

OLENEX'S BRIEFING ON THE AGREED TEXT OF THE PROPOSAL FOR THE REGULATION ON PRODUCTS ASSOCIATED WITH DEFORESTATION AND FOREST DEGRADATION (EU) NO 995/2010

As a specialist in edible oils and in implementing sustainable supply chains in the palm oil industry, Olenex has supported since the beginning this Proposal's objective. However, Olenex believes that some of the measures presented in the text as currently designed carry important risks, such as creating a logistical bottleneck for shipments arriving at EU, penalising smallholder farmers with exclusion from supply chains to the EU or disregarding deforestation definitions and best management practices already widely used since 2018 in the palm oil industry. Moreover, certain provisions still need to be better defined and clarified.

Olenex would hereby outline some of these challenges. Ahead of the entry into force of the Regulation, Olenex strongly believes that the points outlined in this briefing need to be clearly defined and addressed by the European Commission and / or the national authorities of the EU Member States so to ensure an effective and efficient implementation of the proposal.

1. Art. 2: Deforestation definition vs HCV / HCS

- **"Deforestation"** under this European Commission proposal is defined in line with **FAO definitions**. However, in the palm industry the multi-stakeholder created [High Carbon Value \(HCV\)/High Carbon Stock \(HCS\) approach](#) is used to classify land as forest and non-forest, and therewith determine deforestation. This approach ensures consistency, high standards, transparency and independent verification of "No Deforestation", while ensuring high conservation value areas are conserved.

Note: Land classification under HCV/HCS approach is concluded on satellite images, land use change analysis over time, and field verification. It is an integrated and participatory approach to land use planning by identifying values and recommendations for management and monitoring. However, this approach may allow some forest patches to be developed with swapping of land in other areas within the concession, under certain rare circumstances and strong justification, as it considers the importance of forest patches at the landscape level; the **"give-and-take"** principle.

- Currently, land is **already audited**, to exclude forest areas from being converted to palm plantations.

Question:

1. Will the EC or Member States consider the HCV/HCS approach for the palm industry to determine deforestation as best management practice, as it is already widely and successfully implemented in palm?

2. Art. 4: New information

- Art. 4.6 refers to Operators that obtain or are **made aware of relevant new information**, shall immediately inform the competent authorities of the Member, as well as the related traders.

Question:

2. How far back in time should the operator consider new information? E.g. In 2028 the operator finds a breach on imported products in 2025. Does the operator still need to inform competent authorities and traders?

3. Art. 9: Concession maps and smallholder geolocation

- Most of the approximately **7 million smallholders** in the palm oil industry **are not in the possession of geolocation data**, because they don't have the knowledge or financial means. Gathering this information is extremely time consuming.
- Some governments [forbid the sharing of concession maps](#), which are considered confidential owned by state or land user. Sharing said maps would put Operators in a breach with the production country's regulation and data privacy protection laws. Some operators have already received precise instructions from National governments of third countries not to share concession maps. This provision would be seen as a **negative political signal to producing countries**, in the opposite direction to partnerships outlined in Art. 28.

Note: sharing concession maps with the competent authorities does not lead per se to deforestation free supply chains. Monitoring deforestation and assuring deforestation free supply chains in the palm industry is currently already done by the different parties in the supply chain.

Questions:

3. Olenex asks for at least 5 additional years for the implementation of Art. 9(d) for smallholders.
4. Olenex asks the EC to financially support production countries on gathering geolocations for smallholders.
5. Can EC consider specific production country regulations relating sharing geolocation information? Operators can report on percentage of geolocations available at the initial seller in origin country, however, not physically share these through the supply chain: should be 100%, excluding smallholders (see question 3 above)

4. Art 14: Due Diligence process and the obligations of the competent authorities

- For example, a fatty acid shipment can easily include 500,000 plots of production connected to the import product. This imposes an **enormous administrative burden** for the operators, the customs and national competent authorities involved.
- Consequently, the due diligence statement per shipment can ultimately lead to **logistical issues and delays** with customs and physically in the port. A simple solution would be an annual Due Diligence Audit, with more time to perform checks without causing delays.

Note: the costs of a shipment under suspension for checks of a competent authorities can range from \$25,000 to \$50,000 per day. A waiting period of 3 to 6 days, as indicated in the text, would imply excessive costs for companies (\$75,000 - \$300,000).

Question:

6. How long before the arrival of a shipment should operators upload the Due Diligence (DD) Statement in the centralised online information system, to prevent delays – also considering the customs controls? Or, can the EC give a minimum processing time to the customs/competent authorities between handing in the DD statement and receiving notice for free circulation of the product on the EU market, when it does not concern the 1, 3 or 9% checks?



5. Art 22 + 23: Corrective actions and penalties

- **Art. 22 on Corrective Action in case of non-compliance:** the text reads that “... they shall without delay require the relevant operator or trader to take appropriate and proportionate corrective action”. Among the options listed in the article, point (c) states “withdrawing or recalling the relevant product immediately”.
- **Art. 23 on Penalties:** in article 23 points (da) and (db), the text refers to “temporary prohibition from placing ..., in the event of a serious infringement...”

Questions:

7. What should be done if the **non-compliance is found 6 months after** the product was placed on the market?
8. How would the Operator be judged if this happens? Would **all corrective actions** apply as indicated in Art 22? Should there be a minimum threshold for e.g. affected hectares or volume of product?
9. What is the definition of “**serious infringement**”?

6. National Mandatory Legal Frameworks

- National mandatory legal frameworks (like [ISPO](#) and [MSPO](#)) are an **effective tool** to have palm producers transform to sustainable practices on a country level. Nevertheless, challenges to comply with these exist for (small) palm producers, relating to a.o. not owning land titles, gathering GPS coordinates/polygons and cost of certification.
- Olenex supports **stronger government-to-government engagement under this proposal** (Art 28), specifically **to improve the quality of these mandatory legal frameworks**. The goal is to have these frameworks/national standards aligned with EU regulation, which would make the verification of an imported product easier.
 - Support could consist of technical and financial assistance to improve the certification schemes, but also to assist smallholder inclusion (e.g fund projects to obtain polygons for the 7 million smallholders).
- Olenex emphasizes the importance of **EU recognition of the audit work** done under the mandatory legal frameworks in the palm oil sector, e.g on deforestation.

7. Other policies referred to the due diligence duties for companies

- Within 10 months, from November 2021 to September 2022, the European Commission **published three related proposals** for legislation on [deforestation-free products](#), [Corporate Sustainability Due Diligence Directive \(CSDDD\)](#) and recently on [banning products made with forced labour](#).
- While Olenex supports the objectives of these proposals it will undoubtedly create **large administrative and financial burden** in the daily operations of companies in the supply chain. Olenex is concerned about some unclear and possibly overlapping points between the three texts relating the due diligence obligations.

Questions:

10. Do companies have to put in place three sets of due diligences?
11. What about cases with overlap in the scope of the due diligence proposals?

Considering the above and aiming at an open collaboration with European authorities and institutions, Olenex will seek to inform its partners and national authorities of EU Member States of the challenges the final text of the proposal presents with the aim of contributing to the best of its abilities to clarify them to secure an effective and efficient implementation of the Regulation.

