

Assessment of MSPO Certification Against the Requirements of the European Union Deforestation Regulation

May 2nd, 2024

Pierre Bois d'Enghein

Commissioned by:
Malaysian Palm Oil Council



ABOUT THE AUTHOR

Pierre Bois D'Enghien is the author of EUDR-MSPO Gap Analysis and has decades of experience advising some of the largest palm oil and commodity institutions in Europe, Africa, and Southeast Asia.

He has served as the Head of the Sustainable Development Department at Socfin, an Auditor for the Roundtable on Sustainable Palm Oil (RSPO), an Advisor for the Global Platform for Sustainable Natural Rubber, a Project Director for Feronia, and many more. His articles and commentary on palm oil and the broader commodities market have been featured in media across Europe and globally.

He received his Master's Degree in Environmental Monitoring at the University of Liege in Belgium.

ABOUT THE MALAYSIAN PALM OIL COUNCIL

The Malaysian Palm Oil Council (MPOC) is dedicated to positioning Malaysia as the global leader in certified sustainable palm oil. MPOC prioritises the promotion of Malaysian palm oil as a healthy, sustainable, and ethical choice for consumers worldwide, by actively engaging with stakeholders, while improving market access and acceptance of the MSPO certification.

MPOC has a network of regional offices in China (Shanghai), India (Mumbai), the Middle East (Istanbul), Europe (Brussels and Moscow), and Africa (Cairo and Johannesburg).

Through its head office in Kuala Lumpur and the regional offices, MPOC plays a vital role in facilitating the Malaysian palm oil industry's trade expansion by constantly identifying and capitalising on the latest market trends and opportunities.

EXECUTIVE SUMMARY

The following is an assessment of the Malaysia Palm Oil Certification Council (MPOCC) requirements for the Malaysia Sustainable Palm Oil (MSPO) certification system against the requirements of the *Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (European Union Deforestation Regulation)*.

It should be noted that although the most recent version of the proposal has been published, this is still some uncertainty as to the final approved text; the requirements of the implementing regulation (known as 'Delegated Acts'), which will be written and approved in the 18 months following the final approval on June 9 2023. Because of this, the precise nature of the final requirements remains unknown.

However, there are two areas in which it is possible to undertake the assessment.

The first is the basic prohibition of the EUDR stipulated under Article 3. They are that products cannot be placed on the EU market unless:

- (a) They are deforestation-free;
- (b) They have been produced in accordance with the relevant legislation of the country of production; and
- (c) They are covered by a due diligence statement.

The MSPO sustainability requirements are assessed against these prohibitions.

The second is the information that is required by importers.

Article 9 contains the information required for the due diligence statement in Article 3 (c).

Article 10 contains the requirements for a risk assessment that needs to be undertaken.

The MSPO certification procedures (i.e., the information provided about certified operations in public summaries and certificates) are assessed against those requirements.

TABLE OF CONTENTS

SUMMARY	1
ANALYSIS	2
Regulatory Requirements	
Due Diligence Requirements	
RISK ASSESSMENT	6
IMPLEMENTATION	6
ANNEXES	10
Article 3 Regulatory Requirements	
Article 9 Informational/Due Diligence Requirements	
Article 10 Risk Assessment Procedural Requirements	
Normative References	
MSPO and EUDR Factsheet	





SUMMARY

The initial findings are as follows:

- ▶ *The MSPO standard's sustainability requirements:*
 - Meet the EUDR deforestation requirements (Article 3) at MS 2530:2022: Criteria 4.1.2.1
 - Meet the EUDR legality requirements at (Article 3) MS 2530:2022: 4.3 Principle 3 (and associated Criteria and Indicators)

- ▶ *The MSPO Public Summary requirements (stipulated in the [MSPO Certification Scheme Document](#)):*
 - Provide adequate information for the due diligence statement under the EUDR (Article 9) with some exceptions:
 - Geolocation data only provides pins, not polygons
 - Geolocation data for group certification (smallholders) will provide all smallholder locations and will not be able to disaggregate by shipment.
 - Time and date of production is only be provided within the audit or surveillance audit period.

 - Provide the basis for a risk assessment by importers using:
 - [MSPO Trace website](#) information as a verification system.
 - The MSPO-specified [audit sampling criteria](#) as the basis of a risk assessment for any group certifications.

- ▶ *MSPO Certificates* do not provide the information required for the due diligence statement, although the other documentation (e.g., public summaries) do.

