

Options for EU recognition of the MSPO certification scheme

Expert report on policy options available to formally recognise the Malaysian Sustainable Palm Oil (MSPO) scheme in the EU.

August 2024



Foreword

In this expert report, Implement Economics (part of Implement Consulting Group) explores the policy options available for the formal recognition of the Malaysian Sustainable Palm Oil (MSPO) certification scheme by the EU. This report does not include an assessment of whether the MSPO is compatible with EU standards or an evaluation of whether the MSPO should be recognised. A recent gap analysis by Bois d'Enghein has found that the requirements for palm oil in the EUDR and MSPO certification scheme are highly similar. Our focus in this report is on identifying the potential mechanisms through which such recognition could be achieved.

We assess a spectrum of policy options, ranging from utilising upcoming EU regulations as a vehicle (e.g. the EU Regulation on Deforestation-Free Products, EUDR) to options that may require larger political efforts, such as drafting or redrafting political or new free trade agreements. By analysing this comprehensive range of options, we aim to provide an overview of how the EU could effectively integrate the MSPO scheme within relevant frameworks. Formal recognition can contribute to reducing compliance costs, strengthening competitiveness, and ensuring continued access to essential products for European businesses and consumers.

Through this report, we seek to contribute to the ongoing dialogue on sustainable palm oil practices and support collaborative efforts between the EU and Malaysia in promoting environmentally responsible trade. The logic and arguments would however also apply for other similar products or third country certification schemes. By third countries we refer to countries that are outside the EU and EEA.

Executive Summary

The mandatory Malaysian Sustainable Palm Oil certification standard (MSPO) has existed since 2015. Studies in both Europe and Malaysia have assessed that the MSPO can comply with EU regulations on zero-deforestation (e.g. the EUDR).

Formal recognition of the MSPO standard by the EU could benefit European consumers and businesses, as well as Malaysian exporters, through decreased compliance costs, increased consumer choice, and improved market competition.

Multiple pathways exist under current EU laws for the European Commission to formally recognize the MSPO. Our analysis identifies several options, including:

- Approval as a certification scheme, similar to existing recognitions for biofuels in RED II
- Equivalency recognition, similar to existing agreements (e.g. US-EU Organic Equivalency)
- Bespoke bilateral agreements with an FTA, CEPA or VPA between the EU and Malaysia

These options are not mutually exclusive, and both the EU and Malaysia could pursue multiple pathways concurrently. Additionally, the options differ across several evaluation parameters, offering flexibility in the approach towards formal recognition.

Table of Contents

1	Rationale for the EU recognition of sustainable practices in third countries	p. 4
2	Framework for evaluating policy options for the formal recognition of the MSPO	p. 10
3	Evaluation of policy options for the formal recognition of the MSPO	p. 14
4	Concluding remarks	p. 21

Rationale for the EU recognition of sustainable practices in third countries



1

2

3

4

The MSPO was established in 2013 and reflects a transition of Malaysian palm oil producers towards more sustainable production methods and sophisticated commodity markets

Overview of the Malaysian Sustainable Palm Oil (MSPO) Certification Scheme



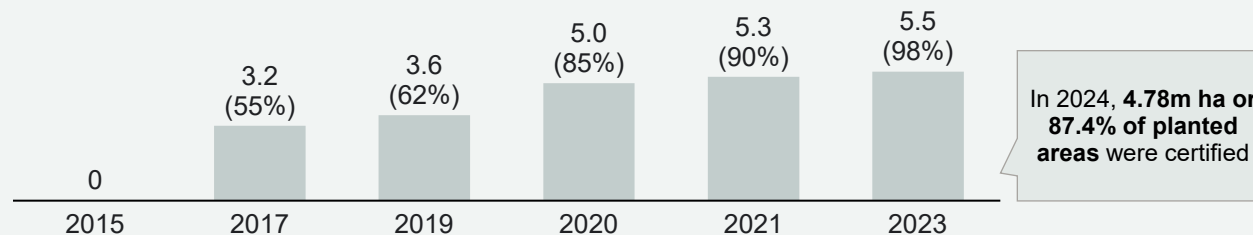
Malaysian Sustainable Palm Oil (MSPO)

Background: The Malaysian Sustainable Palm Oil (MSPO) Certification Scheme is a national initiative ensuring the sustainability and traceability of palm oil produced in Malaysia. Established in 2015, the MSPO was launched as an effort to move towards more sustainable production as well to address some of the issues raised on the global market such as the requirement by importing countries for a completely certified sustainable palm oil supply chain.

Content: The current MSPO (2530:2022) sets out principles covering environmental protection, biodiversity conservation, and social and labour rights. The criteria include rules on legal land ownership, respecting indigenous peoples' rights, and avoiding deforestation, minimise pollution from oil palm cultivation and processing, maintaining a system to track palm oil from cultivation to final product, etc. As of 1 January 2020, MSPO certification is mandatory for all Malaysian palm oil producers, including smallholders and large plantations, with compliance verified through independent third-party audits.

Progress and results: The MSPO has given a comparative advantage in European and other Western markets, where demand for certified palm has increased. As of April 2024, 87% of Malaysian palm oil **planted** areas were certified under the MSPO.

