasing transparency in supply chains.

The Commission officially released on 7 September its response to the EP resolution, in particular concerning the several calls for action addressed to the Commission in the report.

The resolution is not part of a legislative initiative. Therefore, while it has political value in expressing the orientation of the EP on the issues of deforestation/palm oil, the report will not in itself create binding rules.

**Studies by DG ENV on deforestation and palm oil**

DG ENV released on 16 March 2018 a study as a follow-up to the 7th EU Environment Action Programme and the 2013 study assessing the impact of EU consumption on deforestation in third countries. This study considers in particular the feasibility of options to step up EU action to combat deforestation and forest degradation. Its preliminary findings were presented to a stakeholder consultation last June, during which Indonesia was invited to present its policy and efforts to ensure sustainable palm oil production. This study is an important element underpinning a potential new EU initiative on deforestation (possibly a Communication).

DG ENV also released on 16 March a study on the environmental impacts of palm oil production, and on certification schemes and legislation in place in producer countries. The preliminary results of the study were presented to an expert workshop on 2 October in Brussels, in which Malaysia participated. The study aims among other things at comparing the performances of the main four palm oil certification schemes in terms of verification, accreditation, supply chain certification and transparency. The draft study reports overall ranks MSPO third after RSPO (Round Table for Sustainable Palm Oil) and ISCC (International Sustainability and Carbon Certification), though MSPO comes before ISPO, the national Indonesian scheme, ranked as the less robust.

**Palm oil and EU Ecolabel criteria**

The EU adopted in 2014 EU Ecolabel criteria for rinse-off cosmetics requiring palm oil, palm kernel oil and their derivatives used in products to be sourced from plantations that meet criteria for sustainable management that have been developed by multi-stakeholder organisations that have a broad-based membership including NGOs, industry and government.

Updated detergents criteria were also recently adopted, whereby similar sustainability requirements are set regarding palm oil. Applicants are in particular requested to provide evidence through third-party certificates and chain of custody that palm oil originates from sustainably managed plantations. RSPO is considered eligible under these criteria, as well as "any equivalent or stricter sustainable production scheme".

**Palm oil and environmental impacts**

Palm oil is produced from the pulp of the fruit of the Elaeis palm that grows in tropical climates – Southeast Asia, West Africa, Latin America. The oil palm offers exceptional oil yields of 3.8 tonnes per hectare (t/ha) as a global average, nearly 6 t/ha in the best plantations in Southeast Asia and more than 10 t/ha in the highest yielding genetic trials currently underway in research institutes. These are striking figures (and largely contribute to explaining the success of the oil palm as an agricultural commodity of world interest) when compared to the less than 1 t/ha for rapeseed, sunflower, groundnut and soybean. As a consequence, although it occupies 7% of agricultural land devoted to oil producing plants, the oil palm provides 39% of world production of vegetable oil on a much lower proportion of this land than that devoted to soybean (61%), rapeseed (18%) and sunflower (14%).

While it cannot be denied that the socio-economic impact of palm oil expansion has been positive, it is equally true that its environmental impact has been disastrous. In fact, the biological requirements of oil palm mean its distribution is limited to the tropics, and it is thus forced to share some of the planet's biodiversity hotspots, namely the Congo Basin, the Amazon and Borneo. One of the biggest environmental problems is deforestation, which is mainly driven by agricultural expansion.

The conversion of peatlands causes huge emissions of carbon dioxide and the loss of fragile ecosystems. The highest proportion of tropical peatland is found in Southeast Asia, where they cover an area of 24.8 million hectares (over 20 million hectares are in Indonesia alone, mainly in Kalimantan, Sumatra and Papua). The drainage of peatlands in Southeast Asia is emitting some 400 million tons of carbon dioxide per year (equivalent to the entire emission of a country like Venezuela). Currently, the palm oil and paper industries are fueling rapid agricultural development in both Indonesia and Malaysia.

Peatland and forest fires are also the main source of transboundary smoke haze which is recognised as one of the most serious environmental challenges in the ASEAN region, resulting in serious health risks and causing economic losses. Studies have shown that the peat drainage needed for the development of oil palm and Acacia plantations contributed significantly to fire and smoke problems in Indonesia. This smoke includes PM2.5 particles and gases from fires also contribute to low‐level ozone formation. Modelling attributes an average of 110,000 deaths a year in the region to these fires, primarily associated with long-term seasonal exposure to smoke particles. The Indonesian National Disaster Mitigation Agency (BNPB) estimated in $35bn the cost to the country for the forest fires in 2015, particularly serious because of El Niño and associated dry conditions. The haze generated choked the region for months, causing tension within ASEAN, in particular with Singapore and Malaysia.

