Case Study Summary — Session 3, 29 June 2026

Case Study 2: Palm Oil, Malaysia (Sabah)

• Land tenure and Native Customary Rights • state land and leases • new plantations requirements • deforestation • third parties' rights and FPIC • MSPO vs RSPO

Disclaimer: This summary was prepared by the co-facilitators of the EUDR Community of Practice (CoP). It is intended to share the key points discussed in the core group with the wider community of practice to foster mutual understanding, readiness, and alignment among the different actors involved. They should not be interpreted as definitive positions of different stakeholder groups or as representing what may be deemed compliant by the participating Competent Authorities. Rather, many of the recommendations and observations captured in this report point to what could be considered examples of good practices for the early implementation of the EUDR.

1. Case Setting

An operator sources palm oil from Malaysia and uses the mandatory MSPO (Malaysian Sustainable Palm Oil) as the backbone of its legality due diligence. The operators' procurement team assumes that because MSPO is nationally mandated and widely implemented, supported by supplier declarations and refinery sustainability policies, it is sufficient to demonstrate compliance with EUDR legality requirements.

However, in Sabah, fresh fruit bunches from independent smallholders often pass through intermediaries before reaching mills, creating weak traceability, especially for tracking plot location, Native Customary Rights (NCR), and legality documentation. This stage also increases the risk of physical mixing of certified and non-certified material. The region also presents legal and social risks, including indigenous land claims under NCR frameworks and migrant worker issues such as recruitment fees, passport retention, wage deductions, and poor living conditions.

The case also considers whether voluntary schemes like RSPO can complement MSPO by providing additional information on Free, Prior and Informed Consent (FPIC), grievances, and labour standards, even though they do not cover the full supply base.

2. Key legality issues in play

The key legality issues in this case are structured around the main legal domains in Sabah's palm oil sector but also relevant to other smallholder-dominated commodity supply chains:

1. **Different forms of land tenure and NCR**
   - Palm oil may be produced under NCR, state leases, organised smallholder schemes or other land arrangements. Due diligence should recognise these different tenure categories and identify the appropriate evidence of legal land-use rights for each.
   - Native Customary Rights (NCR) are legally recognised in Sabah and may exist without formal individual title or survey.

- NCR boundaries and competing claims may be difficult to establish, requiring evidence of customary occupation/use and consideration of unresolved claims.

2. **New planting requirements**
   - MSPO establishes restrictions on new planting in sensitive areas, including steep terrain, fragile or marginal soils, peatland and riparian zones, unless permitted by the relevant state authority.
3. **Deforestation and environmental compliance**
   - MSPO prohibits conversion of natural forest, protected areas and High Conservation Value areas after 31 December 2019.
   - Nationally permitted land conversion does not necessarily satisfy the EUDR deforestation requirement. For example, conversion of degraded or secondary forest may be legally permitted under Sabah law but could still constitute deforestation under the EUDR definition.
4. **Third-party rights and FPIC**
   - Palm oil development may affect indigenous communities and other parties holding NCR or competing land-use claims.
   - MSPO and RSPO requirements on FPIC and grievance mechanisms may provide additional supporting evidence.
5. **Labour and migrant workers**
   - Migrant labour is a salient issue in Sabah's palm oil sector - potential legal risks include recruitment fees, passport retention, wage deductions, inadequate housing, forced labour and child labour.

3. Key challenges and good practices by theme

3.1. Preliminary risk assessment and the role of certification

A substantial part of the discussion concerned how certification can support EUDR compliance without replacing the operator's own due diligence. MSPO has some particularly useful characteristics for EUDR implementation. As a mandatory Malaysian scheme, it has high coverage, including among smallholders. Certification is linked to Malaysian Palm Oil Board (MPOB) licensing: actors need the relevant certification/licensing arrangements to produce and trade. This potentially provides an important existing regulatory infrastructure that EUDR systems can build upon. MSPO is particularly relevant because it is a **mandatory national scheme with relatively broad coverage**, including smallholders. Certification is also linked to MPOB licensing: MSPO certification is required to obtain or maintain relevant MPOB licences for production and trade. The discussion noted that an MPOB licence could therefore provide an indication that MSPO requirements have been met. At the same time, mandatory certification should not automatically be treated as proof of EUDR compliance. The technical question is whether the certification criteria and verification procedures cover the specific EUDR requirement being assessed. The discussion stressed that MSPO has areas of alignment but also gaps.