MSPO certificated palm oil plantation in Malaysia, areas (incl. infrastructure)*
Million hectares



- The MSPO was established back in 2013 and reflects a transition of Malaysian palm oil producers towards more sustainable production methods and sophisticated commodity markets.
- The uptake of the certification has been rapid due to its mandatory nature. In 2024, 87% of Malaysian palm oil planted areas were certified under the MSPO.
- The MSPO has given Malaysia a comparative advantage in European and other Western markets where demand for certified palm has increased.

Note: Since March 2021, MSPO achievement has been expressed in certified planted area as the main statistical figure for certification data as opposed to prior, where MSPO achievement was based on certified areas (incl. infrastructure, conservation areas, etc.). For comparability certified area is used in the figure. According to the Malaysian Reserve 4.9 million hectares or 87.4% of Malaysian palm oil plantations was covered under the second definition as of April 2024.

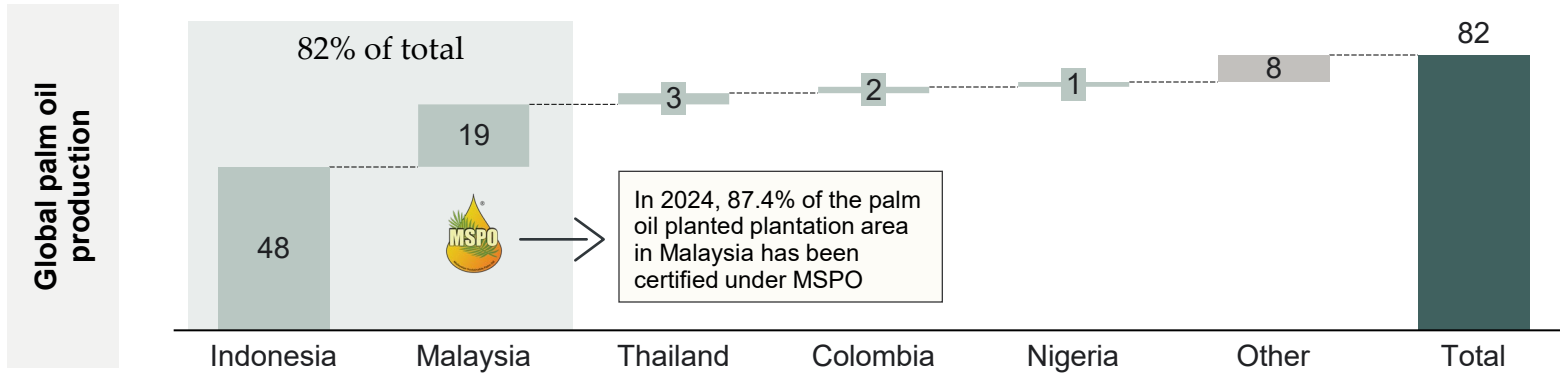
Sources: Bois d'Enghein (2024). Assessment of MSPO Certification Against the Requirements of the European Union Deforestation Regulation. CSPO-Watch, Kannan (2020), A review on the Malaysian sustainable palm oil certification process among independent oil palm smallholders, Malaymail (2019): Minister: 55pc of nation's oil palm plantation MSPO-certified, MSPO Trace.

The EU's consumption of sustainable palm oil amounts to 93%, driven by a combination of domestic demand and third countries developing deforestation-free practices

Supply and demand for palm oil

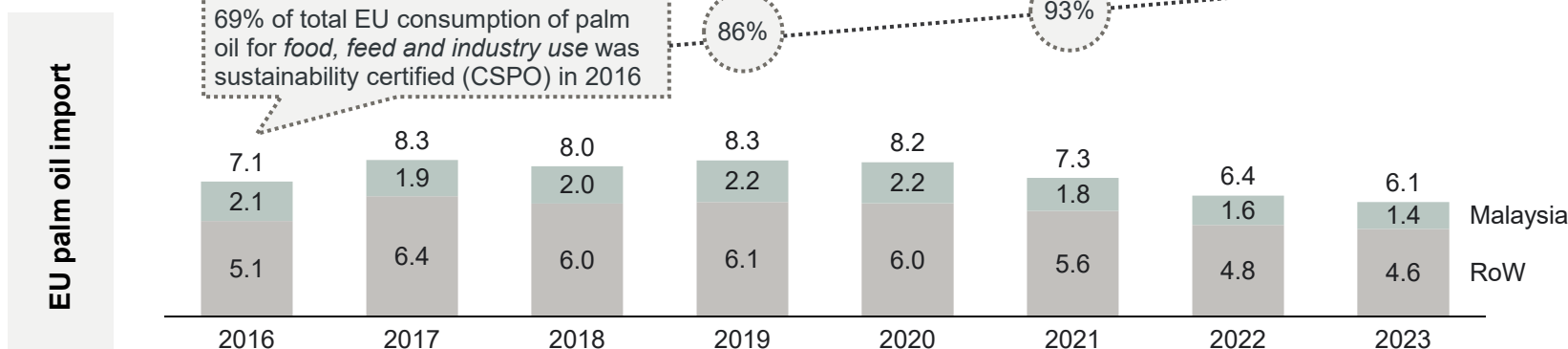
Palm oil production, 2023

Million tons



EU oil imports (Oil World) from Malaysia and rest of the world (RoW)