**Deforestation trends: why should we focus on tropical deforestation?**

In 2015 forests covered approximately 4 billion hectares, or 30 % of the earth’s land surface, down from 4.13 billion hectares in 1990 (FAO, 2015a). According to the Global Forest Resources Assessment 2015 (FAO, 2015a), the global forest area fell by 129 million hectares (Mha) (3.1 %) in the period 1990–2015 (net loss), though between 1990 and 2008, 239 Mha of forest were cleared worldwide (gross loss) (FAO, 2015a). While the rate of gross deforestation has decreased in recent years – from 16 million hectares per year in the 1990s to 13 million hectares per year from 2000-2010 (FAO, 2010) falling to 7.6 Mha in the last five year period from 2010-2015 (FAO, 2015a) – it is still alarmingly high. In percentages, this corresponds to a loss of 0.18 % in the 1990s, 0.13 % from 2000-2010 and 0.08 % from 2010-2015 (FAO, 2015a).

*The decade from 2000-2010*

On a regional basis, South America has suffered the largest loss (about 4 Mha per year) of forests in the decade through 2010, followed by Africa with a loss of some 3.4 Mha, while Oceania reported about 0.7 Mha of losses, mainly due to losses in Australia (FAO, 2010). North and Central America’s forest area remained roughly constant, while Europe’s increased by about 0.7 Mha. Within regions, the afforestation seen in Asia as a whole (about 2.2 Mha net increase in forest area) in the period 2000-2010 (FAO, 2010) somewhat hides the **continued deforestation in Southeast Asia** (about 8 Mha total from 1990-2010 in the Greater Mekong Region) (FAO, 2015b). Similarly, the **afforestation in Europe** and North America means that at the global level net deforestation becomes lower than the gross deforestation found in Latin America and Africa.

*The past five years (2010-2015)*

In the past five years, South America has lost about 2.0 Mha of forest annually (net loss), though the loss of natural forests has been somewhat higher at 2.2 Mha; both figures lower than in the previous decade. Deforestation per year is also down in Africa, which has lost about 2.8 Mha annually (with a natural forest loss of 3.1 Mha annually). **Asia has seen the forest area expand by 0.8 Mha annually, but has lost about 1.0 Mha annually of natural forest**. **Europe has gained about 0.4 Mha of forest annually**, while North and Central America has seen the forest area expand by 0.1 Mha, however, natural forest area has declined by 0.4 Mha annually. Oceania has gained about 0.3 Mha annually, an increase due to the expansion of natural forest area by 0.3 Mha annually. All numbers above are cited from FAO (2015a).

**Annex: extracts from DG ENV palm oil study**

#### **Indonesia: attempts to upgrade sustainability policy**

The Indonesian government is committed to tackling climate change and environmental degradation as well as ensuring that the development of oil palm plantations is socially equitable and contributes to poverty reduction.

To achieve these goals, Indonesia has introduced a large number of regulations governing the establishment and running of oil palm plantations. These are in addition to broader legislation, such as the PROPER[[1]](#footnote-2) system, which also applies to the oil palm sector.

There is detailed legislation regarding **licensing for land** **allocation**. However, the complexity of the regulations, the overlap in responsibility among different ministries and the problem of decentralisation render enforcement of the legislation challenging.

In terms of **protecting indigenous rights** the government has introduced new laws to safeguard customary land rights, but as they stand these cannot be enforced given the issues and delays with land allocation. In addition, the attempt to support customary land rights may come at the expense of discouraging deforestation.

To address environmental concerns and the problems created by the land allocation system, the government has introduced a **moratorium and protection of peatland areas**. However, as companies still hold land banks of concessions, which may include forest, the law is (on its own) not fully sustainable. In addition, it has proven difficult to enforce. Moreover the Indonesian Supreme Court has revoked on economic grounds Regulation (Penmerhut) No 17/2017 (adopted in April 2017) that required large plantations to vacate peat areas with a depth of more than 3 metres, or to reforest after fires.

