

Terms of Reference

Business due diligence: an analysis of best practice, implementation steps and associated costs

Date: 20th September 2021

BACKGROUND

The UK Government is currently proposing a mandatory due diligence obligation on companies to monitor their agricultural commodity supply chains for deforestation risks, based on relevant producer country laws (see the UK's Government response to consultation and proposal [here](#)). Although such a move is welcome, the proposal falls short to address the UK's overall commodities footprint, especially in regions where there is high risk of deforestation and/or land conversion and where regulatory frameworks or enforcement mechanisms may be inadequate or under threat. WWF-UK is concerned that the proposed due diligence mechanism, based only on producer country laws on legal deforestation rather than all deforestation and conversion, will not deliver impact at the pace and scale needed and may even have deleterious effects in encouraging environmental deregulation in some producer countries (see our latest report '[Due Negligence](#)'). WWF-UK is committed to ensuring that any due diligence obligation introduced is as robust as possible and can achieve maximum environmental outcomes.

Regardless of the final formulation of the due diligence regulation, it is critical that when it comes to the implementation, companies in scope clearly understand what best practice looks like and how to implement it – accelerating delivery of their voluntary commitments that go beyond what is required by law.

THIS STUDY

WWF is looking to provide evidence that will support our advocacy on the details of the due diligence regulation and its implementation, including proposals to policymakers and clear guidelines to companies on the best practices.

This study should build on the recent WWF-UK study, *Due Negligence*, which analysed the potential environmental impacts and issues with implementation of a legality model of due diligence arising from UK supply chains. In particular, *Due Negligence* provided initial policy recommendations required to establish an impactful due diligence regulation (see Appendix).

WWF-UK will use this study, alongside the *Due Negligence* study, to support our advocacy on reducing the UK's overseas footprint, including:

- The Environment Bill and due diligence obligation (including the details of the secondary legislation, any future review of the due diligence obligation, and complementary measures);
- Direct engagement with companies who will be in scope of a UK due diligence obligation.

STUDY OBJECTIVES

This study should meet the following objectives:

1. **Analysis of existing models of due diligence:** Building on the analysis in *Due Negligence*, exploring different existing models of due diligence (notably product-based and corporate governance models), to provide public policy guidance on the strengths, weaknesses, and risks of each approach.
2. **Analysis of the implications for businesses:**
 - a. **An analysis of the steps companies will need to take to implement a product-based model of due diligence.** This analysis should be broken down by supply chain segments (as a minimum, including (1) downstream commodity buyers such as retailers and food service companies, and (2) first importers of commodities into the UK market). If possible, this analysis should include insights on variations across different production regions. This could be done for a single supply chain, single commodity or across several forest-risk commodities – the consultant proposals should advise on appropriate and feasible scale.
 - b. **Cost estimation:** An estimation of costs to companies associated with the implementation of a due diligence system as described in step 2 – for all scenarios covered in the analysis under step 2 (as a minimum, for downstream companies and first importers).
3. **Guidelines for business:** Based on the analysis in Objective 2, and acknowledging that due diligence models may change over time, develop guidelines for companies looking to implement robust due diligence processes within their supply chains, examining examples of industry best practices.
4. **Recommendations to UK government:** Take into account both the analysis of the models of due diligence in step 1 and the implications and costs for business to implement the regulation, as described in steps 2 and 3.

AUDIENCE

- UK government officials, in particular policymakers involved in the development of the UK due diligence obligation on forest-risk commodities.
- Businesses potentially under the scope of the UK due diligence obligation.

OUTPUTS FOR DELIVERY

Bidders should clearly outline in their proposal the deliverables and outputs which will be provided to WWF-UK to meet the objectives stated above, which should include:

- A **public-facing report**, directed to industry and policy maker audiences. The report should be no more than 40 pages, excluding the references list. If possible, the report should be professionally designed with high quality photography (WWF are able to provide some imagery). Within the report content we expect:
 - a. A short introductory narrative outlining the rationale for the study and why it is important;
 - b. An executive summary (3-4 pages max);
 - c. Sections covering objectives 1 – 4 outlined above;
 - d. Any required figures, tables and infographics to support and summarise key arguments; and
 - e. Full references, hyperlinked to original sources where required.
- A **draft report** with preliminary results for objectives 1 and 2 by end of Nov-Dec 2021

WWF–UK will also require:

- all excel spreadsheets used in the analysis;
- detailed description of methodology; and
- data sources separately to the main report for our internal records.