Million tons



- A total of 82 million tons of palm oil were produced globally in 2023, of which Indonesia and Malaysia made up 82% (67 million tons).
- The EU is the second largest importer of palm oil globally, amounting to 10% of all global palm oil consumption, and by far the largest importer of certified sustainable palm oil (CSPO), amounting to 45% of global CSPO consumption. Between 2016 and 2023, the EU imported 7.5 million tons of palm oil per year on average. The majority of Europe's palm oil consumption for food, feed and industrial use (93% in 2021) was certified sustainable.
- The widespread European sourcing of sustainable palm oil predates the forthcoming regulatory efforts, including the EU Deforestation Regulation (EUDR). Thus, the new regulation should accommodate existing sustainable/deforestation-free trade practices and mitigate potential unintended adverse effects on a market already aligned with deforestation-free intentions.
- The European commitment to sustainable palm oil was initiated in 2015 with the industry forming the European Sustainable Palm Oil (ESPO) project and the Amsterdam Declaration with 7 European countries committing to a target of 100% sustainable palm oil by 2020.

Note: Import numbers and share of CSPO import may vary slightly and not add up completely due to statistical differences between sources (Agristat and RSPO). The share of European certified sustainable palm oil import in 2016 is based on the volume palm oil used in food, feed and industry (comprising ~50% of total consumption). The remaining share is predominantly used in biofuel that has to meet the sustainability criteria of the European Renewable Energy Directive (RED).

Source: Implement Consulting Group based on Data from Oil World (2024), RSPO Annual Communication of Progress (2021), EU Agricultural Outlook 2023-2025 (December 2023), Making sustainable palm oil the norm in Europe (2017), RSPO, Eurostat and Agridata, The Malaysian Reserve (2024), MSPO certification achieves 87.4% coverage of Malaysian palm oil plantations, Amsterdam Declaration Partnership (2018), Palm oil.

New EU sustainability regulation (EUDR, RED II & III etc.) is catching up with the market trend by putting legal requirements on European businesses importing and trading palm oil

EUDR scope and timeline

Commodities

The EUDR applies to products made available on the EU market, or exported from the EU market that contain, have been fed with or have been made using commodities causing deforestation and/or forest degradation. Products covered by the EUDR include:



Oil palm



Soy



Coffee



Beef



Cocoa



Rubber



Wood

Businesses

The EUDR applies to two main categories of businesses: operators and traders. Additionally, given the typical capacity and resource constraints of SMEs, the EUDR offers certain exemptions for SMEs, as opposed to large enterprises (> 250 FTEs).

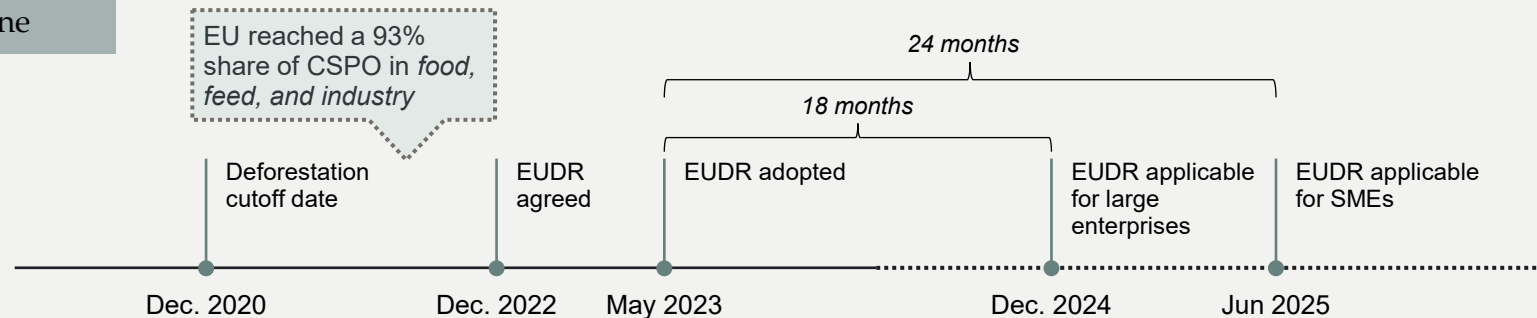


Operator: Any business entity or individual responsible for placing a product on the EU market for the first time, i.e., importers or EU-producers of covered commodities or products derived from covered commodities.



Trader: Any business entity or individual other than the operator who buys or sells a covered commodity or product derived from commodities after they have already been placed on the EU market.

Timeline



- In the recent years, the EU has increasingly introduced regulation to reduce the EU's contribution to deforestation. Recent regulation includes:
 - **RED II:** Implemented in 2018, with the aim to phase out the use of high indirect land-use change (ILUC) feedstock, including palm oil in biofuels. However, the phase-out has been challenged by a WTO ruling in March 2024 agreeing with Malaysia's claim that its palm oil products were discriminated relative to like products of EU origin and noted deficiencies in the design and implementation of the EU's ILUC risk criteria. **RED III**, passed in 2023, kept the phase-out of palm oil in place and added further restrictions on crop-based biofuels.
 - **EUDR:** To be implemented by 31 December 2024, prohibiting products linked to deforestation from entering the EU market.
- With the increased level of regulation, finding a way for relevant EU and/or national certification bodies to formally recognise the MSPO becomes more pertinent. In this way, compliance by EU businesses is entrenched in a regulation rather than a commercial contract with a client, which is likely to reduce administrative costs.