One area where the government has had greater success is in the **legislation on haze** where Indonesia ratified the 2002 ASEAN Agreement on Transboundary Haze Pollution in 2014. This complemented Law No. 39/2014 on Plantations and Law No. 32/2009 on Environmental Protection and Management. However, enforcement is not yet comprehensive, since ‘hotspots’ have appeared during subsequent years during the dry season; and the mechanism could benefit from greater transparency.

Finally, day-to-day management of plantations remains only partially regulated by the **Indonesian Sustainable Palm Oil scheme,** which currently has limited coverage. However, there are attempts to improve the legislation. At present, issues such as the treatment of labour are covered by general Indonesian laws not ones pertaining directly to the oil palm industry.

Each of these areas is outlined in more detail below.

**Licensing for land allocation**

The system for land allocation is highly regulated. A number of permits are required:

*Izin Lokasi* (Location permit):is the starting basis for all the licences. This permit is granted by the head of the district (the *Bupati*) and outlines the area of the land given to a company for business purposes. The duration of the permit varies by province, but it can be extended when it expires.

*AMDAL* (Environmental Impact Analysis): all companies which conduct business that affects the environment must obtain an AMDAL. To obtain one, companies need to submit an application, along with list of documents. The application is reviewed by the AMDAL assessment committee, established by the State Minister of Environment, the governor of the province (each province comprising several districts) or the regent/mayor.

The process of land allocation also involves the recognition of the need to protect areas of High Conservation Value. In areas where there is High Conservation Value the plantation either has the option of doing the conservation itself or of returning that land to the government.[[2]](#footnote-3) However, there have been many cases where plantations have received different advice from the local government that wishes to develop the land.

*IUP* (Plantation Business Licence): This is a key licence for a plantation. It allows the companies to cultivate and process products from the plantation. This permit is granted by the governor and has no expiration date as long as the company is in the plantation business. The IUP is divided into three categories: 1) IUP-cultivation; 2) IUP-processing; and 3) IUP.

The IUP-cultivation is the licence for companies engaged in plantations. The IUP-processing is the licence for companies processing plantation crops. The IUP itself is the licence for companies that are integrated from plantations to the processing of crops. As long as a company has an IUP, there are no restrictions on its ability to conduct a plantation business.

*HGU* (Land Right): The HGU is a land right issued by Central Government which can be granted only on state-owned land, and only for the purposes of agriculture, fisheries, or animal husbandry.

The system for land allocation involves a full environmental and social impact assessment. It would be sustainable if it were properly enforced. The overlap in responsibilities between national and local government as well as between different ministries means it is not properly enforced. There have been a number of cases where permission was given for land conversion that was unsustainable. This has come to light as the administration has brought anti-corruption cases against several Sumatra governors, including that for Riau, on land conversion (including to oil palm)[[3]](#footnote-4) [[4]](#footnote-5)

**Protecting indigenous rights**

The granting of the HGU is not necessarily a green light for the development of an estate. Negotiations then need to occur with settlers (whether or not they actually have a long-standing connection with the land in question) on the area stipulated in the *Izin Lokasi*.

Because negotiation occurs late into the process and without clear land rights means that the process is fraught for both the developer and the traditional inhabitants. In response to these issues the Indonesian Constitutional Court has also recognised local community rights to customary forests[[5]](#footnote-6) [[6]](#footnote-7) [[7]](#footnote-8). While this is a strong affirmation of the rights of indigenous populations, given the myriad problems associated with establishing property rights it is unclear how it might be enforced[[8]](#footnote-9).

In addition, the government has indicated that it may pursue a land amnesty to regularise property rights in cases of smallholder-led deforestation, including in the upland areas. While sustainable from a social point of view this would clearly be unsustainable in terms of the signal it sends to allow further smallholder-led deforestation.

**The moratorium and peat protection**

In response to the problems with land allocation, outlined above, President Jokowi announced a moratorium on new palm oil concessions and a ban on peat deforestation. However, at a provincial level there have been difficulties enforcing the moratorium. As a result, record fines have been meted out on agro forestry companies for illegal forest clearing and fires (including on peatlands).[[9]](#footnote-10) [[10]](#footnote-11) Payment of these high fines is said to be pending still. There is also an issue with companies still holding land banks of concessions that may include forest.

**Regulation on haze**

The government has introduced better fire prevention regulations after the 2015 haze crisis, but companies criticise the delays in the One Map spatial planning, which would help better understand the risk of forest fires. Therefore the law is sustainable but not properly enforced at present, as it requires greater transparency.