- ▶ There is a risk to group certified entities in using MSPO certification in that because disaggregation of smallholders under a MSPO group certification is not possible:
 - The EUDR would disqualify the entire MSPO group certificate if a single smallholder was found to be breaching EUDR rules after initial screening and certification processes.

ANALYSIS

There are two aspects to MSPO-certified material meeting the EUDR. The first is **regulatory requirements**, i.e., whether the production of the goods meets the benchmarks of the EUDR.

The second is the **due diligence requirements**, i.e., whether the information provided by MSPO summaries and certificates can meet the EUDR informational requirements. In addition, EUDR requires a risk assessment be undertaken by importers.

REGULATORY REQUIREMENTS

MSPO standards meet the regulatory requirements of the EUDR under Article 3, in that they:

- Prohibit deforestation after 2019;
- Require legal compliance of all local laws; and
- Can link imported commodities to their source.

More detail on this is provided below and in the Annexes.

DUE DILIGENCE REQUIREMENTS

The EUDR requires that specific information be provided that allows the informational due diligence requirements to be met.

EUDR Article 9 contains the information that importers must have to meet the due diligence requirements. Summarised, the Article 9 requirements are for: product description, quantity of material, country of production, supplier identification, receiver identification, conclusive verification of deforestation-free status, conclusive verification of legal compliance and land rights, and geolocation.

Although the MSPO certification public summary provides much of this information, there are some gaps. Below is a summary of where the MSPO requirements and public summaries meet the Article 9 requirements.

Product description

The public summary provides information covering the outputs from the operation. Depending on the operation and the type of certification, this must include at least one of: FFB, CPO, PK and PKO.

Quantity

The EUDR requires that quantities be provided as part of the due diligence procedures. This information is not provided via a certificate or public summary. It will, however, be provided via customs documentation.

Country of production

The public summary (and the certificate) indicates that the product is produced in Malaysia; the scope of MSPO certification is restricted to Malaysia.

Identification of supplier

The public summary includes the following specific information: name of management unit; site address of the management unit; management and contact person's name, telephone number and email.

Identification of receiver

This is not provided in the certificate, but this is not relevant.

Conclusive and verifiable information that products are deforestation-free

The MSPO certificate or public summary does not in itself contain that information, but meeting this requirement is a pre-requisite of MSPO certification.

It should be emphasised that the MSPO requirement meets and goes beyond the EUDR standard. Malaysia utilises the FAO definition for forest, in-line with FAO definitions. The MSPO standard defines 'natural forest' in line with FAO definitions.

The MSPO defines deforestation as "loss of natural forest as a result of i) conversion to agriculture or other non-forest land-use; ii) conversion to a tree plantation; or severe and sustained and degradation."

MSPO certification requires that under MS 2530:2022: 4.1.2.1 Indicator 1 that "New planting shall be carried out with the consideration of the following: a) No conversion of *natural forest, protected areas and High Conservation Value areas* after December 2019."

The addition of HCV areas effectively increases the scope of MSPO's deforestation requirement. In addition, the cutoff date for conversion precedes the EUDR cut-off date. Importers should be aware of this requirement.



This information should be considered conclusive because of the certification and accreditation procedures, which follow international norms:

- MSPO areas are only certified after auditing processes;
- The audit processes are carried out by accredited certifiers that are required to have training for MSPO certification; and
- Accredited certifiers must meet the requirements of the following international standards:
 - ISO/IEC 17021:2015 (or its replacement) - (Conformity assessment Requirements for bodies providing audit and certification of management systems);
 - ISO/IEC 17065:2012 (or its replacement) - (Conformity assessment - Requirements for bodies certifying products, processes and services)
- Accreditation for certification is carried out by Standards Malaysia, which is a member of the International Accreditation Forum. Standards Malaysia is required to comply with:
 - ISO/IEC 17011:2004 (or its replacement) Conformity assessment - General requirements for accreditation bodies accrediting conformity assessment bodies.

The information should be considered *verifiable* using the two following techniques:

- Importers can verify the public summary and the certificate through the certifier or auditor; and
- Importers can verify the public summary and certificate via the MSPO Trace website.

Legal compliance and land rights are conclusive and verifiable

MSPO Principle 3 requires that all operations comply with local, national and ratified international and regulations. laws, conventions, and that any certified body actively monitor and identify additional or new requirements where appropriate. This does not allow for any exceptions and can be considered a broad statement that goes beyond the requirements in Article 9.

MSPO contains additional criteria for: rights to use land; and native customary rights (which also addresses free, prior and informed consent). FPIC is also addressed in a prohibition on new plantings where FPIC is not obtained.

