



Was it produced legally?

Applying the legality
requirement in the EU
Deforestation Regulation
to cocoa from Ghana

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Lead authors: Michael Rice, Value Chains, Trade & Investment Lead, and Raphaëlle Godts, Law & Policy Advisor, Climate & Forests.

Editor: Helen Coen

Designer: SimonGilles.co.uk

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Introduction

This case study is taken from a larger briefing published by ClientEarth¹ in April 2025.

That briefing provides a comprehensive examination the legality requirement under the EU Deforestation Regulation (“EUDR”), how it should be understood, and how due diligence on the legal compliance of commodity production should be approached by EU companies and EUDR competent authorities.²

This case study explores how the EUDR’s legality requirement would apply to cocoa products produced in Ghana. It provides an assessment of the ‘relevant local laws’ that would likely fall within the scope of the legality requirement and an analysis of levels of enforcement, implementation and compliance with those laws – as well as important risks and indicators of non-compliance – across the Ghanaian cocoa sector.

Equivalent case studies examining cattle, cocoa, palm oil and soy production in Brazil, Côte d’Ivoire and Indonesia are also available.

The research on which this case study is based was jointly undertaken by ClientEarth and TaylorCrabbe, a Ghanaian legal non-profit organisation and long-standing partner of ClientEarth in Ghana. The research focused on relevant national laws for the production of cocoa and has been informed by experience working with local legal working groups that include and support cocoa farmer associations (for more details, see: [A legal pathway to sustainable cocoa in Ghana and Côte d’Ivoire](#)).

¹ Available on the ClientEarth website.

² This analysis has been informed by an independent expert legal opinion from Sir Nicholas Forwood K.C., who served for 15 years as a Judge of the General Court of the Court of Justice of the European Union, including two terms as President of Chamber. This opinion is available on the ClientEarth website at <https://www.clientearth.org/latest/documents/expert-legal-opinion-on-the-eudr-legality-requirement/>.

Executive summary

The EU Deforestation Regulation (“**EUDR**”) requires that the commodities and products to which it applies have been produced in accordance with local laws – known as the '**legality requirement**'. EU companies must conduct due diligence on their supply chains to ensure that their products satisfy the legality requirement.

Understanding the legality requirement:

- The scope of the legality requirement is not entirely clear and requires interpretation to clarify its meaning. Interpreted according to the EUDR's objects and purpose, the legality requirement should be seen as including all laws applicable in the country of production that affect the legal status of activities undertaken to produce the relevant commodities and products.
- **This includes pre-production and post-production activities** necessary for commodity production and the commercialisation and trade of the resulting products. It also includes the **direct and indirect effects** of those activities on the relevant “plot of land” or “establishment” **and the surrounding “area of production” – the area directly or indirectly affected by the production activities**.
- The local laws that are included in the legality requirement will vary from jurisdiction to jurisdiction. However, those laws **must either relate in some way to the topics listed in the EUDR as being relevant or must contribute to the Regulation's objectives or purpose**.

Contextualising the legality requirement for each producer country:

- Understanding which laws fall within the scope of the legality requirement is fundamental to a company's ability to comply with the EUDR's due diligence procedure. This is necessary for assessing any risks that relevant products do not satisfy the legality requirement. It will be impossible to complete the due diligence process without first identifying the relevant laws applicable in the area of production and understanding how they may affect the legal status of production activities.
- Each producer country will have different laws and legal institutions. While there may be similarities across legal systems and commodity sectors, due diligence investigations will need to consider local political, legal, cultural and sectoral dynamics. Understanding these local dynamics will help determine the level of diligence that is 'due' in a particular case. This briefing explores the key legal and sectoral considerations in Brazil, Côte d'Ivoire, Ghana and Indonesia for cattle, cocoa, palm oil and soy production.

Due diligence on legal compliance:

- There are likely to be challenges to gathering the necessary information and investigating the legal compliance of specific production activities in most countries, both inside and outside the EU. **Companies should therefore anticipate common challenges and design their due diligence systems to overcome them.** Adapting due diligence procedures to overcome any practical challenges to investigating legal compliance as well as customising investigations to address contextual and supply chain-specific risk factors is necessary to complete the due diligence process.
- In addition to official sources of information, it will usually be necessary to consult with local legal experts and non-governmental stakeholders to identify the relevant local laws and to understand the 'reality on the ground' regarding their implementation and enforcement. **This should be regarded as standard practice for companies completing due diligence under the EUDR.**
- Due diligence on specific supply chains should be tailored to investigate whether general risks of legal non-compliance apply to specific production activities. **Understanding the dynamics of commodity production in the relevant jurisdiction will be necessary to verify information that gives an appearance of legal compliance.** Official documentation and third-party certificates should not simply be taken at face value – information must be verified and supported by evidence.

Recommendations

Several key recommendations for approaching due diligence when assessing commodity production activities against the EUDR legality requirement can be drawn from the research and analysis in this briefing.

- Invest in a comprehensive, independent and authoritative analysis of the applicable laws in the country of origin and how they apply to commodity production activities.
- Catalogue contextual information regarding levels of legal implementation, compliance and law enforcement, as well as trends in non-compliance and the reasons behind them.
- Consult local experts on both points above.
- Investigate the current and *historical* circumstances of commodity production activities, including advice from non-government local stakeholders.
- Do not rely on official records or third-party certification alone – consult a range of local stakeholders, especially where contextual information indicates general risks of legal non-compliance within the sector or raises concerns about the reliability of official data and records.
- Speak to locals: consult local community and civil society stakeholders (such as labour unions, workers' associations, community organisations and NGOs) to verify the reality 'on the ground', including whether any sectoral risks apply to the specific supply chain and whether local rights holders are being unlawfully impacted.
- Competent authorities should require companies to demonstrate that they have consulted appropriate experts and a variety of local stakeholders as described above to identify the full spectrum of applicable laws and their implementation – in general and in specific production areas.
- Competent authorities should require companies to convince them, by explaining the company's assessment of non-compliance risks, that the information they gathered is reliable and adequately conclusive that there is no reason to be concerned that their relevant products were not produced in compliance with all applicable legal requirements.