**ISPO palm oil certification scheme**

While the government has made the ISPO certification scheme mandatory, few plantations have actually achieved ISPO certification. Recent statements from the Indonesian Ministry of Agriculture suggest that only 16.7% of the area dedicated to the cultivation of oil palm in Indonesia has achieved ISPO certification. [[11]](#footnote-12) In addition, some consider that the initiative has failed to reassure consumers, NGOs and foreign governments of its effectiveness in reducing negative environmental and social impacts.[[12]](#footnote-13)

To address these concerns, significant political commitment is being put into revising ISPO in light of these perceived weaknesses. These include the ISPO Strengthening Team, under the Coordinating Ministry of Economic Affairs (CMoEA), aiming at a Presidential Decree to repeal the current Ministerial Decree on ISPO for late 2017/early 2018. In addition, the *Forum Kelapa Sawit Berkelanjutan Indonesia* (FoKSBI), a multi-stakeholder forum led by the Indonesian government and facilitated by UNDP, aims to increase the coordination, sustainability and efficiency of the palm oil sector, including developing a National Action Plan[[13]](#footnote-14). These processes are expected to result in significant revisions to the ISPO standards and certification processes that are likely to address some of the weaknesses that have been identified by stakeholders.

In conclusion, at present, the ISPO is not yet fully implemented or applied[[14]](#footnote-15).

# Certification schemes, legislation and voluntary initiatives

## Analysis of existing palm oil sustainability certification systems

This section provides a description and analysis of oil palm sustainability certification schemes, focusing on the four most widely used schemes: the Roundtable on Sustainable Palm Oil (RSPO), the International Sustainability and Carbon Certification (ISCC), the Indonesian Sustainable Palm Oil (ISPO) scheme and the Malaysian Sustainable Palm Oil (MSPO) scheme. Other certification schemes that are relevant to the palm oil sector are also discussed.

The section takes a systems approach, describing and then comparing a selection of key elements of these certification schemes (see [Table 34](#bookmark)**):** the standard, the certification process, measures to build credibility (accreditation, complaints procedures and transparency) and claims (chain of custody and labelling). It also includes evidence on the effectiveness of the systems, where that exists.

Analysis of the schemes focuses on how each scheme addresses the environmental and social sub-themes more prominent in the debate and literature on palm oil (i.e. those included in **Section** [7](#bookmark1)).

| Table 34: Architecture of sustainability certification |
| --- |
| Although the precise details vary from scheme to scheme, the basic system for most sustainability certification is as described below. This is a system of rules, processes, and separation of powers that are all designed to promote consistency of approach and minimise the risk of poor practice. **The standard:** These are documents that set out the requirements which must be met by the plantation and against which certification assessments are made. **The certification process:** includes the processes of confirming that the requirements of the standard have been met by the entity seeking certification, and ensuring confidence in that decision. Assessments follow requirements established by the schemes organisation and certification body. Auditors must collect objective evidence that a company’s plans are adequate, that they are implemented and (where the standard specifies performance) that the outcome meets the requirements of the standard. This evidence is collected through a visit to the company, with documents scrutinised, the plantation examined, and managers, workers, local people, and other stakeholders interviewed. A decision is then made whether the requirements of the standard have been met in full, whether it has been largely met with only minor corrective actions required, or whether the company’s performance has major deficiencies that must be corrected before it can be certified. All of the main sustainability schemes, including FSC, RSPO and RTRS, specify that the certification body is independent of the company being assessed: known as ‘third party independent audits’. Certification bodies must also fulfil general requirements of impartiality, a quality management system, and requirements on the conditions for granting certificates, as described by the International Organisation for Standardisation (ISO). The competence of the personnel conducting the audits is also covered by these guides: a team leader that is adequately trained; and a team with the combined expertise to assess all aspects of the standard, and who are able to interpret the standard being assessed. **The accreditation process**: one way to build confidence in certification is the process of accreditation or ‘certifying the certifier’, in which an independent organisation provides assurance that a certification body is competent. Accreditation bodies also have requirements defined by ISO, including the organisation of the accreditation body, and the way in which they carry out accreditation. **Complaints procedure**: A second mechanism for building confidence in certification is having a complaints procedure that gives third parties a response to concerns about a certification decision. ISO guidelines specify that certification bodies should have procedures to resolve complaints, appeals and disputes.**Transparency**: The third mechanism for building confidence is transparency. This is ensured by allowing interested parties direct access to non-confidential information about the process and results of certification assessments. This usually involves making public available information on the certification body, consultation with stakeholders, and providing a summary of the audit findings.**Traceability and Claims**: If claims will be made on the products coming from certified companies, then mechanisms to control the claims are also required. The type of claim depends on the level of traceability of the palm oil, of which there are four basic options: * *Identity preserved* (where the provenance of the certified palm oil is known to the purchaser);
* *Segregated* (certified palm oil is kept segregated from non-certified, however the plantation of origin may be unknown to the purchaser as a result of multiple transportation, bulking and processing stages);
* *Mass balance* (certified and uncertified palm oil are mixed, with the proportion of certified palm oil entering a process known, therefore a purchaser has on average that proportion of certified palm oil);
* *Book and claim* (the purchaser buys certificates corresponding to a volume of certified palm oil produced and redeems the value of the certificate to a certified producer, but buys oil on the open market).

