

## Retail and wholesale: supporting an EU market for deforestation-free products

### Key messages

- **Our sector strongly supports the aim of the proposed regulation to curb EU-driven deforestation** as part of the goals set by the EU Green Deal to meet the ambitions of the Paris Agreement.
- **Retail and wholesale are fully aware of their role and actively tackle societal and environmental challenges.** As such, many companies are committing to global alliances and use certification and verification schemes to, among others, reduce the impact of their sourcing practices on deforestation.
- To achieve the desired impact, the deforestation regulation should **clearly target those actions with most impact.** As such, to be effective and efficient, the obligation to exercise due diligence should follow a strict division of responsibilities among actors in the supply chain, **where the first placer on the EU market of a commodity or product is responsible to ensure that it is deforestation-free, and that any operator downstream is able to check its origin via a robust chain of custody.**
- Retail and wholesale are positioned at the end of a very complex supply chain, which reduces the access to, and control of the information generated at primary production level and making it impossible to replicate the entire due diligence process. For some commodities or products, they act as and assume the responsibilities of importers. **However, their strength is that they can check documentation in a risk-based manner and apply mitigation measures if needed.**
- The proposed measures duplicate administrative burden and bring huge costs on distributors, offering many thousands of products from equally high numbers of suppliers, without proven additional impact on reducing deforestation. This should be addressed through **a review of the responsibilities in-line with other EU product regulation.**
- Each supply chain of commodities in the scope of the proposal is different and specific, a one size fits all approach for due diligence systems is therefore not indicated. **Instead, a certain flexibility should be allowed to adapt the due diligence requirements and systems to the commodity.**
- **Certification and verification schemes are important tools to support due diligence processes,** as part of risk mitigation and hence they need to be included and recognised.

### General introduction

#### *Retail and wholesale actions against deforestation and for zero-deforestation commodities and products*

**We support the aim of the proposed regulation to curb deforestation. Forests play a critical role in maintaining biodiversity, helping to regulate temperature and humidity and are important carbon stores to mitigate climate change. Therefore, all actors in the food system, to which retail and wholesale belongs, should be involved in finding solutions to tackle commodity-driven deforestation.**

Retailers and wholesalers have long been committed to preventing deforestation in their supply chains. These commitments are implemented either through internal policies and standards closely

working with their suppliers to agree on strict and verifiable criteria, or by joining and endorsing global, region or commodity-specific commitment to fight deforestation in specific areas. (See examples in annex) They work with suppliers, traders, and governments in producing countries, to establish long-term and trustworthy business relationships in order to reduce deforestation risks. Other actions have involved disclosing progress via measurable indicators or investing in landscape initiatives.

**Our aim therefore is to contribute to an effective and enforceable European regulation to combat deforestation built on our key learnings from long standing responsible supply chain management initiatives which are listed in the annex ([here](#)).**

### *Complexity of the supply chain*

Forest-risk commodities are sourced globally and, as such, linked to long and complex supply chains ([see annex](#)). It is a significant challenge for retailers, wholesalers and international trading companies to obtain full traceability throughout the supply chain for all the various ingredients in a product, from plantations and forests through production to retail.

The supply of these commodities and products typically involves forest/plantation owners, processors, importers, traders, wholesalers, manufacturers, and other players before the final product reaches the customers. This gets even more complex for commodities indirectly present in supply chains, such as soy used in animal feed to produce products such as beef, eggs or dairy that can, in turn, be used as ingredients in other end-products.

### *Allocating appropriate and proportionate obligations along the supply chain*

Our sector is at the end of a very complex supply chain making it impossible to replicate the entire due diligence process. To be effective and efficient, the obligation to exercise due diligence should follow a strict division of responsibilities among actors in the supply chain, where the first placer on the EU market of a commodity or product is responsible to ensure that it is deforestation-free, and that any operator downstream is able to check its origin via a robust chain of custody.

Legislative measures should focus on where most impact can be obtained and avoid duplication of administrative burden bringing huge costs on distributors offering many thousands of products from thousands of suppliers. Responsibilities should be in-line with well-established EU product regulation and supported by appropriate risk-based enforcement processes by Member States.

## **Specific comments to strengthen practicality and impact of the proposed measures**

### *Subject matter and scope (Article 1)*

The proposal sends a strong signal to market operators to increase the transparency of their supply chain for six commodities and related products. This reflects the approach of retailers and wholesalers who usually choose to focus on a few high-risk commodities in their horizontal commitments.