Background

Adopted on 31 May 2023, the EUDR aims to promote the use of deforestation-free products to reduce the EU's impact on the world's forests, thereby reducing the EU's contribution to global climate change and biodiversity loss.

The commodities and products covered by the law are: cattle, cocoa, coffee, oil palm, soy, rubber and wood – and specific products listed in Annex I of the EUDR that “contain, have been fed with or have been made using” these commodities – defined as “**relevant commodities**” and “**relevant products**” respectively.

It establishes two fundamental requirements that relevant commodities and relevant products must satisfy to be imported into, traded in, or exported from the EU:

- They must be “**deforestation-free**”; and
- They must have been **produced legally**.

To ensure these requirements are respected, the EUDR requires EU companies who import, trade and export relevant products to complete a mandatory “due diligence” process on their supply chains.

At the core of this process are requirements to:

- **Identify** the area where the product originated
- **Check** the land was not deforested after 2020; and
- **Ensure** the production of the product was conducted legally.

This “due diligence” process – and the information EU companies rely on to complete it – will be the primary mechanism for demonstrating, checking and verifying compliance with the law's requirements.

These new rules are a significant evolution of an existing EU law which prohibits trade in illegal timber – the EU Timber Regulation (“**EUTR**”) – which requires timber importers to trace supply chains to the point of origin and check the legal compliance of the timber harvesting activities.

In this regard, the EUDR's supply chain traceability and legal compliance requirements are not new. However, they have been extended to agricultural commodities and products derived from them.

Case study

1. Summary of the Ghanaian legal framework



Ghana has a **pluralist legal system**, consisting of overlapping statutory, common and customary laws. These sources are recognised in Chapter 4 of the Ghanaian Constitution of 1992, which sits at the top of the national legal framework.

The main kinds of law in Ghana are legislation and common law, comprised of jurisprudence and customary law:

- **The Constitution of the Republic of Ghana 1992:** the Constitution declares itself as the supreme law of the land and, as a result, all laws which are inconsistent with its provisions are void to the extent of the inconsistency, including customary laws. The Constitution provides a broad framework for government and makes provisions for the regulation and use of natural resources.
- **Acts of Parliament:** legislation provides much of the detail for the national legal framework for natural resource management.
- **Legislative Instruments:** regulations complement the Acts of Parliament and operationalise them.



A farmer removing cocoa beans from their pods

- **Jurisprudence:** the Supreme Court has jurisdiction over constitutional issues and it is the final court of appeal. The Court of Appeal deals with appeals relating to the High Court, which has jurisdiction over all civil and criminal cases except treason. The Supreme Court, Court of Appeal and the High Court are referred to the Superior Courts of Judicature. All but the most serious civil and criminal cases, and cases under family law, are heard in circuit courts. These courts also deal with appeals arising from district courts within their region.
- **Customary law:** formally recognised in the Constitution as a valid source of law to the extent that it is not inconsistent with the Constitution or other statutory laws (Article 1(2) and 11 of the Constitution). It includes rules of law and custom that are observed by and are applicable to specific communities. Customary law is generally unwritten³ and is most relevant to personal, domestic, land ownership and contractual relationships, for example inheritance and marriage.

Accordingly, customary laws are not universally applicable across Ghana, only to members of the community in which the relevant customary law is observed.

The main legislation regulating the cocoa sector in Ghana are the Ghana Cocoa Board Act 1984, the Land Act 2020, the Land and Spatial Planning Act 2016, the Plants and Fertilizer Act 2010, the Labour Act 2003 and the Children's Act 1998. These laws establish:

- a management and regulatory body for cocoa;
- the rules governing the land tenure, spatial planning, plant protection and fertiliser control; and
- provide a framework for the sustainable management of forest resources.

Given Ghana's pluralist legal system, assessing the legality of Ghanaian cocoa will require a review of statutory law and specific local customary laws.

³ Since 2006, the National House of Chiefs in partnership with the Ghana Law Reform Commission initiated a project for the Codification of Customary Law. The project is still in progress. Nyarko, M. (2023). Researching Ghanaian Law. Globalex, NYU Law. Retrieved from <https://www.nyulawglobal.org/globalex/ghana1.html>

2. Key laws relevant to cocoa production in Ghana

2.1 Land access

Cocoa production can only be done in authorised areas that have been zoned for agriculture pursuant to the *Land and Spatial Planning Act 2016 and the Zoning and Land Use Regulations, 2019*. These laws guide how land is designated for different uses, including for agriculture purposes.

Ghana's legal framework differentiates between forest reserves and off-reserve areas. Forest reserves are officially designated forest estates established by the government under Ghana's primary forestry laws, including the *Forest Act of 1927 and the Forest Protection Act of 1974*.

Forest reserves are protected areas established for specific purposes, such as conserving forests and water sources and ensuring a sustainable supply of forest products.

Therefore, in principle, agriculture is not allowed in forest reserves as it is not a permitted forest reserve purpose – except where cocoa farms already existed before the forest reserve was established, known as “admitted farms”.

Forest reserves can be “degazetted”, meaning they lose their “forest reserve” status. However, the law is unclear on the grounds and procedure, and instead the Forest Commission tends to grant access to these areas for agricultural or mining purposes on a case-by-case basis, notwithstanding their “forest reserve” status.

Off-reserve areas are not subject to the same legal protections and forested land can be cleared for agricultural use. However, the felling of trees suitable for timber harvesting requires a permit from the Forestry Commission under the *Timber Resources Management Act of 1998*.

2.2 Vegetation clearance

There are no legal restrictions on cutting trees that are not suitable for timber harvesting in off-reserve areas. This has contributed to widespread forest conversion, particularly for cocoa farming.

In fact, the legal framework creates incentives for farmers to destroy timber-producing trees at an early stage without considering other options. One such option might be agroforestry farming, where farmers plant cocoa trees amongst other trees that provide shade, water retention and other indirect benefits.

Instead, as farmers derive no direct benefits from existing trees⁴ – and could have their cocoa farms damaged by future government-authorised timber harvesting – many opt to clear the land, further driving deforestation and habitat loss.

2.3 Land tenure

The *Land Act 2020* regulates land acquisition, leasing, transfer, and all other issues relating to land in Ghana. It revises, harmonises, and consolidates all laws for sustainable land administration and management as well as effective and efficient land-tenure governance.