An EU-wide formal recognition of existing sustainable practices and certifications presents some potential economic opportunities over individual legal contracts

Opportunities businesses and consumers from the formal recognition of existing sustainable practices



BENEFITS FOR EUROPEAN BUSINESSES

- **Compliance savings** | European operators/traders can avoid the operational costs of building capabilities internally (hiring additional staff, setting up IT-systems etc.), and instead rely on more efficient external standards and compliance.
- **Competitiveness** | European companies would stand to save on compliance cost, hence making them more competitive also in regions with less stringent environmental regulations. EU companies would therefore also be better able to retain their market share, reducing the incentive for businesses to move production outside the EU.



BENEFITS FOR EUROPEAN CONSUMERS

- **Stable prices** | Consumers are already today mostly consuming certified palm oil. A formal recognition would therefore most likely contribute towards ensure more stable prices.
- **Consumer choice** | The availability and variety of products on the market may shrink if European firms individually have to ensure legal contracts with palm oil producers. This could create supply shortages as firms have to reevaluate and adjust their current supply chains.
- **Consumer assurance** | By formally recognising foreign schemes, consumers can be confident about the provenance of purchased products.



BENEFITS FOR FOREIGN BUSINESSES

- **Existing practices** | Third countries already today producing and certifying sustainable palm oil will be better positioned to export into the EU. This could encourage other countries to implement similar mandatory anti-deforestation schemes. Further, they can retain current schemes that are suited to a national context instead of reworking or double-documenting to fit EU standards.
- **Smallholder access** | Smallholders, who may particularly struggle to document existing good practices themselves, will have improved access to European markets through a centralised certification scheme, rather than entering an individual contract with a European operator.



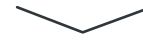
- A recognition of existing palm oil certifications has the potential to accelerate the EU's path towards mitigating consumption linked to deforestation, while likely benefitting both European consumers and businesses as well as third country producers.
- By recognising existing certifications schemes (as opposed to requiring legal contracts for the individual EU firm), EU products will become more competitive globally compared to those from regions with less stringent environmental regulations. Further, it can also reduce the burden on foreign palm oil producers, and particularly smallholders, who might struggle to document existing good practices.
- In contrast, introducing requirements on already sustainable practices might lead to a sizeable duplication of costs. For example, an EU impact assessment of the EUDR estimates that the recurrent due diligence costs for importers of wood, beef, cocoa, coffee, palm oil and soy could amount to a total of EUR 175 million to EUR 2.6 billion per year, equivalent to 0.3 to 4.3% of the value of the imports. These estimates exclude the one-off costs associated with setting up due diligence systems, which are estimated to range between EUR 5,000-90,000 per operator.

Recognition of existing sustainable practices like MSPO can enhance sustainability outcomes and reduce unintentional adverse effects associated with new regulation

Economic opportunities from a formal recognition of the Malaysian Sustainable Palm Oil (MSPO)



By recognising existing anti-deforestation certifications, the EU can help ensure...



1 SUSTAINABILITY	2 COMPETITIVENESS	3 ACCESS	4 COST-EFFICIENCY
By making EUDR-covered products more accessible and affordable, European producers are less likely to switch to non-EUDR products (e.g. from palm oil to coconut oil) or outsource production, thus maintaining sustainable sourcing practices.	Recognising existing certifications allows European firms to source palm oil more affordably, enhancing their competitiveness against global (possibly non-deforestation free) counterparts.	Recognising existing certifications helps maintain a stable supply of raw materials, reducing supply chain bottlenecks.	Formal recognition by the EU of the MSPO (or similar sustainable certifications in third countries) eliminates the need for dual certification (under e.g. the EUDR), thereby lowering compliance costs.

- The MSPO is currently not recognised as compatible with EU standards.
- While this report does not assess the compatibility of the MSPO with EU standards, a recent gap analysis finds that the requirements for palm oil in the EUDR and MSPO certification scheme are highly similar. This reflects Malaysia’s commitment and joint EU-Malaysia efforts towards more sustainable practices.
- Recognition of national standards, such as the MSPO, will benefit EU businesses and consumers as well as limit costs for third countries, while generating improved sustainability outcomes overall.
- The rationale is that recognition simplifies compliance procedures, minimising the duplication of efforts and reducing overall costs. Moreover, it helps to secure cost efficiencies, European competitiveness and product availability for consumers.
- Finally, it promotes a collaborative response to a *global* challenge. It can also prevent exports from being diverted towards markets with looser environmental regulations.

Framework for evaluating EU policy options for the formal recognition of the MSPPO



1

2

3

4

The upcoming EUDR is one vehicle for formalising a fast lane for approved schemes such as the MSPO

Regulatory options with legal basis in the current EUDR

OPTION 1: Third party verification of due diligence compliance

Recognition of third-party verification for due diligence compliance

This option involves the EU approving third-party certification bodies as capable of verifying compliance with the due diligence requirements stipulated in the EUDR. Essentially, this would mean that the verification of compliance with the EUDR's due diligence requirements is outsourced to an ISO-accredited third-party certification body. Operators and traders would still need to conduct due diligence but could rely on third-party certifications to demonstrate compliance.