We ask further clarification:

- that products which are not listed in annex 1 but made with ingredients, or components do not require a due diligence statement. *For example, soy milk (commodity in scope) while product not in scope.*
- It should be clarified that for products of animal origin, geolocation of soy with which animals were fed is **not** required.
- Whether substances part of the production process, but not necessarily in the actual final product, are in scope.
- Whether packaging is in the scope
- Whether there is a minimum threshold (by weight/volume/value addition) for the presence of a



commodity in a product for the provisions of this regulation. If a commodity is only 0.5% by volume or weight in the product, would full traceability and proof of 'deforestation free' be required? (see example in annex)

### *Clear definitions (Article 2)*

For our sector, implementation of this regulation is only feasible, and will in general be more effective, if definitions are clear.

**(1) Deforestation** – The definition should be compatible with the definition of the Accountability Framework initiative which considers conversion of natural forests to timber plantation as “conversion”. In the proposal, however, conversion of natural forests to timber plantations is linked to forest degradation.

We consider it important to consider expanding the definition to grass land in the first review of the regulation.

**(2) Forest** - The definition used is the FAO definition, rather than the UNFCCC range definition adopted by producer countries. UNFCCC range definition would support a baseline applicable internationally.

EC's Impact Assessment does not consider the likely impacts of disregarding producer country definitions against the UN FAO definition. This brings risks in the implementation of the regulation by restricting market access by smallholders who have legally cleared land with sparse trees for other uses (agriculture, or timber plantation).

In addition, there is significant likelihood of reduced efficiency due to a greater administrative burden on businesses and producers to prove whether the agricultural land was converted from a forest meeting this definition, rather than a country definition.

The impact of the definition of forest should therefore be reviewed with appropriate foresters, scientists, wider stakeholders and considering both high volume producers of timber and forest risk commodities within EU and countries who experience high levels of deforestation or degradation.

**(6) Forest degradation** – We draw attention to the fact that this is a novel and untested definition that will impact the forestry and wood sector in particular.

We support including the concept of forest degradation in the proposal, however, considering widespread evidence of difficulties in practically applying this concept, this definition should be carefully reviewed to prevent unintended side effects.

As such, the definition should be clearly defined, unambiguous and universally acceptable, thereby effectively preventing the long-term reduction in the services and benefits of forests, while not excluding responsibly managed forests certified under voluntary schemes. There should be no room for individual member state interpretation of what 'forest degradation' means, while at the same time acknowledging local forestry management practices.

As a possible solution we suggest using more developed definitions, such as set out by the Accountability Framework Initiative. Further collaboration with technical international forestry experts (e.g. EFI, ITTO) on the practical implementation in producer countries where high levels of forest degradation have been reported, is needed.

**(8) 'deforestation-free** - As set out in recital 28 of the regulation, verifiable post-consumer recycled material should be excluded from the scope to support increased use of recycled material and the circular economy. This exclusion of recycled relevant commodities and products should be explicitly mentioned in this definition.

**(12) (13) definitions of 'operator' and 'trader'** – These definitions should differentiate the roles and responsibilities when placing a product on the EU market or when making it available. Article 6 point 5 makes the definition confusing, as a trader is be considered an operator due to its size only, hence we suggest this paragraph is removed.



## *Obligations and responsibility along the supply chain (Articles 4 and 6)*

**Systemic change in the sourcing of forest-risk commodities needs strong buy-in from the entire supply chain across the globe and our sector is ready to do its part.** Yet, in the proposal, retailers and wholesalers (that are not SME's) are **expected to meet the same obligations** as operators laid down under articles 4, 6, 8, 10 and, most notably, the information requirements listed in article 9. This is leading to a duplication of responsibilities and actions.

It should be noted however that depending on the commodity and/or product – retailers, and especially wholesalers, can act as importer as well as market actor later in the chain. Where they act as importers, they take on board these specific responsibilities. However, where they are an actor further down the chain meeting the same obligations as operators as defined in the proposal poses a real challenge and leads to duplication.

For our sector, the implementation of this regulation is only feasible, and will overall be more effective, through a **proportionate allocation of responsibilities along the supply chain**<sup>1</sup>. These responsibilities **should be assigned in line with commonly applied and generally accepted division between producers, manufacturers and importers in other EU product law**. As the proposal is currently set up, the duplication of efforts will result in a very high cost for distributors (as these will be redundant costs upstream the supply chain) which will increase consumer prices without added impact on preventing deforestation.

One model to follow is Art. 11 of the proposal for a General Product Safety Regulation<sup>2</sup> which states “*Before making a product available on the market, distributors shall verify that the manufacturer and the importer have complied with the requirements set out in Article x as applicable*”. Another option to follow the differentiated responsibilities of the EUTR between importers and traders.

Under article 6, and in line with long established EU product law, traders (distributors) can be responsible and liable for verification of the presence and conformity of the due diligence statements drawn up by the operator (producer, manufacturer, or importer) as first placer on the market. This will prevent national authorities receiving huge numbers of due diligence statements with the same information for the same product, thereby reducing the effectiveness and efficiency of the controls.