Certification schemes may include mechanisms to verify traceability (identity preserved, segregated and mass balance) that are, in the more rigorous certification schemes, verified by independent third parties (certification bodies). The rules governing the labelling of those products are set out by the standards body.  |

#### **Indonesian Sustainable Palm Oil**

The Indonesian Government launched its Indonesian Sustainable Palm Oil (ISPO) scheme in 2011 ([Table 37](#Ref365637812)). More information on the ISPO’s Principles can be found at Appendix 6.

ISPO is mandatory for companies producing and/or processing palm oil, except for smallholders and for plantation companies producing palm oil for renewable energy. The standard was introduced to ensure the adherence of oil palm plantations to government laws and policies, demonstrate that adherence to Indonesian regulations could deliver sustainable production, and support the Indonesian Government’s commitment to reduce national GHG emissions.

The standard is based on existing Indonesian regulations that pertain to palm oil cultivation and processing. Certification includes independent, third party verification. There is less separation of decision-making and transparency than in the certification systems discussed above: certification bodies are appointed by the ISPO Commission as the scope of the national accreditation body (the Indonesian Accreditation Committee, KAN) does not yet include sustainability, and there is no requirement for summary audit reports to be publicly available.

Currently, 543 companies hold ISPO certificates,[[15]](#footnote-16) and it has been argued that the initiative has failed to reassure consumers, NGOs and foreign governments of its effectiveness in reducing negative environmental and social impacts. At present, coverage remains limited. In December 2017, 16.7% of Indonesian production was approved as complying with the ISPO standard.

To address these concerns and perceived weaknesses, the position in December 2017 was that significant political commitment is being put into revising the ISPO scheme. These include the ISPO Strengthening Team, under the Coordinating Ministry of Economic Affairs (CMoEA), aiming at a Presidential Decree to repeal the current Ministerial Decree on ISPO for late 2017/early 2018. In addition, the *Forum Kelapa Sawit Berkelanjutan Indonesia* (FoKSBI), a multi-stakeholder forum led by the Indonesian government and facilitated by UNDP, aims to increase the coordination, sustainability and efficiency of the palm oil sector, including developing a National Action Plan. These processes are expected to result in significant revisions to the ISPO standard and certification processes that may address some of the weaknesses that have been identified by stakeholders. Although it is not possible to know what changes will occur at the time of writing, some of the innovations being considered include:

* The certification of aggregated entities the (villages, cooperatives of even districts) to be certified as a whole, on behalf of individual farmers within their boundaries;
* The scheme becoming mandatory to all producers;
* A new principle and criteria on transparency and supply chains; including as regards access to information for independent monitoring;
* A revised governance structure inspired by the FLEGT multi-stakeholder, consultative process;
* A clarification of defining "deforestation", possibly informed by parallel progress of the national REDD+[[16]](#footnote-17) policy as regards the National Forest Monitoring System and Reference Levels.

Finally, there have been attempts to find common ground between public and private schemes. A recent joint study between ISPO and RSPO identifies significant scope for alignment, particularly in the auditing process, whilst also highlighting some key differences in the treatment and definition of High Conservation Value (HCV) areas within concessions, and the rules for developing new plantations.[[17]](#footnote-18) It is not clear what steps will be taken by the two parties in order to promote greater alignment.

### **Comparison of RSPO, ISCC, ISPO and MSPO**

This section compares the process requirements for the four main certification schemes. It then assesses the degree to which their standards cover the key environmental and social themes described in Section [7](#bookmark2) of this report.