MSPO includes a definition of FPIC that is consistent with international norms such as those found under UNDRIP. In addition, any definition should theoretically revert to

international norms under UNDRIP as Malaysia is a signatory to UNDRIP, which establishes conditions for the relationship between governments and indigenous groups and the approval of projects.

This should be considered conclusive and verifiable for the reasons indicated above.

The EUDR guidance from the European Commission has not yet provided more detailed compliance on broader legal requirements; operators cannot be expected to undertake tax audits, for example. The guidance states that any legal obligations must be “linked to the area of production.” Similarly, many companies will operate across multiple jurisdictions, and have headquarters in other tax jurisdictions.

Auditing guidance for the standards for the general legal compliance requires checking for legal registration documents, and management capacity for dealing with regulatory changes.

It should be noted that in matters such as taxation, for example, it is not the standard’s role to ensure taxes paid are correct, but that they are registered for all taxation requirements and can comply with those rules accordingly. The provision of current tax records in those instances – as part of an MSPO audit – would therefore suffice. In this regard, the MSPO auditing requirements could be considered as proportionate to the risk assessment required under the EUDR.

Geolocation

The EUDR requires that geolocation be provided as a polygon. The MSPO information on geolocation is provided as a single point.

On geolocation, the EUDR requires that where there are multiple production sites for a shipment, that the geolocation of all sites is provided.

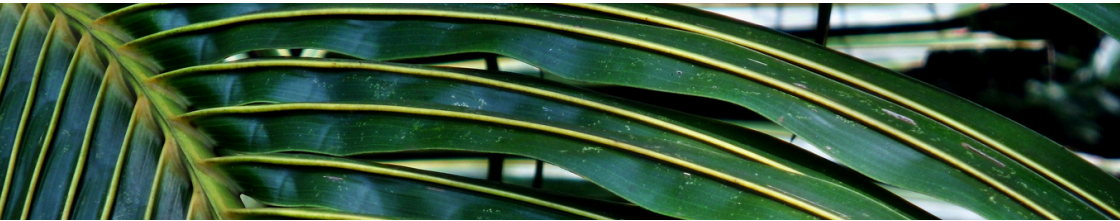
This has implications for group certification. Group certification permits multiple operators (generally smallholders) to be certified under a single certificate. The public summary will include all the operators within the group. However, a group certificate is not shipment-specific, i.e., the group certificate cannot define precisely which operators contributed to a single shipment. This means there will be an excess of information rather than a lack of information.

The risk is that if deforestation takes place within a group area, the integrity of the group certificate and therefore EUDR compliance is undermined, impacting the entire group and its certificate. Group certification procedures generally require that disciplinary or corrective action take place if so determined. In the case of the EUDR, deforestation will mean that the group certificate participant cannot join a group certification again, if that certificate is to be used for EUDR compliance.

RISK ASSESSMENT

EUDR also requires importers to undertake a risk assessment that analyses and verifies the information. Importers must be able to undertake an analysis of the information collected above and determine that the risk of non-compliance is negligible.

MSPO's robustness, i.e., its use of accreditation and auditing would indicate low risk, as would verification through the MSPO Trace website. In addition, for group certification, where risks may be higher, the sampling technique used within the MSPO system for group certification is an effective assessment of that risk, as it uses representative sampling to determine risk.



IMPLEMENTATION

Since the publication of the regulation, the European Union has published some initial guidance on the implementation of the EUDR.¹ This has raised questions in three areas in particular: mapping and geolocation; definitional requirements for deforestation in-country; and the jurisdictional approach. These are examined below.

MAPPING AND GEOLOCATION

In complying with the EUDR, importers must determine whether the land from which commodities are sourced has been cleared prior to 2021. The European Union, through its Joint Research Centre “EU Observatory on Deforestation” has published a global forest cover map for the year 2020.² The maps have been produced by a private-sector consortium, but have not included a methodology. The EU states that the map “has no legal value per se but may serve as a tool to comply with the Regulation on deforestation-free supply chains.”

Problems have been noted with the maps. For example, areas within Kuala Lumpur International Airport (KLIA) are marked as forested prior to 2021, as are trees alongside streets in central Kuala Lumpur. Areas where tree losses have clearly occurred due to urbanization are identified as being “mainly due to agricultural expansion”.

¹ https://environment.ec.europa.eu/publications/frequently-asked-questions-deforestation-regulation_en

² [EU Forest Observatory \(europa.eu\)](https://forest-observatory.europa.eu/)

The publication of the maps raises questions regarding what source could be considered as a “baseline” for deforestation maps given the inaccuracy of the EU’s published data.