The same principle applies to voluntary certification. RSPO is not considered a "green lane" for EUDR, although it can provide useful information, greater transparency and established supplier relationships. The particular RSPO supply-chain model also matters: Identity Preserved, Segregated and Mass Balance provide different levels of traceability and segregation.

In the rubber sector, FSC, national rubber systems, audits and producer databases can support EUDR, while gaps in legality, geolocation, traceability and human-rights assessment still require additional controls.

Challenges

1) MSPO was described as mandatory and linked to Malaysian Palm Oil Board licensing, but participants noted that this does not automatically settle EUDR legality questions, because the operator still needs to understand the applicable national laws and how they map to the EUDR criteria.
2) Alignment challenges between MSPO and RSPO: minding the fact that MSPO is a national mandatory scheme while RSPO is voluntary, participants discussed differences with EUDR around forest definition, geolocation format, segregation/mass balance and compensation provisions.
3) The risk that EUDR-specific compliance costs may make companies deprioritise voluntary sustainability certification, even when certification has previously supported broader supply-chain improvements.
4) For rubber, the Malaysian sustainable natural rubber SOP was described as government-developed and not third-party verified; participants indicated that it is not widely relied upon by the sector.
5) The discussion also cautioned against certification schemes themselves applying requirements that go beyond what national law or the EUDR requires, particularly for land tenure. An example from another commodity was given where certification required the highest form of formal land ownership, despite national law recognising other legal use rights. Such an approach can unnecessarily exclude smallholders.

Good Practice:

1) The first step should be to understand the applicable legislation in the country and commodity concerned. Only then can the coverage provided by MSPO or another certification scheme be assessed against those requirements. This can be challenging where legislation is dispersed across different laws, uses different terminology or languages, or where it is unclear which provisions are relevant to the EUDR legality categories.
2) Information and documents collected through certification or other sources should therefore feed into the risk assessment rather than simply being collected and retained separately.
3) Certification can therefore help differentiate where further investigation is required. Rather than repeating all checks covered credibly by a scheme, the due-diligence exercise can identify the gaps between the scheme and EUDR and focus additional information collection or verification on those areas.

3.2. MSPO transition to 2022 standard

The relevance of certification for EUDR due diligence should be assessed against the specific version and scope of the applicable standard. Revised standards may substantially strengthen traceability and alignment with EUDR requirements, but differences in definitions, evidence requirements and supply-chain coverage may remain. In the case of MSPO, the ttransition to MSPO 2022 significantly increases the usefulness of MSPO for EUDR due diligence, particularly through the deforestation cut-off and dealer certification, but it does not eliminate the need for an EUDR-specific gap assessment.

Challenges

1. A key change is the introduction of a **deforestation cut-off date of 31 December 2019**. This predates the EUDR cut-off date and therefore provides potentially useful evidence for EUDR purposes. However, the discussion stressed that the MSPO definition of forest is not fully aligned with the EUDR definition, meaning that the earlier cut-off date alone does not establish EUDR compliance.

Good Practice

1. Under the revised standard, dealers must be registered and provide traceability information. The discussion considered this an important mechanism for establishing chain of custody through the "first mile", an area where other certification schemes can struggle.
2. The revised standard was also described as having strengthened labour and human-rights requirements, including greater alignment with ILO requirements.
3. MSPO has undertaken a **gap assessment against EUDR requirements** and was described as working to close identified gaps. An additional MSPO guidance/add-on was being developed for supply destined for the European market, setting out supplementary requirements beyond the core certification standard.
4. Add independent or additional checks where certification does not fully align with EUDR-relevant requirements, especially for deforestation definition, geolocation and segregation.