Legal basis in the EUDR: This option requires amendments in Regulation 2023/1115 to Article 8, 9 and 10.

OPTION 2: Recognised certification scheme

Full equivalence, no additional certification required

This option involves the EU recognising a third country's certification standards as equivalent to its own. It recognises the entire regulatory framework and standards-setting system of the other party as equivalent, allowing certain certified products to be sold in the EU without additional certification or compliance checks. This requires that the EU and the given third country enter into a formal agreement recognising the equivalence of the national certification with EUDR standards.

Legal basis in the EUDR: This option requires amendments in Regulation 2023/1115 to Article 3.

OPTION 3: Bespoke benchmarking under implementing regulation

Benchmarking of verified certification holders as "low risk" in implementing acts

This option involves the classification of a country or parts of a country as "low risk" based on a certification that is deemed to comply with EUDR requirements. Operators sourcing from a low-risk country, or parts thereof, would be subject to fewer/simpler requirements, as already stipulated in the current EUDR. This would require regular monitoring and review of the "low risk" classification to ensure continued compliance.

Legal basis in the EUDR: This option does not require amendments in Regulation 2023/1115, but rather in the benchmarking assessment detailed in Article 13 and 29.

- The upcoming EUDR offers a structured approach to formalise a fast lane for the recognition of the MSPO, providing a legal framework within which the MSPO could gain recognition through compliance mechanisms. Given the fast-approaching nature, compatibility with the EUDR is also a relevant parameter to consider options on.
- We have identified three potential options under this framework. These options can be accommodated by either making minor amendments to one or more articles of the current EUDR or in the implementing acts of the regulation. The options can likewise inspire and/or be relevant for potential other sustainability regulatory efforts if the EUDR is not adopted or is significantly amended.
- A key requirement under both Option 1 and 2 is that the Commission acknowledges certification as a way to comply with the EUDR (or potentially other sustainability regulation), possibly issuing guidelines on what the standard should as a minimum cover that can be continuously adjusted.
- Utilising existing regulatory frameworks, such as the EUDR, is not the only avenue for formal recognition of the MSPO. We consider alternative options on the following page.

Additionally, other options requiring larger political efforts, but unrelated to existing regulatory frameworks, are also available and hold significant merit

Trade options extending beyond regulation

OPTION 4: Voluntary partnership agreement (VPA) for palm oil

Specialised partnership agreement

This option involves creating a bilateral agreement between the EU and a third country to ensure that deforestation-linked commodities, like palm oil, are legally and sustainably produced. These agreements, similar to those under the EU's Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, might use national certification or VPA-specific licensing to verify compliance. EU member states would designate competent authorities to oversee the import of these commodities and might also assist in capacity building and provide technical assistance to the partner country.

OPTION 5: Bilateral trade agreement with sustainability clauses

Broader free trade agreement with sustainability clauses

This option is a broader agreement between the EU and a third country that covers a wide range of sectors and commodities and include commitments to uphold sustainability standards. The agreement would recognise that the third-country meets EU requirements in the agreement's sustainability clauses, provided certain enhancements or alignments are made. Such bilateral trade agreements typically entail comprehensive trade provisions such as tariff reductions, market access and investment protections. It would also have its own legal framework and mechanisms for dispute resolution and enforcement that exists in parallel and complementary to any relevant regulatory frameworks.

- Formalising the recognition of the MSPO by the EU can also be pursued through broader political agreements that extend beyond the scope of the EUDR or other potential regulatory frameworks.
- Considering options beyond upcoming regulatory frameworks is crucial as they offer flexible, tailored agreements for specific sustainability goals and bilateral cooperation, providing stable recognition mechanisms less dependent on the evolving regulatory landscape. This is particularly important given the uncertainty of the upcoming EUDR.
- Notably, the EU has a history of using political agreements to address sustainability in trade, seen for example with the EU-US soybean deal or the VPAs negotiated under the EU's FLEGT Action Plan.
- These options also vastly differ in the difficulty and cost of implementation, as well as other parameters.
- To effectively compare across different options, we consider an objective set of evaluation criteria. We present our evaluation parameters on the next page.

The policy options can be assessed using six parameters, enabling choice-making towards a decision that ensures objectives are met most cost-effectively

Parameters to evaluate the effectiveness and feasibility of policy options

	Phase-in time speed	Measures the duration necessary to fully implement the agreement. It measures the time needed for all stakeholders to adapt to changes and for new frameworks to become fully operational. A shorter phase-in time can indicate an attractive policy option as the risk of supply chain disruptions is reduced.
	Cost reduction potential for businesses	Measures financial burdens that compliance with the new agreement specified in the option places on businesses, including costs associated with meeting standards, documentation and audits. Lower compliance costs generally favour acceptability from businesses.
	Ease of expansion	Measures the scope for adapting the policy option and expanding to other commodities covered by the EUDR or to other countries with national sustainability certifications. High ease of expansion implies that the framework is scalable and flexible.
	Predictability for businesses	Measures the likelihood of disturbances to trade flows, including availability of certified products and impacts on market dynamics. Options causing minimal disruptions are generally preferred to ensure market stability.
	Efficiency of implementation	Measures the initial resources (time and money) required to develop and set up the new policy framework under the given option. Costs can include research and development, consultations, legislative processes and the establishment of monitoring bodies.
	Ease of monitoring	Measures the level of complexity and costs associated with overseeing and verifying compliance under the new agreement. Easier monitoring reduces the risk of non-compliance and can lower operational costs over time.