The use of the maps provided in the MSPO audit reports should therefore be considered as reliable mapping data given that:

- The maps are verified by accredited auditors; and
- The deforestation date is verified by accredited auditors, and not approximated by satellite data.

As has been noted, MSPO certificates already provide a clear and verified dataset on deforestation in Malaysia’s palm sector.

Given that the EU states its published maps have “no legal value”, it is reasonably clear that national authorities in exporting jurisdictions are in a better position to publish their own consolidated deforestation baseline maps.

DEFINITIONAL REQUIREMENTS

The ‘cutoff’ date and definitions of forest may become problematic for land that was:

- Legally approved for conversion to agriculture according to national laws prior to the cutoff date, but nonetheless took place following the cutoff date. In the case of Malaysia, this would mean excision of the land from permanent reserve forest (PRF) according to state law; and/or
- Classified as forest after the cutoff date, but had been cleared and/or severely degraded prior to the cutoff date, and potentially excised from the PRF following the cutoff date.

Although the EUDR would generally not consider products from the conversion of natural forest beyond the cutoff date as acceptable regardless of its classification, the acceptability of products from ‘forest land’ that has been severely degraded raises a grey area.

MSPO does not permit the conversion of degraded forests if they maintain ecosystem composition, structure and ecological function and the sustained reduction of tree cover below thresholds. However, the EUDR’s definitions do not include any mechanism for assessing degraded forest.

In these cases, the MSPO’s definitions would provide a more concrete and implementable guidance tool for the Malaysian context.

MSPO AS JURISDICTIONAL APPROACH

In its guidance, the European Union has stated that the 'jurisdictional approach' for certification will not be appropriate for EUDR compliance. The 'jurisdictional approach' generally attempts to apply a set of sustainability standards at a sub-national level. Advocates argue that such an approach would mean the subnational jurisdiction would therefore 'automatically' comply with EUDR.

Given that MSPO is applied mandatorily at the national level, it is apparent that MSPO operates as a national jurisdictional approach for the entire country, covering Sabah, Sarawak and Peninsular Malaysia.

It is apparent from this assessment and from guidance issued by the EUDR that jurisdictional approaches will not be formally 'recognised' as a form of compliance. However, MSPO should be 'accepted' as a national jurisdictional approach by European authorities and by palm oil stakeholders internationally for its role in meeting the EUDR requirements 'in principle'.

TRACEABILITY

In the supply-chain MSPO should be accepted 'in practice' as an EUDR compliance tool, given that MSPO deals with the reality of requirements at ground level.

The key concern among stakeholders – both exporters and importers – are the traceability requirements for shipments across all commodity groups, not just palm oil.

Palm oil supply chains are structured in such a way that they mingle literally millions of supply sources into the processing and refining stages, which are then separated and refined further according to customer specifications.

The complexity of traceability throughout this process will require the handling of vast amounts of data. The EUDR requirements will favour large plantations and vertically integrated operators that are able to minimise the data required for compliance.

The MPSO Trace system requires that all operators in the supply chain, from mills, to refineries and manufacturers consistently update MSPO supplier information, including certificate information. MSPO Trace consolidates additional transaction and sales data from MPOB SIMS.

Rather than 'mass balance' systems used by alternative certification systems, MSPO does not permit the co-mingling of sources without traceability through the supply chain, the system should theoretically provide sufficient information for operators to undertake risk assessments for their operations, and link products to harvesting sources.

The traceability of palm kernel oil (PKO) throughout the supply chain will also favour large and integrated operators. The PKO crush supply chain has additional complexities. Specifically, the relatively low volume of palm kernel means that fewer firms have undertaken integrated investments, and palm kernel catchments are broad. Segregated supply chains have generally not been implemented because of prohibitive costs. Theoretically MSPO Trace should be able to maintain traceability of palm kernel, but it will require additional compliance from participants.