Certainly, retail and wholesale companies act as operators for their own brand products containing the listed commodities but have no influence on other manufacturer's product (A-Brands). They can work with their tier-1 suppliers, from whom retail and wholesale companies can ask additional information and assurance. In addition, retail and wholesale can act as importers for certain commodities and/or product. Where this is the case, they are prepared (as in other EU legislation) to take on board these responsibilities.

## *Due diligence obligations (Article 8, 9 and 10)*

The sector is committed and ready to continue to contribute to more sustainability. It is nevertheless important to ensure proportionality, especially for small and medium enterprises, and avoid overlap, duplication or divergence from national and EU Corporate Due Diligence laws.

The obligations as set in articles 8 and 9 go beyond due diligence requirements and in essence result in an obligation for full transparency of the supply chain without specifically requiring the transmission of information on production origin in the corresponding obligations under article 4.

Full traceability (including geo-location) is extremely complex and expensive and **should only be required for high-risk areas**. Further, for products comprising multiple components or ingredients, it is possible that many of them were harvested at different times and passed through different entities

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<sup>1</sup> [Blue guide](#)

<sup>2</sup> Proposal for a regulation of the European Parliament and of the Council on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council, and repealing Council Directive 87/357/EEC and Directive 2001/95/EC of the European Parliament and of the Council.



before reaching the specific end-product. It would therefore be challenging to trace all products back to the geo-location and time range of harvest. This would add additional expenditure to products originating from 'low-risk' countries and with no guarantee of full compliance.

**The first placer on the market of a commodity or product should be responsible to ensure that the commodity or product is deforestation-free. Following this, suppliers downstream should be able to check the origin of the commodity or product via a robust chain of custody<sup>3</sup>.**

This allows for a balanced risk management approach and prevents accumulation of similar administrative burden<sup>4</sup> to all subsequent actors in the supply chain. It would also minimize extra costs for consumer while still curbing EU-driven deforestation.

To make this happen, **a legal requirement to transmit production origin information throughout the supply chain from the operator to the final trader is needed.** First placers should be required to pass their due diligence statement reference number and information on country and source of production to their business customer, and each trader (including SMEs under Article 6) should have the same duty. Commercial product specifications could be used to transmit the information.

We express our concern on the need for data storage for 5 years which is very challenging taking account of the large number of titles (of products) to which this regulation applies.

To ensure feasible application of article 9:

- **We support a two-year exemption to providing geolocation information for products and commodities produced by smallholders.** Requesting this information from smallholders represents a significant administrative burden that many operators may not be able to meet without substantial support and can jeopardize the sustainability of farmers and their livelihoods as well as environmentally positive practices that these may promote.
- **To maximise efficiency,** we request the information requirements to **exclude products which contain only derivatives of the commodity in question.** A minimum threshold (by weight/volume/value addition) for the presence of a commodity in a product for the provisions of this regulation should be set. This should be reviewed at least every 5 years.
- For Low-risk countries, **operators should be allowed to first perform a risk assessment** based on information on the country of production, location information including the source reliability, validity, and links to other available documentation, before conducting further work to identify the geolocation.

### *Risk assessment and risk mitigation (Article 10)*

The due diligence obligations are based on risk assessment procedures that are not defined in the current proposal. To set up such systems in a timely manner, it is important to clarify on beforehand what is expected. Companies should be able to decide and develop their own procedures based on, e.g., existing guidelines and with the necessary flexibility to adapt it for a specific commodity or product.

The proposed regulation should seize the opportunity to include existing tools and learnings from the EUTR to help and support risk assessment and mitigation procedures. We specifically refer to the following tools which have proven to be beneficial:

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<sup>3</sup> process by which inputs and outputs and associated information are transferred, monitored and controlled as they move through each step in the relevant supply chain

<sup>4</sup> Cost estimates can reach xxx Euro for a large retailer



- Alignment with existing international standards and procedures (e.g., OECD Guidance<sup>5</sup>), UN Guiding Principles on Business and Human Rights<sup>6</sup> to ensure ease of implementation and avoiding duplication of obligations.
- Consider other best practice such as guidance by the WBCSD Forest Solutions Roadmap<sup>7</sup> and the Consumer Goods Forum Guidance on Forest Positive<sup>8</sup>, and due diligence.
- To consider, for example, the information sources and support of Global Forest Watch, fTrace.

Further to the obligations of operators in the supply chain the meaning of “**substantiated concern**” should be clarified (Article 10(i) and article 29). It is difficult to understand at what point the trader has enough proof to classify information as “substantiated” and to bring forward such a concern. A clear differentiation of duties between competent authorities and economic operators who cannot be required to conduct in-depth investigations and may infer on personal data, should be maintained. This should be coherent with provisions under the Corporate Sustainability Due Diligence.