The following analyses are of the current processes and standards. It is important to note, however, that all of these certification schemes are in stages of revision: the ISPO is undergoing a thorough review, the RSPO is in the process of revising its Principles and Criteria, MSPO is developing a supply chain standard; and the ISCC began to make summaries of its audit reports publicly available in October 2017. The specific standards assessed are:

* The RSPO Principles and Criteria for the Production of Sustainable Palm Oil;[[18]](#footnote-19)
* ISCC (EU) 202 Sustainability Requirements;[[19]](#footnote-20)
* ISPO Principles And Criteria Of Indonesian Sustainable Palm Oil for Plantation Company Operating Cultivation;[[20]](#footnote-21) and (for those issues specific to mills) Principles And Criteria Of Indonesian Sustainable Palm Oil (ISPO) For Plantation Companies Operating Processing Of Palm Oil/Mill
* MSPO General principles for oil palm plantations and organised smallholders.[[21]](#footnote-22)

The RSPO and ISCC EU standards are included because these are by far the most commonly used schemes for imports of palm oil into the EU for food and oleochemical use (RSPO) and biofuels (ISCC). The ISPO and MSPO are included as the national schemes for the two main producing countries.

#### **Certification process**

Certification schemes comprise a series of processes, the main ones being the certification process (who verifies compliance, how, and who decides whether performance has reached the standard); accreditation; complaints procedures; transparency; and claims (please see [Table 34](#bookmark3)). The way that these processes are undertaken provides a greater or lesser prospect of independence of decision-making and confidence in the system. The tried and tested best practice for each of the processes within certification is codified by the International Organisation for Standardisation (ISO). This provides a convenient mechanism for comparing certification schemes,[[22]](#footnote-23) with the following elements defined by Nussbaum *et al.* (2002)[[23]](#footnote-24) as among the key ones:

Who verifies: Does the scheme require certification by an independent, third party certification body, or is first or second party assessment accepted?

How is compliance verified: For all assessments it is important to establish not only that plans are assessed, but also that there is collection of objective evidence that the plans are implemented in practice, in the form of an audit.

How often is it done: Certification schemes must include a requirement for regular and adequate monitoring of certificate holders and mechanisms to remove certificates if the standard is no longer being met or if Corrective Action Requests have not been met. In the context of certification of agricultural crops, an annual surveillance audit is common practice.

Who decides: The decision whether an audited estate has met the requirements of the standard should be made impartiality, with a separation of responsibility for certification decision and audit, and with freedom from pressure that may influence decisions. The decision is typically made by staff from the certification body who have not been involved in the audit.

Confidence in the certification system is enhanced by accreditation of the certification body, complaints and grievance procedures and transparency. The certification body should be accredited by a credible accreditation body is fundamental to credible third-party certification independent organization provides assurance that a certification body is competent. Credibility of an accreditation body can be increased by adherence to international standards on accreditation, mutual recognition between national accreditation bodies, or using an international accreditation body, having adequate complaints procedure mechanisms and by making its activities transparent.[[24]](#footnote-25)

Certification bodies should have documented complaints and grievance procedures which, when implemented, are able to resolve any complaints, appeals and disputes. Ideally, documentation on complaints and grievances, including their status, should be publicly available.

Transparency, the third element of building confidence in certification, has a number of different aspects. The key one considered here is the public availability of audit reports, which contribute significantly to transparency, but reduce confidentiality for the plantation company and increase the cost of the scheme, as a public summary of the audit report must be produced.

The final element of most certification schemes regards traceability and the claims that can be made about certified products. Depending on the supply chain model, such claims must be supported by effective chain of custody certification ([Table 34](#bookmark4)). Its elements are the standard, certification and accreditation. The scheme should cover product identification, product segregation and documentation.

Key elements of the certification process of RSPO, ISCC (EU), ISPO and MSPO are compared in[Figure 30](#Ref365640182). In general terms, RSPO and ISCC follow ISO specifications closely.

Figure 30: Summary of certification processes within four palm oil certification schemes

|  |  |  |
| --- | --- | --- |
|  |  | **Standard** |
| **Certification scheme element** | **RSPO** | **ISCC** | **ISPO** | **MSPO** |
| Certification | Who: independent 3rd Party |  |  |  |  |
| How: audit |  |  |  |  |
| How often: annual surveillance |  |  |  |  |
| Who decides: certification body |  |  |  |  |
| Accreditation | Fully independent accreditation |  |  |  |  |
| Complaints  | Documented procedures available |  |  |  |  |
| Transparency | Audit reports publicly available |  |  |  |  |
| Claims | Supply chain verification |  |  |  |  |

Note: Dark shading indicates that the process reaches best practice, pale shading indicates absence of the process; mid-shade implies an intermediate state.