ANNEXES



ASSESSMENT CHECKLISTS

1. ARTICLE 3 | REGULATORY REQUIREMENTS

EUDR REFERENCE	TEXT REQUIREMENT	DEFINITIONS	MSPO REFERENCE	ANALYSIS/ASSESSMENT
<p>Article 3: a) "Deforestation free"</p>	<p>'The commodities shall not have been produced on land that has been subject to deforestation (or forest degradation) after 31 December 2020'.</p>	<p>'The conversion of forest to agricultural use, whether human-induced or not'</p> <p>Definition of 'forest' is consistent with FAO definition: 'Land spanning more than 0,5 hectares with trees higher than 5 meters and a canopy cover of more than 10%, or trees able to reach those thresholds in situ, excluding land that is predominantly under agricultural or urban land use'</p> <p>'forest degradation' means structural changes to forest cover, taking the form of the conversion of primary forests or naturally regenerating forests into plantation forests or into other wooded land and the conversion of primary forests into planted forests;</p>	<p>Definition for deforestation: "loss of natural forest as a result of i) conversion to agriculture or other non-forest land-use; ii) conversion to a tree plantation; or severe and sustained degradation</p> <p>MS 2530:2022: 4.1.2.1 Indicator 1: New planting shall be carried out with the consideration of the following: a) No conversion of natural forest, protected areas and High Conservation Value areas after December 2019</p> <p>This is consistent across requirements for smallholders, small and large plantations.</p>	<p>With regards to the definition of deforestation, the definitions do not completely align. While the MSPO deforestation is broader, and includes the conversion to plantation forests, the EU definition does not.</p> <p>Although there is no consistent international definition of degradation, the EU has defined this within the regulation; MSPO does not define the term.</p> <p>The 'no conversion rule' in MSPO is consistent with the EUDR.</p>
<p>Article 3: b) producted in accordance with the relevant legislation of the country of production</p>	<p>"the laws applicable in the country of production concerning the legal status of the area of production in terms of:</p> <ul style="list-style-type: none"> - land use rights, - environmental protection, - forest-related regulations including forest management and biodiversity conservation, where directly related to wood harvesting, - third parties' rights, - labour rights, - human rights protected under international law, - the principle of free, prior and informed consent, including as set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), - tax, anti-corruption, trade and customs regulations." 	<p>The EUDR does not attempt to provide an exhaustive list of relevant legislation and regulation for each country with regards to the legality of production.</p>	<p>4.3 Principle 3: Compliance with legal and other requirements</p> <p>4.3.1 Criterion 1: Regulatory requirements The organisation shall comply with local, national and ratified international and regulations. laws, conventions,</p> <p>4.3.1.1 Indicator 1: The organisation shall identify applicable legal requirements related to their operations. Changes shall be updated.</p> <p>4.3.1.2 Indicator 2: Compliance with identified legal requirements, including national and ratified local, state, international laws, conventions, and regulations, shall be monitored.</p>	<p>Principle 3 provides a broad definition for compliance with local, national and international laws and regulations that is consistent with the EUDR definition as it provides no exceptions and does not limit the application to those only concerned with production. Additionally, MSPO provides additional criteria for: Rights to use land; and Native Customary Rights (which also addresses FPIC). FPIC is also addressed in a prohibition on new plantings without FPIC.</p> <p>MSPO provides a definition A definition for is provided in the MS Standard Part "FPIC implies participatory, informed, non-coercive consultation and negotiations between organisations, local communities, and indigenous people prior to developments on their customary lands." .. In addition, given that Malaysia is a signatory to UNDRIP, it is unlikely that this would be a significant issue. UNDRIP establishes conditions for the relationship between governments and indigenous groups and the approval of projects.</p>