3.3. Legality: Understanding applicable laws and scope of legality

The group examined how far operators should go in assessing labour and human-rights risks where these issues are present in the sector or sourcing area, and how to interpret broad versus narrow legality scope.

Challenges

- Uncertainty around whether and how labour and human-rights issues are directly linked to the legal status of the area of production or to the objectives of the regulation.
- Migrant-worker issues in palm oil and rubber, including recruitment fees, debt, forced labour indicators and factory or plantation-level risks. Child labour was referred to as a salient risk in some rubber-producing contexts, while forced labour linked to migrant labour was identified as a particularly salient risk in another context.
- Overlap and tension between EUDR, forced labour regulation and broader corporate sustainability due diligence obligations, each applying different legal logic and risk approaches.
- Concerns that competent authorities in different Member States may interpret the required depth of human-rights assessment differently.
- Operators and downstream actors were described as struggling to know how far to go in each origin country, especially when legal documents may be difficult to understand, verify or obtain.
- Rubber: legality is highly contextual - legal harvesting rights, different forms of land tenure, migrant labour and other salient country-specific risks require supply chain specific risk-based assessment rather than a standard document checklist.

Good Practice

- Conduct country, area and sector-level risk assessment to identify salient labour and human-rights issues before deciding which issues require deeper checks.
- Adopt and communicate policies covering relevant labour and human-rights topics to farmers, collection centres and suppliers, even where detailed checks focus on priority risks.
- Use recognised audit or certification elements where they address labour and human-rights controls, including factory-level audits and forest-management standard requirements.
- Maintain grievance mechanisms at collection centres or supply-chain control points so that labour, deforestation and legality concerns can be raised directly.
- Treat remediation as part of the management system where an issue is discovered.

3.4. Land tenure, NCR claims and third parties' rights

The legality assessment should ask "Does this producer have a legally recognised right to use and produce on this land?", rather than "Does this producer hold an individual ownership title?"

Challenges

1. Native Customary Rights and communal land arrangements were described as difficult for operators because there may not be one individual formal title proving a smallholder's right to produce.
2. NCR claims can also remain unresolved for extended periods. The discussion suggested that an NCR process may take many years, including through court proceedings. Importantly, a pending claim does not necessarily mean production is illegal. Where Malaysian law allows production to continue during the process, evidence of the ongoing proceeding together with the relevant MPOB licence to sell fresh fruit bunches may demonstrate that production is legally permitted.
3. A concern raised was that uncertainty around NCR and other informal or customary rights may encourage companies to exclude these producers because exclusion is easier than investigating their legal status. The alternative discussed was to understand the legal framework and establish appropriate evidence requirements for different tenure situations.
4. Smallholder legality documentation can vary by country and land category; the group described 7 levels of land ownership or use rights in Thailand and in Indonesia, smallholders can operate under several different forms of recognised land-use rights.

Good Practice:

1. The discussion emphasised that legal land use should not be equated automatically with formal individual ownership. This is particularly important for smallholders operating under customary, communal or other recognised land-use arrangements.
2. For land held under a communal title, possible verification discussed included demonstrating that the individual farmer belongs to the community covered by the title and has the right to operate the particular plot. Examples from comparable situations included confirmation by village or district authorities identifying individual producers and confirming that there were no overlapping land conflicts.
3. Rather than requiring one standard ownership document, the due-diligence system identified which evidence was appropriate to each farmer's legal situation. Having this standard information at the national level would greatly help Operators and Competent Authorities and ensure smallholder inclusivity.
4. The discussion also connected land tenure with third-party rights and potential land conflict. Evidence should therefore not only establish the producer's right to use the land but, where relevant, help determine whether competing customary/community claims or other land conflicts exist.
5. For Thailand rubber, using proof of harvesting rights and a permit from the rubber authority as evidence that the farmer has legal rights to harvest from the land.