PROPOSAL SUBMISSION AND TIMELINES

Proposals should include:

- Relevant background of the supplier/consultant(s) involved including CVs of consultant(s) who will participate in the project.
- Organisation's mission and previous experience with similar projects.
- A detailed description of the proposed methods.
- A detailed timeline and workplan for delivery of interim findings by end November 2021, and final delivery of all outputs by 14th January 2022. The workplan should include details of deliverables and outputs required to meet the objectives stated above. The final format of outputs should also be mentioned (for example maps/infographics).
- Cost estimate for the project to include the daily rate, the number of days/breakdown of cost by task/milestone.
- Please include total costs before and after VAT. Please also include any applicable charity discounts you may offer.

The proposal should be no longer than 6 pages plus CVs and other information on the organisation's policies.

Proposals will be assessed using a selection of criteria, likely including fit to brief, previous experience, time required for completion, value for money, robustness of proposed methodology. A round of short interviews may be required to further explore the details of the proposal.

Closing date to submit proposals: Monday 11th October 2021 at 12pm

Project kick-off: Week commencing on Monday 1st November 2021 (latest)

Draft report / indicative findings: At a minimum, completed Objective 1 and indicative findings from Objective 2 (a) and (b)) to be received by WWF by end of November/early December 2021.

Delivery of (undesigned) report: Friday 21st January 2022

Final delivery of designed report: Friday 11th February 2022

Budget: GBP 30,000 (including VAT)

Submit proposals to: Mollie Gupta (mgupta@wwf.org.uk) and Josephine Cutfield (jcutfield@wwf.org.uk), with the following colleagues in CC: Sabrina Goncalves Krebsbach (SGoncalvesKrebsbach@wwf.org.uk) and WWF-UK Procurement Team (procurement@wwf.org.uk).

APPENDIX: FURTHER INFORMATION ON THE RECENT WWF-UK STUDY: *DUE NEGLIGENCE*

WWF-UK's recent report with 3Keel and Environment Systems, *Due Negligence*, analysed the UK's proposed deforestation due diligence regulation using two case studies, soy from Brazil and palm oil from Indonesia, to illustrate the potential environmental impacts of a legality model of due diligence arising from UK supply chains, an initial assessment of the issues with the implementation of a legality model of due diligence, and provided initial policy recommendations required to create an impactful due diligence regulation.

The key findings of the report are summarised below:

1. **By adopting a legality approach that only addresses deforestation rather than all conversion, the UK won't be meeting its goal of eliminating deforestation and other environmental impacts from its supply chains.**

According to our assessment in Brazil, conversion of 36-59,000 hectares of natural vegetation could be attributable to UK supply chains between 2021-2030. Out of this area over 70% could be legal, according to the most likely scenarios. Moreover, the focus on illegal deforestation only will have a limited impact on overall conversion of other natural ecosystems linked to UK soy supply chains in Brazil.

For many countries, like Brazil, the current national laws allow producers to legally deforest or clear native vegetation for agriculture, which can represent considerable carbon emissions, negative biodiversity impacts and loss of ecosystem services.

2. **A regulation based on illegal deforestation will be harder to implement and enforce than one based on all (legal and illegal) deforestation and conversion**, due to the complexity of legal structures in producing countries, the variation in what is defined as legal between countries, and the lack of comprehensive, publicly available data on legality.
3. **A regulation based on producer country laws could potentially have perverse consequences**, by incentivising further deregulation of forest and ecosystem protections. This would make compliance easier but do nothing to remove deforestation and other environmental impacts from UK supply chains.
4. **Getting the right model of due diligence matters.** There are at least two distinct models of due diligence, which have different consequences for companies and for enforcement. The UK government should initially frame the regulation around a model of due diligence based on specified steps that must be taken before a product is placed onto the UK market. This model provides a more robust basis for detection and enforcement of non-compliance in the case of forest- and ecosystem-risk commodities than the alternative, which is based on continuous improvement. A review of the model should be considered in the medium and long term to ensure other environmental risks are included and properly assessed.
5. **Effective, dissuasive penalties must be in place and enforceable** for the legislation to have an impact on the behaviour of all companies within the supply chain. In other words, the severity of the penalty and risk it represents for offenders must have a genuinely deterrent effect by being economically risky. A 'supply chain disruption' model could be an effective alternative to financial penalties.

For further information on this study, you can find the summary and technical reports here: [Due Negligence Report | WWF](#)