The ISPO has third party independent audits with annual surveillance, but the ISPO Commission decides whether a certificate should be issued (rather than the certification body) and accredits the certification body (rather than an independent accreditation body). Documented complaints and grievance procedures are required (but complaints processes are not publicly available) and audit findings are not publicly available. The MSPO system includes most of the required elements, other than independent supply chain verification (though procedures for this are under development).

#### **Content of the standards**

[Table 39](#bookmark6) summarises the coverage of the environmental themes within the RSPO, ISCC (EU), ISPO and MSPO standards. There are significant differences between the requirements of the standards on most key environmental issues. The ISCC standard has requirements that restrict deforestation, peat land conversion and greenhouse gas emissions to a greater degree than the other standards, while conserving biodiversity. The RSPO standard contains the next most restrictive requirements on all aspects except biodiversity conservation and greenhouse gas emissions, with the requirements of the MSPO standard being similar or less restrictive than those of the RSPO. The ISPO is officially mandatory, and the MSPO will be mandatory from end-2019. RSPO and ISCC are voluntary schemes.

The ISCC, RSPO and MSPO have similar degrees of restriction on the use of fire for land clearance. Regarding air pollution (other than GHG), the RSPO and MSPO standards have the greatest restrictions for plantation and mill operators. The ISPO standard is essentially based on existing Indonesian regulations governing palm oil cultivation and processing, whereas the RSPO and ISCC (and to a lesser degree the MSPO) standards go beyond existing legal requirements; therefore the ISPO standard typically has less restrictive requirements on environmental issues than the others. The MSPO has comprehensive requirements on the maintenance of the quality and availability of surface and ground water, which include assessment and monitoring of water resources, water use efficiency, water harvesting, protection of water courses, a prohibition on obstructions of rivers and streams, and measures to prevent and reduce soil erosion. The other three standards have broadly similar requirements regarding water resources.

The standards of the four schemes differ markedly regarding deforestation. The ISCC in effect excludes production from primary forest, and forests of high biodiversity value (Criterion 1.1), and degraded forest (Criterion 1.3). Degraded forest is defined conservatively, with a high proportion of logged forest included in the restriction. These are both classed as ‘major’ criteria; thus compliance is necessary in order to achieve certification. The RSPO standard has the less exacting requirement that forest clearance is legal, but primary forest and High Conservation forest are not to be cleared for oil palm cultivation.[[25]](#footnote-26) However, this still provides significantly more safeguards that the ISPO standard, which permits forest clearance provided it is zoned for agriculture; is allowed under the environmental impact assessment; and the government has given the necessary permits. The MSPO standard is broadly similar to ISPO, but with additional requirements on Environmentally Sensitive Areas and areas with high biodiversity value.

The RSPO standard provides some of the most restrictive requirements on social issues, such as land use rights, forced labour, child labour, the terms and condition of employment, treatment of smallholders, and the rights and wellbeing of people affected by plantations ([Table 40](#bookmark7)). The ISCC has similar requirements for terms and conditions of labour and rights and wellbeing, and the MSPO is similar in terms of land use rights. It should be noted that neither the ISPO nor the MSPO standard has specific provision to exclude forced labour from palm oil production, instead requiring compliance with national labour laws in general. These results are summarised in [Figure 31](#Ref375327917).

Figure 31: Summary of provisions within four palm oil certification standards against environmental and social themes.

|  |  |
| --- | --- |
|  | **Standard** |
| **Theme** | **RSPO** | **ISCC** | **ISPO** | **MSPO** |
| Deforestation  |  |  |  |  |
| Biodiversity  |  |  |  |  |
| Peat land conversion |  |  |  |  |
| GHG emissions |  |  |  |  |
| Burning |  |  |  |  |
| Air pollution |  |  |  |  |
| Water pollution |  |  |  |  |
| Rights & Wellbeing |  |  |  |  |
| Land use rights |  |  |  |  |
| Treatment of smallholders |  |  |  |  |
| Forced and Child labour |  |  |  |   |
| Terms and conditions of labour |  |  |  |  |

Note: Dark shading indicates that the standard provides the greatest restrictions on activities; pale shading indicates the fewest restrictions; mid-shade indicates an intermediate state.