ASSESSMENT CHECKLISTS

1. ARTICLE 3 | REGULATORY REQUIREMENTS (cntd.)

EUDR REFERENCE	TEXT REQUIREMENT	DEFINITIONS	MSPO REFERENCE
<p>Article 3: c) due diligence statement</p>	<p>The requirements of the statement are stipulated in Article 9</p>		
<p>Article 9: Information Requirements</p>	<p>the operator shall collect, organise and keep for 5 years the following information relating to the relevant commodities or products, supported by evidence:</p> <p>(a) description, including the trade name and type of the relevant products as well as, in the case of relevant products that contain or have been made using wood, the common name of the species and their full scientific name; the product description shall include the list of relevant commodities or products contained therein or used to make those products;</p> <p>(c) identification of the country of production and, where relevant, parts thereof;</p> <p>(d) geolocation of all plots of land where the relevant commodities that the relevant product contains, or has been made using, were produced, as well as date or time range of production. Where a relevant product contains or has been made with relevant commodities produced in different plots of land, the geolocation of all different plots of land shall be included. Any deforestation or forest degradation in the given plots of land shall automatically disqualify all products and commodities from those plots of land from being placed and made available on the market or exported therefrom. For relevant products that contain or have been made using cattle, and for such relevant products that have been fed with relevant products, the geolocation shall refer to all the establishments where the cattle were kept; for all other products of Annex 1, the geolocation shall refer to the plots of land.</p> <p>(e) name, email and address of any business or person from whom they have been supplied with the relevant products;</p> <p>(f) name, email and address of any business or person to whom the relevant products have been supplied;</p>		<p>MSPO Certification Scheme Document</p> <p>Appendix 2 MSPO CERTIFICATION AUDIT PUBLIC SUMMARY REPORT TEMPLATE</p> <p>1 Detail of Certification Assessment</p> <ol style="list-style-type: none"> 1.1 Type of certification assessment (main audit OR annual surveillance audit OR re-certification audit). 1.2 Scope of MSPO certification 1.3 MSPO Standards used for the assessment 1.4 Boundary map showing geographical location, with close-up of the management unit with geographical coordinate <p>2 Details of the management unit</p> <ol style="list-style-type: none"> 2.1 Name of management unit 2.2 Site address of the management unit 2.3 Management and contact person's details (name, tel., email) 2.4 MPOB license no., scope of activity, expiry date 2.5 Certified area* and planted area** including mature and immature area and HCV OR conservation area (for Part 2 and Part 3) (for Part 4 where applicable) 2.6 Summary of total production in metric tonne (Mt) (annual refer to the company's financial year) a) For Part 2 and Part 3: Estimated and actual tonnages of annual FFB production b) For Parts: 4.1: Estimated and actual tonnages of annual FFB processed, CPO & PK production 4.2: Estimated and actual tonnages of annual oil palm product received (input) OR processed and production (output) 4.3: Estimated and actual tonnages of annual FFB OR oil palm products received (input) and production (output) 2.7 Date of certificate issuance and validity 2.8 Other sustainability certifications held by the management unit <p>Appendix 3 MSPO CERTIFICATE TEMPLATE INFORMATION MSPO certificate issued by the ACB shall contain the following minimum information: -</p> <ol style="list-style-type: none"> 1. Certification standard and Certification Scope (Individual/Group/Multisite) 2. Certificate number 3. MPOB license no. NOTE: In annex for group OR multisite certification 4. CB's logo 5. MSPO logo NOTE: Only allowed for Accredited CB 6. DSM logo NOTE: Only allowed for Accredited CB 7. CB's name 8. Company name and company address 9. GPS coordinates of management unit 10. Certification scope

ASSESSMENT CHECKLISTS

2. ARTICLE 9 | INFORMATIONAL / DUE DILIGENCE REQUIREMENTS

EUDR REFERENCE	MSPO PUBLIC SUMMARY COMPLIANCE	MSPO CERTIFICATE COMPLIANCE
<p>Article 9 a) description, including the trade name and type of the relevant products as well as, in the case of relevant products that contain or have been made using wood, the common name of the species and their full scientific name; the product description shall include the list of relevant commodities or products contained therein or used to make those products;</p>	<p>YES The summary contains relevant information on the products produced by the certificate holder. However, with regards to export and import items, this will be provided to customs authorities as part of the import and export process</p>	<p>YES The certificate annex contains relevant information on the products produced by the certificate holder. However, with regards to export and import items, this will be provided to customs authorities as part of the import and export process</p>
<p>(b) quantity (expressed in net mass or, when applicable, volume, or number of units) of the relevant products;</p>	<p>NO However, this will be provided to customs authorities as part of the import and export process</p>	<p>NO However, this will be provided to customs authorities as part of the import and export process</p>
<p>(c) identification of the country of production and, where relevant, parts thereof;</p>	<p>YES the scope of certification will only be for Malaysia</p>	<p>YES the scope of certification will only be for Malaysia</p>
<p>(d) geolocation of all plots of land where the relevant commodities that the relevant product contains, or has been made using, were produced, as well as date or time range of production. Where a relevant product contains or has been made with relevant commodities produced in different plots of land, the geolocation of all different plots of land shall be included. Any deforestation or forest degradation in the given plots of land shall automatically disqualify all products and commodities from those plots of land from being placed and made available on the market or exported therefrom. For relevant products that contain or have been made using cattle, and for such relevant products that have been fed with relevant products, the geolocation shall refer to all the establishments where the cattle were kept; for all other products of Annex 1, the geolocation shall refer to the plots of land.</p>	<p>PARTLY Geolocation details are provided broadly, see 1.4 Time and date of production (or a range of dates) can be provided if the date since the last audit is considered applicable. With regards to multiple plots of land for a single shipment, this is likely to be the case and multiple certificates/summaries would be provided. However, with regards to group certification, locations of all sites are provided in the summary report The certification of the land and the no-deforestation requirements should prevent disqualification.</p>	<p>NO</p>
<p>(e) name, email and address of any business or person from whom they have been supplied with the relevant products;</p>	<p>YES See section 2, which includes contact details 2.2 and 2.3</p>	<p>NO only name and address are provided</p>
<p>(f) name, email and address of any business or person to whom the relevant products have been supplied;</p>	<p>Not applicable</p>	<p>Not applicable</p>
<p>(g) adequately conclusive and verifiable information that the relevant products are deforestation-free;</p>	<p>YES the MSPO has a deforestation-free cut off as noted above; the information should be considered conclusive and verifiable via the existence of the audit procedures</p>	<p>YES the MSPO has a deforestation-free cut off as noted above; the information should be considered conclusive and verifiable via the existence of the audit procedures</p>
<p>(h) adequately conclusive and verifiable information that the production of relevant commodities has been conducted in accordance with the relevant legislation of the country of production, including any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity</p>	<p>YES the MSPO has a deforestation-free cut off as noted above; the information should be considered conclusive and verifiable via the existence of the audit procedures</p>	<p>YES the MSPO has a deforestation-free cut off as noted above; the information should be considered conclusive and verifiable via the existence of the audit procedures</p>