- When assessing the policy options for the formal recognition of national certifications, such as the MSPO certification, it is essential to conduct a thorough evaluation using a set of objective parameters.
- These parameters ensure that the chosen policy option aligns with the EUDR's objectives, while also being feasible and cost-effective for stakeholders involved.
- The parameters consider two channels of first-order impacts: economic impacts (relate to European businesses and their competitiveness) and administrative impacts (relate to the resources required to implement and monitor each policy option).
- A sub-optimal option could result in unnecessarily high business costs or prolonged phase-in times, potentially affecting trade flows, prices and the overall competitiveness of the EU economy.

Legend



Economic parameter



Administrative parameter

Evaluation of EU policy options for the formal recognition of MSPPO



1

2

3

4

Identifying the best policy option requires a holistic evaluation of each option according to objective evaluation criteria

Evaluation parameter	Option 1	Option 2	Option 3	Option 4	Option 5
Phase-in time speed					
Cost reduction potential for businesses					
Ease of expansion					
Predictability for businesses					
Efficiency of implementation					
Ease of monitoring					

Legend

Economic parameter

Administrative parameter

Legend

Low (Least optimal) → High (Most optimal)

- Each of the options for the formal recognition of the MSPO certification have unique strengths and pitfalls. In many cases, there are also certain trade-offs to be made.
- Options that are more difficult to design, negotiate and implement could, for example, both require significant resources at EU institutions and have a long phase-in speed, but they could nevertheless be the most advantageous from a European business and competitiveness perspective.
- We therefore distinguish between economic parameters (impacts from a European business perspective) and administrative parameters (impacts from an EU competent institution perspective).
- Pursuing no formal recognition agreement of the MSPO certification is also an option, but it may lead to significant economic consequences (see page 8).
- We have scored the options on a 1-5 scale (where 1 represents “low”/“least optimal” and 5 represents “high”/“most optimal”) for each evaluation parameter.
- We evaluate each option in more detail on the following pages.

OPTION 1 | Third party verification of due diligence compliance

Deep dive

Description and rationale

OPTION 1: Third party verification of due diligence compliance

Recognition of 3rd party verification for due diligence

This option involves the EU approving third-party certification bodies as capable of verifying compliance with the due diligence requirements stipulated in the EUDR. Essentially, this would mean that the verification of compliance with the EUDR's due diligence requirements is outsourced to an EU-approved ISO-accredited third-party certification body. Operators and traders would still need to conduct due diligence but could rely on third-party certifications to demonstrate compliance with due diligence requirements. This will reduce compliance costs and enable European businesses to sustain existing contractual trade relations. Previous experience with the recognition of biofuel certifications under the EU Renewable Energy Directive (RED and RED II) can provide significant applicable expertise and familiarity, as well as efficiency gains for implementation.

Legal basis in the EUDR: This option requires as a minimum amendments in Regulation 2023/1115 to Article 8, 9 and 10.

Example of existing agreement: Recognition of biofuel certifications under RED/RED II.

Evaluation

Evaluation parameter	Scoring	Explanation
Phase-in time speed		Moderate-high phase-in speed due to few required amendments and the potential utilisation of existing certification bodies, without having to establishing new ones. The scheme under RED provides significant expertise, familiarity and efficiency gains, positively impacting phase-in time.
Cost reduction potential for businesses		Moderate-high cost reduction potential as operators and traders still need to conduct due diligence, but fees for third-party certification bodies are likely lower than if incurred in-house.
Ease of expansion		High expansion potential, as all third countries with compatible national certification schemes can in theory be covered. A similar option can be applied to other commodities covered by the EUDR when third-party certification systems are in place.
Predictability for businesses		Moderate predictability with some risks related to the performance and assessment of third-party bodies, though reduced risk of non-compliance penalties due to accredited third-party verification.
Efficiency of implementation		Moderate efficiency of implementation if existing certification bodies are used, avoiding the need for establishing new ones.
Ease of monitoring		Moderate difficulty as monitoring third-party certifiers is still required (to a lesser extent if they are already established and trusted).

OPTION 2 | Recognised certification scheme

Deep dive

Description and rationale

OPTION 2: Recognised certification scheme

Full equivalence, no additional certification required

This option involves the EU recognising the MSPO certification standards as equivalent to the requirements stipulated in the EUDR. It recognises the entire regulatory framework and standards-setting system of the MSPO certification scheme as equivalent, allowing MSPO-certified palm oil products to be sold in the EU without additional certification and compliance processes. Depending on the extent of the equivalence, businesses may be exempt from conducting additional due diligence checks and risk assessments, or only risk assessments, as specified by the EUDR. This requires that the EU and the given third country enter into a formal agreement recognising the equivalence of the national certification with EUDR standards.