#### **Implementation of schemes**

Limited independent research has been conducted on the implementation of schemes within the palm oil sector. The studies that do exist have largely been focused on the RSPO. These include concerns that it is not delivering significant environmental outcomes, such as reduced deforestation and biodiversity conservation,[[26]](#footnote-27) and that the auditing process is inadequate to detect (or in some cases colludes in) serious breaches of the standards on issues such as deforestation, land rights,[[27]](#footnote-28) forced and child labour, and terms and conditions of labour.[[28]](#footnote-29),[[29]](#footnote-30),[[30]](#footnote-31) Local communities and smallholders find it difficult to influence debate and decision within the RSPO, resulting in marginalisation of some viewpoints.[[31]](#footnote-32) This body of research neither covers a wide enough range of standards, nor a large enough sample of RSPO certified companies to draw overall conclusions on the implementation of the schemes within the sector, other than that the requirements of the standards are sometimes not met by certified organisations.

It is increasingly recognised that voluntary schemes are not well equipped to resolve some of the issues found within the sector, such as land rights violations, for which national law (and legal reforms) are necessary.[[32]](#footnote-33)

#### **Conclusions**

There are significant differences between certification schemes used in the palm oil sector (principally RSPO, RSPO, ISCC (EU), ISPO and MSPO, but also POIG, RSPO Next, and SAN). These differences include the processes underpinning certification as well as the requirements of the standards.

Based on the methodology used in this study, the RSPO and ISCC schemes have the most robust processes around verification, certification, accreditation, and supply chain certification, ISPO the least, with MSPO intermediate. These processes should separate roles and responsibilities, and provide confidence in decisions and transparency.

A high degree of transparency in certification is provided by making summaries of audit reports publicly available, as practiced by RSPO, MSPO and since October 2017, ISCC. Further transparency is given by stipulating that information should be public regarding complaints and grievance procedures, which can occur at all levels: plantation, certification body, accreditation body, and scheme owner. The RSPO is the only one of the major schemes that provides publicly available information of complaints at all these stages.

The schemes also differ in how they handle environmental and social issues. This includes what is covered and how. For example, forced labour is explicitly prohibited in RSPO and ISCC, but is not referred to directly in ISPO or MSPO, and requirements on deforestation range from legal compliance (ISPO) to significant restrictions going well beyond the requirements of national legislation (ISCC).

Whilst the content of the underlying standards and the process requirements of the certification system indicate what should happen on the ground, the actual practices may be quite different. This is illustrated by the claims of serious social and environmental issues within RSPO certificated plantations covering practices that are not compatible with the RSPO P&Cs. However, there is almost no information available with which to compare the practices found in plantations certified by other schemes, and hence it is not possible to conclude whether any of the schemes results in more effective environmental and social practices on-the-ground than the others.

|  |  |  |
| --- | --- | --- |
|  |  |  |



1. PROPER is the programme for pollution control, evaluation and rating, which requires that every company submit annual reports. Failure to meet standards for pollution control results in the company being downgraded. Below the blue rating, banks may no longer provide credit to these companies. http://www.menlh.go.id/proper/ [↑](#footnote-ref-2)
2. Menteri Agrari Dan Tata Ruang, Surat Edaran No. 10/SE/VII/2015 *Penerbitan Izin Pada Areal Hutan Konservasi Bernilai Tinggi (High Conservation Value Forest)* [↑](#footnote-ref-3)
3. Jakarta Globe (2013), 'Riau Governor Rusli Still in Office Despite Arrest' Jakarta Globe, 17 Jun 2013, <http://jakartaglobe.id/news/rusli-still-in-office-despite-arrest-2/>, accessed 21 June 2017. [↑](#footnote-ref-4)
4. Jakarta Globe (2014), 'KPK Arrests Riau Governor in Raid', Jakarta Globe, 26 Sep 2014, <http://www.jakartaglobe.beritasatu.com/news/kpk-arrests-riau-governor-raid/>. [↑](#footnote-ref-5)
5. Constitutional Court Decision No. 35/2012 on the recognition and protection of customary forests (hutan adat / tanah ulayat) acknowledges the ownership and the right of local communities in Indonesia to access their customary forests [↑](#footnote-ref-6)
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