ASSESSMENT CHECKLISTS

3. ARTICLE 10 | RISK ASSESSMENT PROCEDURAL REQUIREMENTS

EUDR REFERENCE	TEXT REQUIREMENT	DEFINITIONS	MSPO REFERENCE	ANALYSIS/ASSESSMENT
<p>Article 10 Risk assessment and risk mitigation</p>	<p>Operators shall verify and analyse information collected in accordance with Article 9 and any other relevant documentation, and on this basis carry out a risk assessment to establish whether there is a risk that the relevant commodities and products intended to be placed on or exported from the Union market are non-compliant with the requirements of this Regulation. If the operators cannot demonstrate that the risk of non-compliance is negligible, they shall not place the relevant commodity or product on the Union market nor export it.</p> <p>2. The risk assessment shall take special account of the following risk assessment criteria:</p> <p>(f) the complexity of the relevant supply chain, in particular difficulties in connecting commodities and/or products to the plot of land where they were produced;</p> <p>(g) the risk of mixing with products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring;</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>The risk assessment is a requirement for the importing company. However, the importer will seek additional information from the producer/exporter in order to “verify and analyse” the information.</p> <p>Valid certificates and public summaries are able to be viewed via the MSPO Trace website. It is possible to search by entity name and certificate number. The information can therefore be considered verifiable.</p> <p>With regards to the risk assessment, complexity will increase alongside the amount of processing, and will be dependent upon the company and the products involved.</p> <p>There will also be increased risk for group certification, because of the number of sites involved. Management of risk in group certification requires the application of audit sampling criteria, rather than a full audit of all sites. Although the presence of MSPO certificates for all suppliers within a shipment should theoretically meet the risk assessment requirements, it is nonetheless vital to emphasise the audit sampling criteria, which are indicated in MSPO Certification Scheme Document (4.5 and 4.6).</p> <p>The risk assessment requires consideration of: a) presence of HCV b) landscape setting & geographic locations c) nature of the labour force d) stakeholder concerns e) known land conflicts and/or legality issue f) possession of other sustainability certification, etc. g) numbers of smallholders (where applicable) h) complaints & grievances received by scheme owner which has been escalated to the ACB.</p> <p>The audit sampling criteria operates according to the following formula: For Group and multisite certification, the ACB shall select group members OR sites to be audited before conducting Stage 2 audit based on representative sampling of [risk factor]. The sample size is determined by the following formula and shall always be rounded up to the next whole number.</p> $s = (\sqrt{n}) \times (r)$ <p>Where: s = sample size r = risk factor (multiplier) n = number of the group members OR sites.</p>

NORMATIVE REFERENCES

Department of Standards Malaysia (2022) Malaysian Sustainable Palm Oil MS 2530 (MSPO), Government of Malaysia, comprising:

Part 1: General Principles

Part 2-1: General Principles for Independent Smallholders
(less than 40.46 hectares)

Part 2-2: General Principles for Organised Smallholders
(less than 40.46 hectares)

Part 3-1: General Principles for Oil Palm Plantations
(40.46 hectares to 500 hectares)

Part 3-2: General Principles for Oil Palm Plantations
(more than 500 hectares)

Part 4-1: General Principles for Palm Oil Mill including Supply Chain
Requirements

Part 4-2: General Principles for Palm Oil Processing Facilities
including Supply Chain Requirements

Part 4-3: General Principles for Dealers including Supply Chain
Requirements

European Union (2023). *Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (Text with EEA relevance)*