3.5. Environmental compliance and deforestation

Certification can provide an initial deforestation assurance layer, but differences in definitions and certification rules mean that an EUDR-specific spatial check may still be necessary. That spatial check must then be connected to credible chain-of-custody controls to ensure the physical material originates from the assessed plots.

Challenges

1. MSPO 2022 includes a 31 December 2019 deforestation cut-off date, which is earlier than the EUDR cut-off. This creates a relatively strong starting point for deforestation due diligence. However, the discussion repeatedly stressed that the forest definition used by MSPO differs from the EUDR definition. Therefore, confirmation that a plantation complies with the MSPO cut-off cannot on its own demonstrate that it satisfies the EUDR deforestation criterion.

2. A similar issue arises with RSPO. The discussion noted that RSPO can allow compensation in certain circumstances for land cleared after relevant certification cut-off dates. This creates another potential gap between certification compliance and EUDR compliance.

3. However, the spatial assessment only establishes the status of the declared production plots. It does not establish that the physical palm oil actually originated solely from those plots. The discussion therefore connected deforestation assessment to traceability, segregation and mixing risk.

4. Participants noted restrictions on sharing precise coordinates in some jurisdictions.

5. False positives from satellite or map-based systems were described as a practical issue. Competent authority indicated that inability to explain how a false positive was removed, or what criteria were used, is a red flag because the operator remains responsible for the due diligence conclusion.

6. Where a plantation is identified as problematic, it may be excluded from the EUDR supply stream. This requires the mill/refinery to maintain separate sourcing streams and, potentially, separate tanks. Participants emphasised that there remains a practical risk of mixing, particularly because downstream companies cannot directly monitor every physical movement at supplying facilities.

7. Where a plantation is identified as having negliable risk, it may be excluded from the EUDR supply stream. This requires the mill/refinery to maintain separate sourcing streams and, potentially, separate tanks. Participants emphasised that there remains a practical risk of mixing, particularly because downstream companies cannot directly monitor every physical movement at supplying facilities.

8. The discussion also highlighted potential discrepancies between different deforestation-monitoring systems. A commercial monitoring platform may flag deforestation on a plot that another map or the supplier's assessment considers compliant. Such discrepancies require investigation and, where necessary, additional verification before concluding negligible risk.

Good Practice

1. The practical response described by companies was to undertake an additional spatial check independently of certification. Suppliers provide GeoJSON files, which are uploaded into a monitoring system and checked against relevant forest/deforestation maps using the EUDR requirements and cut-off date.
2. The due-diligence system should assess legality under Malaysian law and deforestation under the EUDR as separate criteria. MSPO certification and Malaysian permits/licences can provide evidence that production is legally authorised, but this does not automatically demonstrate that the land is deforestation-free under the EUDR. Participants specifically noted that MSPO has an earlier deforestation cut-off date, but its forest definition differs from the EUDR definition. Therefore, relying on MSPO alone would not be sufficient for the deforestation assessment.

3. Document the criteria and evidence used to remove false positives. If using service providers, require them to share this reasoning with the operator so it can be explained during checks.

3.6. Traceability, intermediaries, mixing and segregation

The group discussed first-mile traceability and the risk of mixing in palm oil and rubber supply chains where smallholders sell through dealers, collectors, intermediaries or aggregation points before the mill or processor.

The discussion stressed that farm-level geolocation alone does not establish credible traceability if the product passes through unrecorded intermediaries. Participants distinguished between having geolocation data and demonstrating that the physical product actually came from those plots.

Challenges

- Palm oil and rubber supply chains were described as involving multiple intermediaries, increasing the risk of mixing and weakening visibility between farmer, dealer, mill and downstream operator.
- Rubber was described as especially complex because production is continuous, with many harvests throughout the year and frequent flows from smallholders into aggregation points.
- A EUDR strategy to shortening or selecting supply chains can reduce traceability risk, smallholder inclusion is the central trade-off - excluding difficult-to-verify farmers reduces compliance risk, but in origins such as Thailand for rubber the sector cannot function without smallholders.
- Mixing risks at tanks, collection centres, dealers and segregated/non-segregated flows; segregation failures may be accidental or deliberate.
- A recurring concern was data duplication or double use of the same smallholder data across customers, creating a risk to over-declare EUDR-compliant volumes.
- RSPO supply-chain models were discussed in this context: Identity Preserved, Segregated and Mass Balance. Mass Balance permits mixing and was viewed as particularly difficult to reconcile with EUDR requirements where the operator needs to associate the product with specific production plots.