However, **customary law continues to govern land rights in Ghana**. The rights to use the “plot of land” for cocoa production may therefore be dependent on customary law. Farmers will need to hold customary ownership rights to the land they are farming or have received written or oral permission from landowners to farm their land.

⁴ Presently, ownership of all “naturally occurring” trees, including on land privately held under customary title, is vested in the state and the benefits of harvesting naturally occurring trees are shared between loggers, traditional authorities, and the government – but landowners are excluded.

2.4 Environmental impact assessment

The *Environmental Assessment Regulations, 1999*, require all development activities likely to have a negative impact on the environment to undergo an environmental impact assessment and obtain an environmental permit.

This requirement applies to agricultural activities involving the clearing of land larger than 40 hectares or located in an environmentally sensitive area.⁴ This means small cocoa producers are not required to carry out an environmental impact assessment or obtain an environmental permit, unless their farm overlaps an environmentally sensitive area, such as national parks, watershed reserves, wildlife reserves and sanctuaries, and sacred groves.

There is also the *Control and Prevention of Bush Fire Act 1990* which requires prior approval from the Ministry of Agriculture's Director of Agricultural Extension Services to use fire to clear land for farming purposes.

2.5 Pesticides and fertilisers

Use of pesticides and fertilisers is regulated by the *Environmental Protection Agency Act 1994*, the *Pesticide Control and Management Act 1996* and the *Plant and Fertiliser Act 2010*.

Pesticides and fertilisers used for cocoa farming need to be pre-approved and registered with the Environmental Protection Agency (**EPA**) and Ministry of Agriculture respectively.

They are usually registered for three years, subject to renewal, though provisional registration for shorter periods – between six to 12 months – can be given where an applicant needs to submit more information.

Certain products can be completely banned. Registered pesticides and fertilisers are publicly notified.

The import, export, manufacture, distribution, advertisement and sale of pesticides also requires prior authorisation from the EPA. The storage of pesticide products requires a pesticide licence.

2.6 Labour rights and child labour

Ghana has an elaborate legislative and institutional framework for the protection of labour and human rights, including comprehensive laws and policies to combat the exploitation of children as workers.⁵ The regulations governing worker health and safety⁶ predominantly focus on industrial facilities and operations. There are no sector-specific rules for agricultural production; the requirements are generic.

Labour rights, employers, trade unions and industrial relations are regulated by the *Labour Act 2003*. It prohibits the employment of people aged 18 to 21 in "hazardous work", which includes felling trees, carrying loads over 25kg, and using dangerous pesticides and fertilisers.⁷

The Labour Act also criminalises forced labour, which is work or service that is exacted from a person under threat of a penalty and for which that person has not voluntarily offered to work. This definition is also used to assess child labour in the cocoa sector.

⁴ For a definition see Schedule 5 of the *Environmental Assessment Regulation 1999*. Note that Forest Reserves are not classified as environmental sensitive areas in Schedule 5. While national parks, watershed reserves, wildlife reserves and sanctuaries have been created by legislative instruments (requiring the approval of parliament), Forest Reserves are created by executive instruments, i.e. a declaration by the executive.

⁵ For a comprehensive review, see Taylor Crabbe, Forest trends and Fern, Child labour laws and policies in Ghana, with specific emphasis on the cocoa sector, March 2020.

⁶ Namely the Labour Act, 2003, Labour Regulations 2007 and the Factories, Offices, and Shops Act 1970

⁷ Defined in section 7(1) of the Labour Regulations 2007 as work involving (a) manual lifting of loads the weight of which exceeds twenty-five kilograms, (b) work on scaffold and other structures at a height exceeding two and a half metres, (c) the use of substances and materials that emit (i) radiation, or (ii) poisonous gases or fumes, (d) the use of dangerous chemicals, (e) excessive noise, (f) the felling of timber; (g) night work exceeding eight continuous hours, or (h) other situations considered by the Chief Labour Officer as hazardous

The *Children's Act 1998* sets out the rights of the child, including in relation to labour and apprenticeships.⁸ It defines a child as a person below the age of 18 years and stipulates that in any matter relating to a child, the best interest of the child must be paramount.

The Act prohibits engaging children in “exploitative labour”, defined as work that deprives a child of their health, education or development. The Act further prohibits the engagement of children in work between the hours of 8pm and 6am.

A 13-year-old child may be engaged in “light work” – work which is not likely to be harmful to the health or development of the child and does not affect their attendance at school or their capacity to benefit from schoolwork.

A child of 15 years may be fully employed in regular work.⁹ The work must not, however, pose a danger to the health, safety, or morals of the child.

2.7 Corruption

Corruption, fraud and official conflict of interest are covered by the *Criminal Offences Act 1960*.

Corruption levels in Ghana are low compared to other African countries, although it is not uncommon for low-level government employees to ask for small bribes in return for facilitating licence and permit applications.

The *Criminal Offences Act* criminalises active and passive bribery, extortion, wilful exploitation of public office, use of public office for private gain and bribery of foreign public officials. Ghana has a relatively strong anti-corruption legal framework but, like many countries, faces challenges of enforcement and transparency.¹⁰

3. Key institutions relevant to cocoa production in Ghana

The **Ghana Cocoa Board or COCOBOD** is the primary government body responsible for regulating and overseeing the trade in cocoa (and coffee and shea nuts), pursuant to the *Ghana Cocoa Board Act 1984*.

COCOBOD's objectives are to:

- encourage the cultivation of cocoa, coffee, and shea;
- regulate their marketing and export;
- purchase, import, undertake as well as encourage the manufacture, distribution and marketing of inputs used in the production of these crops; and
- promote and encourage scientific research to improve the quality and yield of cocoa, coffee, shea, including programmes aimed at controlling pests and diseases.

Importantly, cocoa can only be bought from cocoa producers by a person or organisation authorised by COCOBOD, called Licensed Buying Companies (**LBCs**). LBCs are required to sell all the cocoa they buy to COCOBOD for export.

All other persons are prohibited from marketing and exporting cocoa unless certified to do so by COCOBOD. The *Cocoa Industry (Regulation) Act 1968* and *Customs Act 2015* further describe the legal requirements for the transport and export of cocoa.