Legal basis in the EUDR: This option requires amendments in Regulation 2023/1115 to Article 3.

Example of existing agreement: EU-US Organic Equivalency Arrangement

Evaluation

Evaluation parameter	Scoring	Explanation
Phase-in time speed		Low phase-in time efficiency due to the need for formal agreements and recognition processes.
Cost reduction potential for businesses		High cost reduction potential due to streamlined compliance requirements for businesses, depending on the extent of the equivalence. The cost reduction is highest if no additional due diligence checks and risk assessments are required.
Ease of expansion		Low ease of expansion due to the complexity of reaching formal agreements for each commodity and country.
Predictability for businesses		High predictability over continued recognition of the third country's standards once initial agreement over equivalence is established.
Efficiency of implementation		Low efficiency of implementation due to the need for formal agreements and harmonising standards.
Ease of monitoring		High ease of monitoring as the entire certification scheme is recognised, requiring little monitoring.

OPTION 3 | Bespoke benchmarking under implementing regulation

Deep dive

Description and rationale

OPTION 3: Bespoke benchmarking under implementing regulation

Benchmarking of verified certification holders as “low risk” in implementing acts

This option involves the classification of Malaysia, or parts thereof, as “low risk” based on the existence of the MSPO certification scheme that has certified nearly all Malaysian palm oil plantations and mills. Operators (and traders) sourcing from a low-risk country, or parts thereof, would be subject to fewer/simpler requirements, as already stipulated in the current EUDR. This would require regular monitoring and review of Malaysia’s “low risk” classification to ensure continued compliance.

Legal basis in the EUDR: This option does not require amendments in Regulation 2023/1115, but rather in the benchmarking assessment detailed in Article 13 and 29.

Example of existing agreement: NA

Evaluation

Evaluation parameter	Scoring	Explanation
Phase-in time speed		High phase-in time speed as it only requires benchmarking assessment (implementing act) and does not involve extensive amendments.
Cost reduction potential for businesses		Moderate-low cost reduction potential as operators still need to conduct due diligence, despite benefitting from fewer/simpler requirements.
Ease of expansion		Moderate-high ease of expansion as benchmarking assessment is already designed for multiple countries but reaching “low-risk” classification requires separate agreement and proof compliance.
Predictability for businesses		Moderate-low predictability with regular monitoring providing ongoing assurance, though there is some risk of reclassification.
Efficiency of implementation		High efficiency of implementation as it only requires verification in the benchmarking assessment (implementing act) that Malaysia classifies as a “low-risk” country due to the MSPO.
Ease of monitoring		Moderate ease of monitoring due to the need for some monitoring/review to ensure validity of “low-risk” status.

OPTION 4 | Bilateral voluntary partnership agreement

Deep dive

Description and rationale

OPTION 4: Bilateral voluntary partnership agreement (VPA)

Specialised partnership agreement

This option involves creating a specialised agreement between the EU and Malaysia which states that palm oil products should be legally and sustainably produced. Such an option would serve as a mutual recognition and facilitation tool, ensuring that Malaysian products meet EU standards and requirements. This agreement could use the MSPO or VPA-specific licensing to verify compliance. EU member states would designate competent authorities to oversee the import of these commodities, including the licensing system that certifies the legality of palm oil products. As part of the agreement, the member state competent authorities might assist in capacity building and provide technical assistance to Malaysian partners.

Example of existing agreement: VPAs negotiated under the EU's Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, e.g. EU-Indonesia VPA.

Evaluation

Evaluation parameter	Scoring	Explanation
Phase-in time speed		Moderate phase-in time speed as agreements and capacity-building measures need to be established.
Cost reduction potential for businesses		Moderate cost reduction potential due to oversight by competent authorities, but documentation and reporting requirements still exist for operators and traders.
Ease of expansion		Moderate ease of expansion as similar agreements can be negotiated for other commodities and countries, perhaps under a broader agreement such as the FLEGT.
Predictability for businesses		Moderate predictability due to the specialised and cooperative nature, but variability in competent authority implementation/performance might cause delays and increase uncertainty.
Efficiency of implementation		Moderate efficiency of implementation for creating specialised agreements and capacity building.
Ease of monitoring		Moderate-high ease of monitoring as oversight mechanisms are part of the agreement, however, reliance on third-party verification might be logistically challenging.

OPTION 5 | Bilateral trade agreement with sustainability clauses

Deep dive

Description and rationale

OPTION 5: Bilateral trade agreement with sustainability clauses

Broader free trade agreement

This option is a broader agreement between the EU and a third country (such as an EU-Malaysia FTA¹) that covers a wide range of sectors and includes commitments to uphold sustainability standards. The agreement would recognise MSPO certification as meeting EU sustainability requirements in the sustainability clauses, provided certain enhancements or alignments are made. Such bilateral trade agreements typically entail comprehensive trade provisions such as tariff reductions, market access and investment protections. It could also have its own legal framework and mechanisms for dispute resolution and enforcement that exist in parallel and complementary to any relevant regulatory frameworks, such as the EUDR. It aligns Malaysian standards with EU requirements and provides a structured framework for compliance.