Good practices

- Where dealer or collector systems are used, document the licence, registration or certification status of dealers, including the role of MSPO dealer certification in palm oil.
- Implement chain-of-custody controls that reconcile farmer output, collector intake, collector output and factory receipt, rather than relying only on declarations.
- Use monthly surveillance and plausibility checks to identify errors early; monthly record-checking as necessary because errors can compound if only checked annually.
- Document segregation arrangements for the specific shipment, including whether dedicated tanks, separated flows or exclusion of specific plots were used.
- Operators described moving towards dedicated mills and segregated supply chains for EUDR. However, physical segregation itself creates operational challenges. Refineries may need separate tanks, infrastructure and handling procedures for EUDR/non-EUDR and certified/non-certified material.

4. Other discussion points

4.1. Benchmarking and competent authority checks

Participants discussed the relationship between benchmarking, risk assessment, inspection practice and the evidence that competent authorities will expect operators to have before placing products on the market.

Challenges

- Low-risk benchmarking can be misunderstood as removing the need for a risk assessment altogether, while competent authority participants indicated that benchmarking is not the same as the operator's supply-chain risk assessment.
- Operators expressed concern about non-harmonised competent authority expectations and the possibility that the same due diligence system could be accepted in one Member State but questioned in another. Companies may look for the most lenient enforcement route where the boundary of compliance is unclear, creating a risk of a race to the bottom.

Good practices

- Treat benchmarking as only one input; still conduct information gathering, and area/supply-chain risk assessment where there is reason to believe a risk exists.
- Prepare evidence before placing products on the market, rather than collecting it only after a competent authority request.
- If samples are requested during checks, provide the specific evidence linked to those samples and explain the system used to monitor all relevant supply-chain risks.

4.2. Data access, confidentiality, storage and evidence production

The discussion focused on how operators can access and produce evidence when data is commercially sensitive, legally restricted, held locally or managed by suppliers and service providers.

Challenges

- Sensitive legality and geolocation data being held across multiple actors, including suppliers, mills, plantations, local archives, service providers and government databases but in some cases certain documents or data cannot be stored outside the producing country, creating practical difficulty for EU operators expected to produce evidence during checks.
- Competent authority expressed that operators must be able to provide information and proof when requested; the discussion highlighted difficulties between access to evidence and centralised storage of all documents.
- Participants debated timeframes for producing evidence and warned that too much time could create a risk that documents are collected or created after the fact rather than being part of a pre-existing due diligence system.

Good practices

- Describe in the due diligence system where evidence is located, who controls it, which entity can access it and how it can be produced during a check.
- Use contracts with suppliers and service providers to secure access rights to legality Non-disclosure agreements and supplier restrictions were described as limiting the sharing of geolocation data with downstream customers, even where the data can be submitted into TRACES or used for checks.

- On the timeframe for producing evidence, the competent authorities acknowledge that time would be needed to retrieve evidence, the current thinking among the participating Cas was 2 weeks.

5. Conclusion

This case illustrated that certification can provide a strong foundation for EUDR due diligence including in providing the needed legal and deforestation free information, but cannot substitute for an operator's own assessment. Effective practice combines a clear understanding of applicable national laws, recognition of different forms of legal land-use rights, targeted gap assessment of certification schemes, EUDR-specific deforestation checks, and credible first-mile traceability and segregation controls. Across the themes discussed, the underlying principle was that operators should use existing systems such as MSPO, RSPO, FSC, etc. where they provide credible evidence, while identifying and addressing remaining gaps rather than treating certification as automatic proof of EUDR compliance.