

17 June 2024

Mrs. Ursula von der Leyen  
President of the European Commission

Mr. Virginijus Sinkevičius  
Commissioner for the Environment, Oceans and Fisheries

**Subject: Urgent action required to address key concerns for a successful EUDR implementation**

Dear President von der Leyen,  
Dear Commissioner Sinkevičius,

CAOBISCO and its member companies are fully committed to the successful implementation of the EU Deforestation Regulation (EUDR). Our member companies are already taking steps to mitigate and minimise the risk of deforestation in their supply chains while mobilising significant resources to prepare for compliance.

However, the date of application of the EUDR is approaching at full speed, while several key components are still further delayed or lacking clarity. This is particularly concerning as companies rely on legal clarity to further adapt their systems, processes and organisational resources to the EUDR requirements and ensure a high level of preparedness.

Given the risks that companies will bear in case of non-compliance, urgent action is required from the European Commission to provide all the necessary tools and systems, as specified in the Regulation, to minimize the risk of market disruptions, food waste and unnecessary administrative burden on companies.

Specifically, our concerns include the following crucial points:

**Due diligence obligations of operators/traders further down the supply chain**

The EUDR places obligations on operators further down the supply chain (articles 9 to 11). As per the FAQs of December 2023, these operators are obliged to “ascertain” that due diligence was carried out. It is understood that upstream operators can choose to disclose or not the geolocation information to downstream operators in the Information System. It is currently unclear how downstream operators will verify that due diligence has been carried out effectively if they lack access to primary data of the due diligence conducted, in particular, geolocation information. This lack of direct access to primary data may contradict article 4(7) while hindering the ability of downstream operators to fulfill their verification responsibilities effectively, posing a significant implementation challenge. We urge the European Commission to explicitly clarify what exactly would qualify as ascertaining that due diligence was carried out and to ensure that the EU

Information System is equipped with the necessary specifications to allow an adequate level of transparency and data transfer between operators within the supply chain.

Even in cases where geolocation details are disclosed in the Information System, downstream operators and traders would have to check thousands if not hundreds of thousands of geolocations that might have contributed to a given finished product. This is a significant challenge in itself, whereas the EUDR goes even further in mandating that companies check the entire due diligence process which is much more than just collection and provision of the geolocation details. Hence the obligation of “ascertain” should be considered fulfilled when downstream operators/non-SME traders make sure a given relevant product is covered by due diligence statement which is confirmed by a received due diligence statement reference number.

We also ask the European Commission to clarify how placing a product on the EU market is to be defined within the context of a mother company and subsidiaries. Numerous transactions can happen within a group company, where a product is transferred from one site to the other, without being processed or sold outside the group. In this case, it should be clarified if a group could use the same due diligence statement for internal transactions, and only submit the information for a new due diligence statement when the product is either processed (and becomes another product) or sold outside the group. Re-creating a new due diligence statement for each intra-EU movement within the same group company provides no added value to the objective of the EUDR, yet would generate considerable amounts of red tape for companies.

### **Due diligence for composite products**

There would be many instances in which hundreds of thousands of due diligence statements would be required to enable a large international operator to fulfil potential EUDR requirements for finished products contained in Annex I. The lack of clarity around the scope, frequency and aggregation possibilities for a single due diligence statement may create higher compliance costs for companies due to an excessive burden of administration, cost, IT systems changes, as well as complexity, confusion and inconsistency for competent national authorities. By clarifying compliance requirements, those costs and resources could instead be invested by companies in their upstream supply chains or origin activities.

We encourage the Commission to provide guidance towards a simplified due diligence statement option for operators of composite products. In the case of chocolate, products derived from other in-scope commodities (e.g. palm oil, coffee) can be mixed to create the final product. As chocolate is listed under the “cocoa” category in Annex I, our understanding is that the due diligence statement accompanying a batch of chocolate should comprise traceability information only for the cocoa-derived products and that

the obligation to include geolocation information for products derived from other commodities stops once the products are blended together.

### **Adequacy of the Information System and access to third countries**

We welcome the development of an Application Programming Interface (API) to enable seamless communication of information between companies' in-house information systems and the Information System. However, we have concerns about the capacity of this system to handle the massive volume of data that will be generated, especially considering the high volume of due diligence statements that need to be produced. In the event of the system's malfunction or breakdown for a certain amount of time, further clarity on the ways of proceeding is needed for companies to put together a business continuity plan (with internal processes, etc.).

It is also crucial that the system is accessible to non-EU legal entities to lodge their due diligence statements as there will be many instances when an operator places a commodity/product for the first time on a non-EU market. These products will ultimately be placed on the EU market within a new composite product needing to rely on due diligence already carried out upstream.

### **Further clarity on the transition period**

While we appreciate the clarity provided in the last FAQs update of December 2023 regarding the transition period, uncertainty remains in relation to relevant products produced during the transition period that are not directly shipped into the EU market and only reach the EU market after date of application. Given the complexity of global supply chains, involving multiple processing stages, long storage times, and the upcoming main crop seasons for commodities like coffee and cocoa starting in October 2024, products produced during the transition phase but not immediately shipped to the EU will pose significant challenges in complying with the EUDR and cause unintended cost and environmental consequences. We strongly encourage the European Commission to explore a constructive solution to this issue.

Additionally, for composite products, it is possible that some ingredients/semi-finished products used to produce a finished product are placed on the EU market at different times before or after the end of the transition period. Currently, the EU Information System under development does not allow for this differentiation when submitting a due diligence statement for a finished product.

### **Benchmarking system**

A potential delay of the benchmarking system would mean all countries would be considered "standard risk" by default. Irrespective of the country of origin, relevant products will face full-fledged due diligence, even if they may have otherwise been

classified as "low risk". Timely completion of the benchmarking system is crucial to provide clarity to supply chain actors and ensure the smooth implementation.

**Legality requirement**

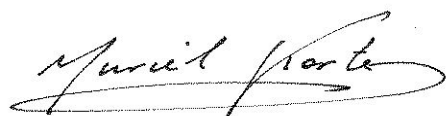
Operators and non-SME traders need as well clear guidance on how to comply with the requirement to collect verifiable information that relevant commodities have been produced in accordance with the legislation of the country of production. We encourage the Commission to provide examples of an information/evidence that could allow operators/traders to rely on during their risk assessment (e.g. third party certification, self-assessment declaration, data from public register on lack of compliance of a given producer where available).

In conclusion, our industries are fully committed to playing our part in eliminating deforestation from our supply chains. However, our ambition to contribute to halting deforestation, as well as our commitment to effectively comply with EUDR, are being challenged by delays in the timely availability of all necessary clarifications and the operability of the Information System.

We welcome the opportunity to engage further with the Commission to provide input and find solutions to the concerns and challenges hereinabove raised in a dedicated meeting to ensure a smooth rollout of the EUDR.

Thank you for your attention to this matter.

Sincerely,



Muriel Korter  
CAOBISCO, Director General