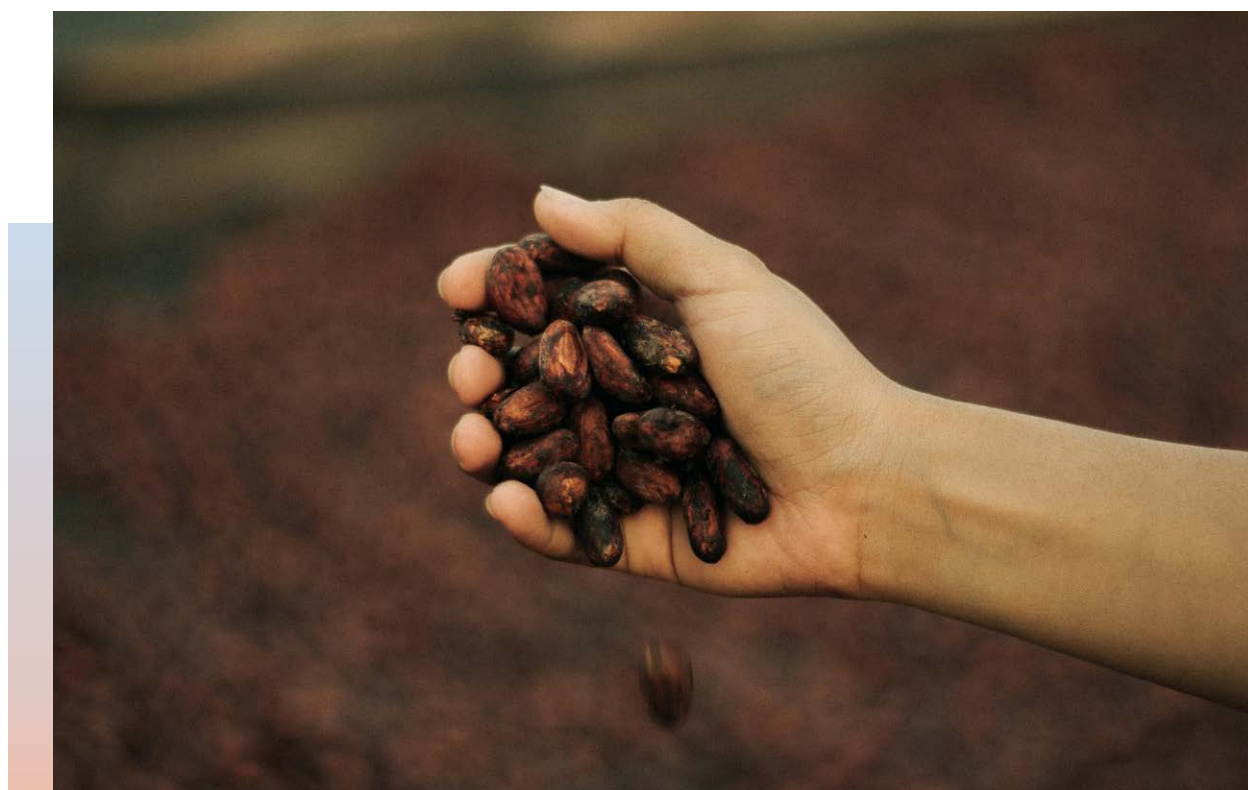
⁸ Note that Ghana ratified the ILO Convention 138 on Minimum Age, the ILO Convention 182 on the Worst Forms of Child Labour and the African Charter on the Rights and Welfare of the Child.

⁹ See sections 88 – 90 of the Children's Act 1998.

¹⁰ For more information, see GAN Integrity (2020), 'Ghana Risk Report, available at: <https://www.ganintegrity.com/country-profiles/ghana/>.

A number of other public entities are relevant for the cocoa sector:

- the **Ministry of Food and Agriculture** is the lead agency for developing and executing policies and strategies for the agriculture sector. It also formally exercises supervision or regulatory oversight over COCOBOD.
- the **Ministry of Lands and Natural Resources (MLNR)** is the leading state institution for making and implementing government policy on lands, forestry, and mineral resources.
- the **Forestry Commission** is one of the natural resources commissions under the supervision of the MLNR. The Forestry Commission is responsible for the regulation, conservation and management of forest and wildlife resources and the coordination of policies related to them.
- the **Environmental Protection Authority (EPA)** has the primary duty of regulating the environment and ensuring the implementation of government policies on the environment. Particularly for cocoa, the EPA may ensure that the guidelines for the application of fertilisers and agrochemicals are in line with best practices to prevent water contamination and protect the environment. The EPA is also responsible for regulating the import, manufacturing, distribution, advertisement and sale of pesticides and the licensing of pesticide dealers in Ghana.
- the **Land Use and Spatial Planning Authority (LUSPA)** provides for the sustainable development of land and settlements through a decentralised planning system, the judicious use of land, and an enabling environment for District Assemblies to contribute to spatial planning and human settlement management. LUSPA is required to control the physical development of sensitive areas such as forest reserves, nature reserves, and wildlife sanctuaries – and ensure the use of natural resources for agriculture, mining, industry, and other related activities do not adversely impact on human settlements.



Ghana also supported the drafting of the ARS-1000 standard for sustainable cocoa in the framework of the African Organization for Standardization. It was adopted on 15 June 2021. The Ghanaian Government plans to make ARS-1000 mandatory for the cocoa sector but had not yet done so at the time of publication.

Our reservations about the role of ARS-1000 in supporting operators' due diligence under the EUDR for cocoa produced in Côte d'Ivoire apply equally in Ghana.