Example of existing agreement: EU-Singapore Free Trade Agreement, including sustainability provisions for environmental protection and labour rights.

Evaluation

Evaluation parameter	Scoring	Explanation
Phase-in time speed		Low phase-in time speed due to the complexity of negotiating comprehensive trade agreements.
Cost reduction potential for businesses		Moderate-high cost reduction potential due to recognition of MSPO, though documentation and reporting requirements still exist for operators and traders.
Ease of expansion		Low ease of expansion to other countries as separate bilateral negotiations are required.
Predictability for businesses		Moderate-high predictability due to the separate legally binding nature of the agreement, minimising unforeseen disruptions due to uncertainty related to EUDR.
Efficiency of implementation		Low efficiency of implementation due to extensive negotiations and implementation of trade agreements, requiring significant resources.
Ease of monitoring		Moderate ease of monitoring as monitoring/review mechanisms are part of the trade agreement.

Note: ¹Negotiations for a Free Trade Agreement (FTA) between the EU and Malaysia were launched in 2010 and put on hold after seven rounds in 2012 at the request of Malaysia. The EU-Malaysia FTA is being discussed at a working level.

Source: See <https://www.bilaterals.org/?malaysia-eu-fta-back-on-the-table#:~:text=Negotiations%20between%20Malaysia%20and%20the,negotiating%20options%20at%20that%20time>.

Concluding remarks



1

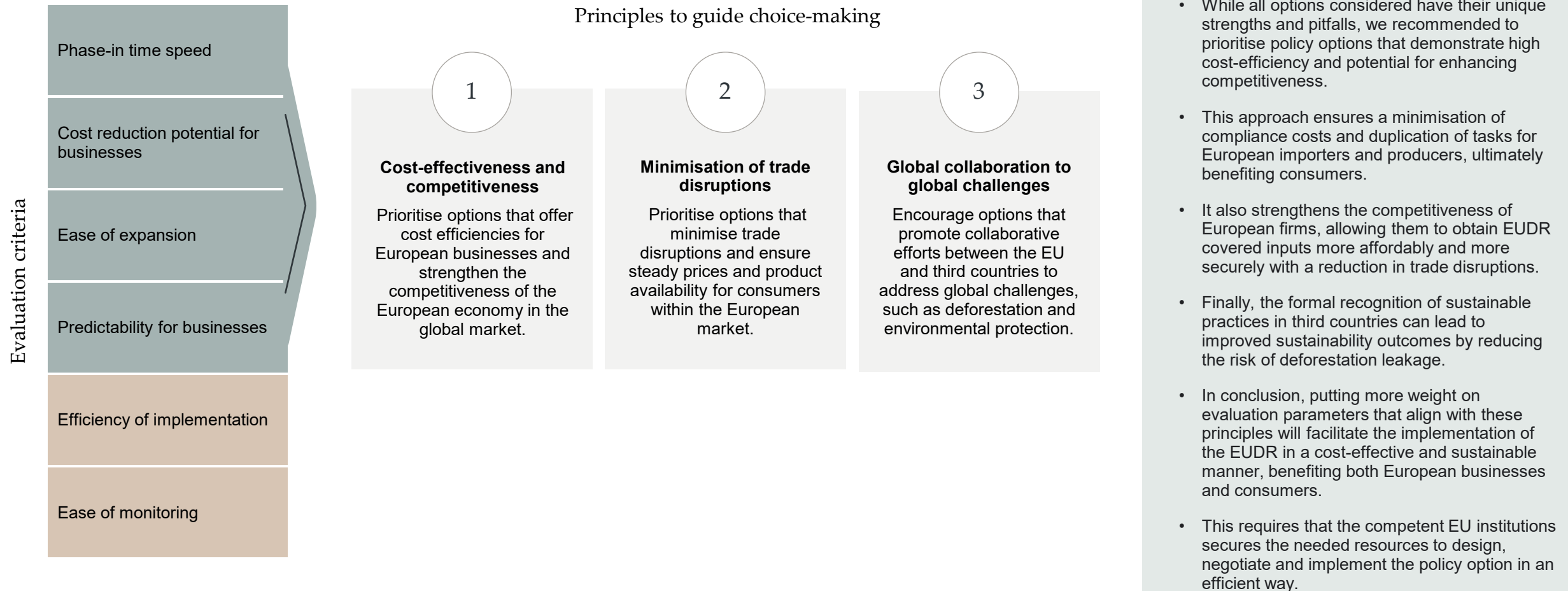
2

3

4

In assessing options available for the formal recognition of the MSPO, we recommend to put weight on options that have high cost-efficiency and competitiveness potential

Recommendations and principles to guide choice-making





About us

Implement Economics is the economics expert unit of Implement Consulting Group. Our experts are advisers to corporate and government decision-makers within regulation, trade, digitalisation, decarbonisation, and globalisation.

The team applies economic modelling, data analytics and econometrics to help solve worthwhile problems.

Headquartered in Copenhagen and with offices in Aarhus, Stockholm, Malmo, Gothenburg, Oslo, Zurich, Munich, Hamburg, and Raleigh (NC), Implement Consulting Group employs more than 1,600 consultants working for multinational clients on projects worldwide.

Contact

Eva Rytter Sunesen
+45 2333 1833
evar@implement.dk