Malaysian Palm Oil Certification Council (2023). MPOC Certification Scheme Document. MPOCC, Kuala Lumpur

Malaysian Palm Oil Certification Council (2019) The Malaysian Sustainable Palm Oil (MSPO) Certification Scheme and Its Implementation Arrangement (Document MSPOCS01). MPOCC, Kuala Lumpur

MSPO AND EUDR FACTSHEET



FACT: MSPO MEETS THE EUDR REQUIREMENTS

MSPO meets the EUDR Requirements in two ways. First, it meets the basic regulatory benchmarks of EUDR because MSPO standards:

- Prohibits deforestation after 2019; and
- Requires legal compliance of all local laws.

Second, MSPO provides importers with key information required by the EUDR. This includes: product description, country of production, identification of supplier/producer; conclusive verification that products are deforestation free; conclusive verification that land rights are held.

Geolocations of operations are provided, but full geolocation polygons are not provided.

FACT: MSPO CERTIFICATION CONCLUSIVE AND VERIFIABLE

MSPO follows international norms for standardisation, accreditation and certification that ensure the information provided in its certifications is conclusive.

Standards are benchmarks for products and the production processes. This can include quality assurance, safety standards for equipment or medicines, or sustainability standards for production.

International norms for standard-setting are established by the International Organization for Standardization (ISO) and followed by national standards bodies such as Standards Malaysia. Standards Malaysia publishes the MSPO Standard. If a company follows a standard, that company and its products can be certified by an auditor.

Accreditation is the process of ensuring that auditors are qualified and credible. International norms for accreditation are set by the International Accreditation Forum (IAF) and its national members, such as Standards Malaysia. Standards Malaysia accredits auditors of MSPO.

MSPO requires that its auditors can only be accredited by Standards Malaysia if those auditors meet certain ISO international standards for auditors and are qualified and experienced in undertaking MSPO audits.

Because these checks that are in place, MSPO information can be considered conclusive.

The information can be considered verifiable because the information in the audit summaries is publicly available via the MSPO Trace website.

FACT: MSPO'S ACCREDITATION RULES IMPROVE ITS CREDIBILITY UNDER EUDR

EUDR is a regulatory requirement from government to business, rather than a business-to-business arrangement, which characterises voluntary standards. MSPO follows international and intergovernmental models for standards and accreditation and utilises those institutions. Voluntary standards follow an alternative model that operates outside of the government sphere. Because MSPO follows international norms, it can be considered more robust among international legal institutions such as the World Trade Organisation; the same cannot be said for voluntary standards.

FACT: MSPO ADDRESSES HCV (HIGH CONSERVATION VALUES)

MSPO requires that HCV assessments take place prior to any new plantings, and for any replanting. The HCV approach is also used for the protection of rare, threatened and endangered species, habitat, conservation set asides and customary sites.

FACT: PRINCIPLES, CRITERIA AND INDICATORS IN THE MSPO STANDARD ARE NOT INFERIOR TO OTHER STANDARDS

MSPO was revised in 2022. The revision process was broad in its scope and included a great deal of consultation with local environmental and social NGOs as well as trade union groups. Organisations that were part of the revision and standard development included WWF Malaysia, Sustainable Development Network Malaysia (SUSDEN Malaysia), Sabah Environmental Protection Association, Malaysian Nature Association, Malaysian Trade Union Congress, National Union of Plantation Workers, Society for Rights of Indigenous People of Sarawak.

The involvement of these groups is reflected in the standard through the inclusion of HCV Assessments and Free Prior and Informed Consent (FPIC).

The requirements of the MSPO standard are narrower, more prescriptive and more technical than other voluntary standards for agricultural production and forestry. This is because they have been developed to a robust standard model.

An example of this is in standard's requirements for labour rights. MSPO requires that auditors find no evidence of labour rights violations; this takes place through interviews and investigation. Other voluntary standards may require that organisations have only policies in place that prevent human rights violations.

Similarly, other voluntary standards rely heavily on HCV assessments to determine the status of forests and whether it can be cleared for planting. The interpretation of HCV is more open to interpretation than the narrow definition used in the MSPO standard, which follows international definitions under the EUDR and aligns with international norms.

FACT: BROADER REQUIREMENTS UNDER VOLUNTARY STANDARDS DO NOT IMPROVE EUDR COMPLIANCE

The EUDR's requirements are narrow and rely on key definitions of deforestation and legality that are in line with MSPO's core requirements. Broader scope in sustainability standards will not improve compliance.