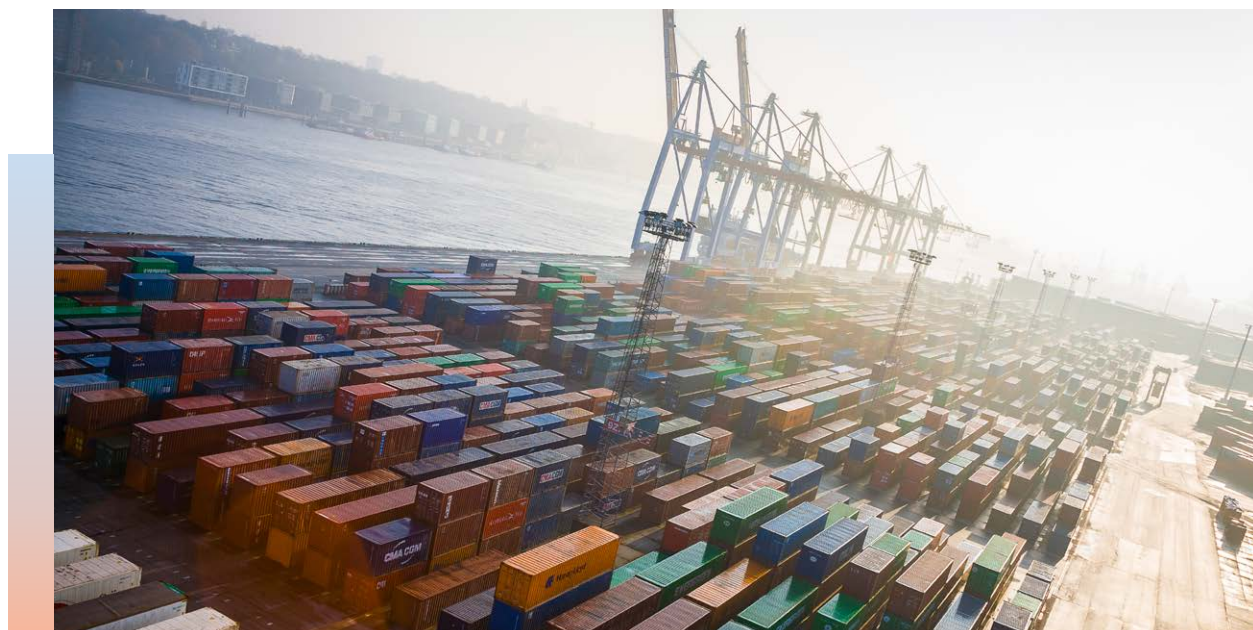
4. Key considerations for assessing legal compliance risk

4.1 Access to relevant information

There is no comprehensive database for Ghanaian legislation and case law.

However, centralised registries exist for some of the different types of law:

- **Statutory laws:** the Parliament of Ghana has an online legislation database¹¹ which, at the time of writing, is not comprehensive but is being updated. Another source of information for national legislation and regulations on agriculture and natural resources management is the FAOLEX Database.¹²
- **Customary law** is primarily oral and unwritten. Some customary rules have been documented in literature or court judgements but there is no comprehensive database. Identifying and understanding relevant customary laws therefore requires consultation with local experts.
- **Case law** can be accessed at court registries. Some cases are available online on private databases.¹³
- **Tenure information** on formal land titles and deeds can be found at the Ghanaian Lands Commission's Register. A process to record customary grants of land rights has begun, with Customary Land Secretariats being set up in local communities across the country.
- **Agricultural zoning and land-use planning** are primarily managed at the local level by the Metropolitan, Municipal, and District Assemblies. These local government bodies have physical Planning Units responsible for creating and enforcing zoning regulations.
- Information on **tax and customs** compliance can be found with the Ghana Revenue Authority.¹⁴



¹¹ <https://ir.parliament.gh/handle/123456789/282>.

¹² <https://www.fao.org/faolex/en/>.

¹³ Two popular databases are the Ghana Legal Information Institute (<https://ghalii.org/>) and DennisLaw (<https://www.dennislawgh.com/dl-search/>).

¹⁴ <https://gra.gov.gh/>

4.2 Informality of the agricultural sector

Ghanaian cocoa is almost entirely produced by smallholders. According to COCOBOD, cocoa is mainly produced in family-run, medium-sized plantations of two to three hectares. There are about 800,000 cocoa farmers in Ghana, comprising approximately 60% of agricultural workers.¹⁵

As with Côte d'Ivoire, the number of small producers and family-farmers in cocoa production means supply chain due diligence requires more effort compared to sectors dominated by large-scale producers.



Given the family-run nature of most cocoa farms, **Ghanaian cocoa production is mostly informal.**

Similar to the Ivorian cocoa sector, it is unlikely that all farmers will have formal documentation proving compliance with formal land tenure and land-use regulations, environmental standards and labour law.

However, the absence of documentation does not necessarily imply non-compliance with Ghanaian law.

As noted above, there are fewer legal requirements for small-scale and informal cocoa production, hence cocoa smallholders will have less – and need less – formal documentation for their cocoa farms.

4.3 Traceability

Although there are relatively well-enforced quality assurance systems for cocoa beans, there is no national-level monitoring system to check the sustainability and legality of cocoa production.

The current systems focus on product quality, not origin, and only apply to Licensed Buying Companies – not the farm where the cocoa was produced.

Existing cocoa bean quality assurance systems are also predominantly paper-based, which can pose challenges if records are lost, destroyed or manipulated. There is also no proper assurance mechanism for buyers to check the accuracy of information about the farm of origin. As such, it is currently difficult to trace cocoa to the farm of origin and check whether it was produced legally.¹⁶

A complicating factor is that farmers typically mix and sell their produce collectively. It is therefore possible for cocoa beans grown legally to be mixed with cocoa beans grown illegally. The fact that cocoa grown illegally can be easily mixed and sold with legal cocoa creates economic incentives for illegal cocoa farming.

As in Côte d'Ivoire, there are several cocoa certification schemes – such as UTZ, Rainforest Alliance and Fairtrade – which attempt to guarantee sustainability along specific supply chain. However, these schemes are voluntary and tend to focus on individual or limited supply chains and traceability back to the first point of purchase – usually the farmer cooperative or LBC – by which point the cocoa has already been mixed.

Traceability data going back to the original farm is often unavailable or unreliable.¹⁷

¹⁵ Amankwaah, B. et al. (2021), *Cocobod's Unrealised Potential: Promoting Human Rights, Welfare, and the Environment in Ghana's Cocoa-Growing Communities*, Northwestern Pritzker School of Law Center for International Human Rights, University of Ghana School of Law, Corporate Accountability Lab & SEND Ghana, at p.13. Available at: <https://static1.squarespace.com/static/5810dda3e3df28ce37b58357/t/60cb58bba936fc53960e4aff/1623939288558/COCOBOD%27s+Unrealised+Potential+-+No+rthwestern+Law%2C+Ghana+School+of+Law%2C+CAL+%26+SEND+%28June+2021%29.pdf>

¹⁶ Nitidae and EFI, (2021), Traceability and transparency of cocoa supply chains in Côte d'Ivoire and Ghana. Available at: <https://euredd.efi.int/wp-content/uploads/2023/08/Traceability-and-transparency-of-cocoa-supply-chains-in-Cote-dIvoire-and-Ghana.pdf>

¹⁷ Stoop, P. et al. (2021), Technical Brief on Cocoa Traceability, IDH, GISCO, C-lever.org. Available at: https://www.idhsustainabletrade.com/uploaded/2021/04/Cocoa-Traceability-Study_Highres.pdf

To address these issues, COCOBOD is in the process of developing a cocoa management system (CMS) – an integrated digital cocoa farmer database and traceability system – called the Ghana Cocoa Traceability System.¹⁸ It aims to provide fully-digitised physical and financial traceability from the farm to the point of export.¹⁹

If the CMS is successfully implemented, it will be possible to detect illegal sourcing based on the location of a farm. For example, if a farmer located next to an area at risk of deforestation is selling significantly more than his forecasted yield throughout a season, the system will identify a risk that the cocoa may be produced illegally.

To date, data collection and implementation trials have focused on cocoa production in the districts of Essam, Adabokrom and Asamankese.

4.4 Incomplete zoning and absence of centralised databases

Land-use planning in Ghana is generally concentrated in urban areas with a focus on settlement planning – for example residential, industrial and commercial – at the cost of land-use planning for agriculture and agroforestry in rural areas.

Cocoa should be cultivated in an area “zoned” for agriculture. However, despite an obligation on district assemblies to produce a zoning scheme, this has not been done throughout Ghana – with many gaps in rural areas.²⁰

Cocoa harvested in an area that has not been designated for agriculture under a zoning scheme is technically considered illegal.

Similarly, cocoa farming is prohibited in designated protected areas. However, there is a **lack of publicly available information on the location of protected areas**. Many cocoa farms overlap with protected areas because of the lack of information available to farmers about where cocoa farming is and is not permissible.

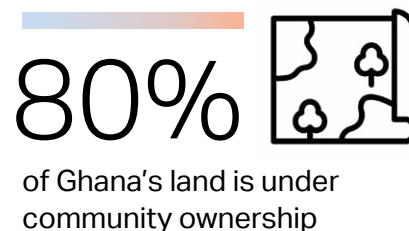
Identifying the boundaries of protected areas could pose practical difficulties, as they are not demarcated on the ground and information about protected areas is not publicly available. Until this information is made available, the legal status of cocoa harvested close to protected areas may be unclear.

The COCOBOD CMS is intended to link cocoa supply chain data to forest cover and protected area information, making it possible to assess the risk that cocoa was produced in prohibited areas.

4.5 Absence of formal interests in land

Eighty per cent of Ghana’s land is under community ownership,²¹ mostly in rural areas. The most extensive system of customary ownership is the “allodial title” (a form of complete ownership without reservation), which is managed by traditional authorities called “stools” and “skins”. The allodial title is the highest form of interest that can be owned in land.²² The allodial owner is entitled to use the land in question without interference and to sell or transfer the land at will.²³

The allodial title is classified as a freehold; it exists potentially forever and is not limited by time.²⁴



18 Cocobod on course to achieve goals of Ghana Cocoa Traceability System (GCTS), 30 June 2023, <https://cocobod.gh/news/cocobod-on-course-to-achieve-goals-of-ghana-cocoa-traceability-system-gcts>

19 EFI (2024), Cocoa Insight - March 2024, Preparedness check of Ghana for the EU Deforestation Regulation, p.2. Available at: <https://efi.int/sites/default/files/files/flegtredd/Sustainable-cocoa-programme/Cocoa%20insights/EUDR%20Preparedness%20check%20of%20Ghana.pdf>.

20 Inter-Réseaux (2018), Land governance and agricultural development in Africa: Balancing the interests of states, farmers, and investors. Inter-Réseaux Development, No. 78, pp. 14. Available at https://www.inter-reseaux.org/wp-content/uploads/pages_de_interreseau-gds-no78_gb-p14.pdf.

21 Rights and Resources Initiative (2023), 'Who Owns the World's Land?'. Available at: <https://rightsandresources.org/publication/who-owns-the-worlds-land-2nd-ed/>.

22 Land Act 2020 sections 1 and 2.

23 Note that although allodial title is usually held by a group of people, the Land Act specifies that it can also be held by an individual and allodial title ownership is not restricted to a group of people.

24 *Golightly v Ashirifi* (1961) 1 GLR 28.

Ghanaian law recognises a “usufructuary title” held by families and individuals over stool land and family lands. This title allows them to lease or otherwise contract for the use of the land. Under this arrangement, many cocoa farmers enter into oral sharecropping agreements, known as customary tenancies, which effectively serve as the landowner’s consent for farming on the land.

Interests in land acquired for agricultural purposes are generally not registered or formalised. Under Ghanaian law, there is no obligation to register a customary tenancy to make it valid.

Although it is possible to register a customary tenancy – and it can be recorded in writing if the parties wish – the law does not require formal written documentation to create or validate it.

An oral agreement made in accordance with customary law is legally valid. This is particularly significant for the many Ghanaian farmers who acquire rights to use land for cocoa farming through customary tenancy.

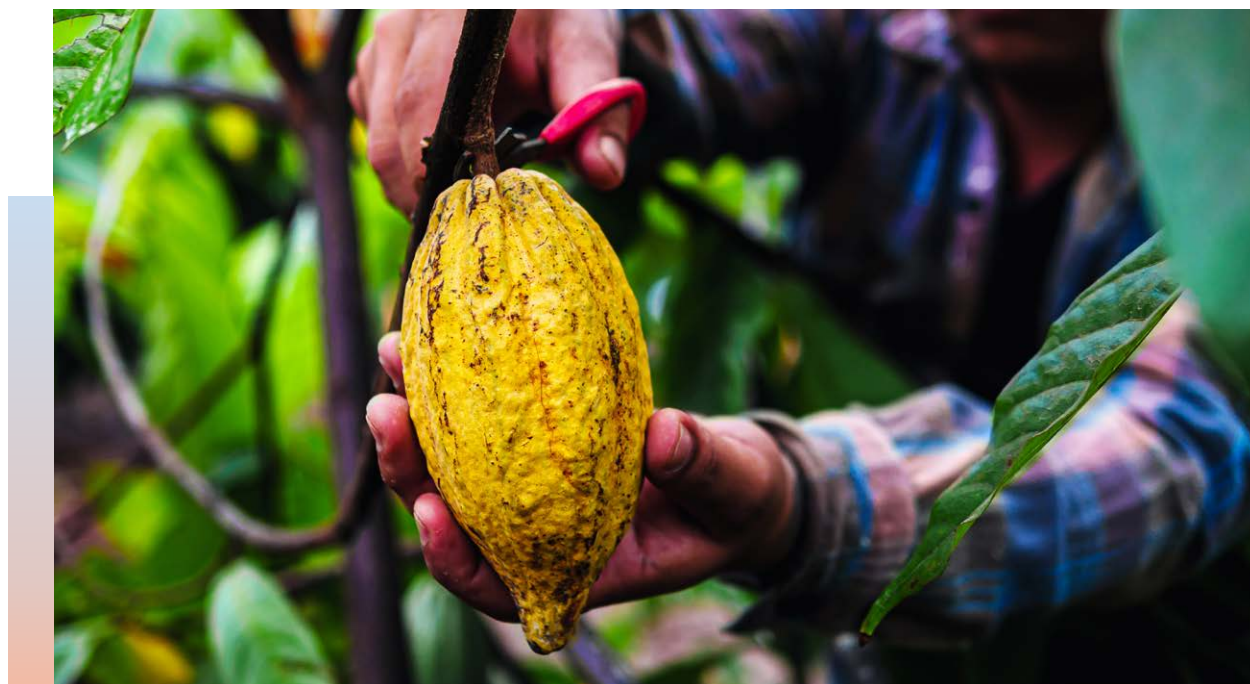
By contrast, leases longer than three years must be in writing and signed by both parties in order to be enforceable.²⁵

Therefore, **the absence of documentation or registration of an interest in the land used for commodity production does not necessarily make the use of the land illegal**. However, it contributes to the informal nature of the sector and may lead to legal uncertainty. Indeed, without a written agreement to use the land, whether a property title or a lease, farmers themselves are at the risk of being evicted.

4.6 Cocoa produced in forest reserves

The area of cocoa production in Ghana is expanding and constitutes a major driver of deforestation. Ghana lost 1.9 million hectares of forests between 1990 and 2020,²⁶ with a recent surge in 2022.²⁷

Cocoa production commonly encroaches on forest reserves.²⁸ Similar to Ivorian “enclaves”, growing cocoa in forest reserves is allowed for farms with existing legal status, known as “admitted farms”.



²⁵ Sections 34 and 35 of the *Land Act 2020*.

²⁶ FAO (2020), *Global Forest Resources Assessment 2020: Main report*. Rome, Italy: FAO. Available at: <https://doi.org/10.4060/ca9825en>

²⁷ World Resources Institute (2023), 'The Latest Analysis on Global Forests & Tree Cover Loss', *Global Forest Review*. Available at: <https://research.wri.org/gfr/latest-analysis-deforestation-trends>.

²⁸ Brobbey, L., Agyei, F. & Osei-Tutu, P. (2020), 'Drivers of cocoa encroachment into protected forests: Case of three forest reserves in Ghana', *International Forestry Review*, 22: pp. 425–437. Available at: <https://doi.org/10.1505/146554820831255533>

The creation of forest reserves in Ghana involves a structured procedure overseen by a “Reserve Settlement Commissioner”. The procedure is initiated by the President, who decides to designate lands as forest reserves.²⁹

Once this decision is taken, a notice is published indicating the land’s location, the reasons for reservation, and the appointment of a Reserve Settlement Commissioner.³⁰ Following this notice, individuals or traditional authorities have at least six months to submit claims regarding rights affecting the land.

The Reserve Settlement Commissioner conducts an enquiry to determine the existence, nature, and extent of the rights that are claimed. The Reserve Commissioner’s report is legally binding and details the area to be reserved, any continuing rights, and rules for any admitted farms.³¹ These typically include the non-expansion of the farms without the prior written approval of the Forestry Commission.

The legality of cocoa production within a forest reserve therefore requires examination. If the farm pre-dates the reserve and the cocoa is produced within the area approved by the Reserve Commissioner or an expanded area approved by the Forestry Commission, it will be legal.

However, if the farm has expanded beyond the original area, then the cocoa produced on that land will be illegal.

Admitted farms’ boundaries should be listed in the forest management plans of each forest reserve. Information and maps of “admitted farms” can be found at the local Forestry Commission office.

However, as noted above, the exact boundaries of admitted farms are missing in some regions or are not publicly available.

According to the Forestry Commission, most owners of “admitted farms” have extended their farms beyond their original boundaries by between 70% and 400%.³² Some of these farms have even grown into communities within the forest reserves.

As encroachment into forest reserve areas by both “admitted farmers” and informal farmers is common, there is a significant risk that cocoa sourced from within forest reserve areas has been produced illegally.

4.7 Use of unregistered pesticides

Pesticide use – including highly disputed and hazardous insecticides³³ – by Ghanaian cocoa farmers is said to be high.³⁴ Overuse and misuse of pesticides is widespread. Unscrupulous dealers often sell farmers unregistered, mislabelled or illegal products.³⁵ Systemic factors like weak law enforcement, farmer poverty, farmer illiteracy and a lack of training for farmers contribute to patterns of illegality in both the sale and use of pesticides.³⁶

29 Section 2 *Forest Act 1927*.

30 Sections 3(1) *Forest Act 1927* 139

31 Sections 4–7 *Forest Act 1927*

32 Information shared with TaylorCrabbe initiative during interviews with Forestry Commission Officers

33 Voice Network (2022), ‘Cocoa Barometer’, at p. 47. Available at: https://voicenetwork.cc/wp-content/uploads/2022/12/Cocoabarometer2022_v1.2.pdf.

34 Denkyirah et al. (2016), ‘Modeling Ghanaian cocoa farmers’ decision to use pesticides and frequency of application: the case of Brong Ahafo Region’, *SpringerPlus*. Available at: <https://springerplus.springeropen.com/articles/10.1186/s40064-016-2779-z>.

35 Pesticide Action Network (PAN) UK (2018), ‘Pesticide Use in Ghana’s Cocoa Sector’, Rainforest Alliance, p.1. Available at: <https://www.scribd.com/document/394348206/18-05-Key-Findings-Report-on-Pesticide-Use-in-Ghana>.

36 Osei-Owusu, Yaw / Owusu-Achiaw, Raymond (2022), ‘Pesticides in Ghana, Assessment on Gender Dynamic of Highly Hazardous Pesticides (HHPs) with Cocoa Production Landscape in Ghana’, Conservation Alliance. Available at: <https://conservealliance.org/wp-content/uploads/2021/06/Final-Gender-Dynamic-Report-for-INKOTA-1.pdf>.

4.8 Child labour

A 2020 report by the National Opinion Research Center of the University of Chicago put the number of children working in cocoa production in Ghana at 770,000.³⁷

770,000



children working in cocoa
production in Ghana

The Ghanaian government has made efforts to enforce labour regulations, but challenges remain – largely due to the cycle of poverty caused by the low earnings of cocoa farmers and their inability to employ paid labour.³⁸

Because cocoa is mostly produced by family-run farms, it is not unusual to see children on farms.

This is not always unlawful and children living there can benefit from the exposure to longstanding cultural and farming traditions. However, children may also be victims of harmful forced labour practices.³⁹

In practice, it is challenging to distinguish between situations that constitute prohibited work and those that are similar to vocational training or appropriate inclusion of children in family farming.

One source of information could be the Cocoa Sector Child Labour Monitoring System that COCOBOD is developing, which will be linked to the Ghana Cocoa Traceability System. It will provide information on the risk of non-compliance with national laws related to child labour.⁴⁰

The Hazardous Child Labour Activity Framework, although it is for guidance only and not legally binding, can also be used as a reference for due diligence on child labour.

37 Sadhu, S. et al. (2020), 'NORC Final Report: Assessing Progress in Reducing Child Labor in Cocoa Production in Cocoa Growing Areas of Côte d'Ivoire and Ghana. NORC at the University of Chicago, p. 10. Available at: https://www.norc.org/content/dam/norc-org/pdfs/NORC%202020%20Cocoa%20Report_English.pdf.

38 Luckstead, J. et al. (2019), 'Estimating the Economic Incentives Necessary for Eliminating Child Labor in Ghanaian Cocoa Production', PLoS ONE, vol. 14, no. 6, p. 2. Available at: <https://doi.org/10.1371/journal.pone.0217230>; Payson Center for International Development (2015), 'Final Report: 2013/14 Survey Research on Child Labor in West African Cocoa Growing Areas', Tulane University School of Public Health, at p.73. Available at: https://www.doi.gov/sites/doi.gov/files/ilab/research_file_attachment/tulane%20university%20-%20survey%20research%20cocoa%20sector%20-%2030%20july%202015.pdf.


39 Amankwaah, B. et al. (2021), *Cocobod's Unrealised Potential: Promoting Human Rights, Welfare, and the Environment in Ghana's Cocoa-Growing Communities*, Northwestern Pritzker School of Law Center for International Human Rights, University of Ghana School of Law, Corporate Accountability Lab & SEND Ghana, at p.13. Available at: <https://static1.squarespace.com/static/5810dda3e3df28ce37b58357/t/60cb58bba936fc53960e4aff/1623939288558/COCOBOD%27s+Unrealised+Potential+-+Northwestern+Law%2C+Ghana+School+of+Law%2C+CAL+%26+SEND+%28June+2021%29.pdf>

40 Cocobod, Stakeholders strengthen anti-child labour protocols in cocoa sector, 21 October 2024, <https://cocobod.gh/news/cocobod-stakeholders-strengthen-anti-child-labour-protocols-in-cocoa-sector>; EFI, Cocoa Insight - March 2024, Preparedness check of Ghana for the EU Deforestation Regulation, p. 8.

6. Conclusion

While the trade and export of cocoa products are well regulated in Ghana and legal requirements are effectively enforced by COCOBOD, the regulation of cocoa *production* is relatively light.

The informal nature of cocoa farming, absence of local zoning schemes designating land for agricultural use and the customary nature of private land rights pose challenges for documenting legal compliance of cocoa production activities.

 The importance of local systems of (unwritten) customary law in land use will likely require additional consultation with local experts.

As in Côte d'Ivoire, the low incomes of cocoa farmers and entrenched patterns of poverty are systemic factors that contribute to the current challenges of supply chain traceability and sustainable cocoa production.

Conversely, there are several public institutions that play a role in supervising cocoa production, such as COCOBOD, the Ministry of Lands and Natural Resources, Forestry Commission and Ministry of Food and Agriculture. Although some of them have conflicting mandates – for example in terms of protecting forest areas and promoting cocoa production – they provide a reliable institutional framework for the development and reform of sectoral norms, standards and reporting systems. The development of a national Cocoa Management System represents a significant government effort to reform cocoa sector governance, address deforestation and support compliance with EUDR's requirements.

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Beijing

1950 Sunflower Tower
No. 37 Maizidianjie
Chaoyang District
Beijing 100026
China

Berlin

Albrechtstraße 22
10117 Berlin
Germany

Brussels

60 Rue du Trône
(3ème étage)
Box 11, Ixelles, 1050 Bruxelles
Belgique

London

The Joinery
34 Drayton Park
London, N5 1PB
United Kingdom

Los Angeles

Santa Monica Blvd
Suite 510
Santa Monica
CA 90401, USA

Madrid

C/Príncipe de Vergara 109
1 izquierda
28002
Madrid, Spain

Tokyo

Toranomon Hills Business
Tower 15F 1-chôme-17-1
Toranomon, Minato City
Tōkyō-to 105-6415
Japan

Warsaw

ul. Mokotowska 33/35
00-560 Warszawa
Polska

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