We propose adjusting Article 10 (2) **to include the prevalence of illegal harvesting or practices** in the country of production and sub-national region, **as included in the EUTR**. Other criteria, such as violence against environmental defenders should also be added as indicative of significant pressure on the environment and threats to natural ecosystems in the country of production.

Lastly, Article 10 (2) j. **should expand the use of certification and third party-verified schemes** beyond RED II Directive 2018/2001 to avoid unintended green lane for schemes recognised under REDII.

**Third-party certification schemes should be recognised as contributing to a company’s due diligence system, including mitigation.** Their role shall not be undervalued as certification is an important criterion of compliance.

Even with an EU framework in place, third-party labels and certification schemes are necessary to inform the value chain beyond the first tier of suppliers. This hold especially true if the full potential of these schemes could be unlocked as part of the EU framework, for example by having EU recognised voluntary schemes for compliance to the legal requirements of this legislation.

As part of this, we would welcome and encourage continued improvement within certification schemes to ensure they continue to respond effectively to the changing policy to combat deforestation and degradation, including ensuring compliance with legislation.

### *Simplified due diligence (Article 12)*

In addition to a simplified approach for low-risk countries or parts thereof, it is worth exploring to extend simplified due diligence requirements to operators who already have in place rigorous internal verification and tracking systems, independent 3<sup>rd</sup> party assessments etc. and whose past performance proves an elevated level of compliance and confidence in their due diligence mechanisms.

As regards the need to perform the extensive obligations under articles 9 and 10, in case operators obtain or are “made aware of any information that would point to a risk”, we would like to point to the need to be coherent with the provisions under the Corporate Sustainability Due Diligence.

### *Controls (Article 14) and enhanced scrutiny (Article 20)*

Article 14 states that it is the authorities’ obligation to perform annual checks that cover at least 5 % of the operators and commodities, and to be intensified to 15% in case of high-risk operators or commodities (Article 20). This seems very ambitious and unlikely to happen considering the limited resources available at Member State level. Following good practice in other market surveillance regulation, and as mentioned in Article 14.3, we argue for **risk-based controls and to remove references to a minimum percentage.**

<sup>5</sup> [OECD Guidelines for Multinational Enterprises](#)

<sup>6</sup> UN Guiding Principles on Business and Human Rights

<sup>7</sup> [WBCSD Forest Solutions Roadmap](#)

<sup>8</sup> [Consumer Goods Forum guidance on Forest Positive soy and palm oil suppliers](#)





It should be noted that control requirements also impose a significant operational cost on the operators. Such costs arise from:

- a) The actual cost of the annual checks born by the economic operators.
- b) The logistical delays in the supply chain if up to 15% of the material need to be made available for checks annually. If unannounced, it is not possible to factor in such delays.

Under the EUTR, EuroCommerce members have faced inconsistencies in the enforcement and checks at national level. To prevent this a harmonised interpretation and implementation of legal requirements is needed which is easy to comprehend, implement and enforce along the supply chain. This also will help business to be compliant.

### *Market surveillance measures (Article 22)*

The proposal states that corrective action could lead to the withdrawing, recall and even destruction of the non-compliant commodity or product. We consider this disproportionate and further having a negative impact on the environment not in-line with the overall aim of climate mitigation measures.

Corrective action should also seek to rectifying sourcing practices, supplier contracts and due diligence measures, with penalties especially aimed at operators that fail to cooperate with the competent authorities, or repeatedly refrain from taking action.

### *Benchmarking System (Article 27)*

We **welcome and support the proposed benchmarking system** to help identify the risks of deforestation, which can assist achieving structural changes in supplier countries. The possibility to apply it to regions within a country will further support those regional governments that set up appropriate rules and enforcement systems. The system should be aligned with CDP Forest<sup>9</sup> and other initiatives.

It is important that the benchmarking assessment is **put in place as soon as possible and ready to be implemented when the Regulation enters into force**, allowing European companies to know which information they need to provide to comply. A delay in setting this benchmarking system may force some companies to withdraw from low-risk regions, if not recognised as such, as they would not be able to provide sufficient information.

It is equally important that the system is updated at regular intervals.

### *Cooperation with producing countries – notion of improvement (Article 28)*

We **support the leadership by the European Commission to engage in further cooperation to address deforestation in parallel to its negotiation on trade policy**. However, the proposed regulation sets a cut-off date on 31 December 2020, meaning that no commodities or products in the scope of this Regulation would be allowed to enter the EU market if they are produced on land subject to deforestation after this date. As an import ban and a due diligence legislation both follow the same goal, to implement both simultaneously is unnecessary and disproportionate.

We see a risk that the proposal as it stands could result in operators cutting out suppliers at risk for deforestation rather than investing in solutions to bring them into compliance. Hence, instead of applying a cut-off date, we suggest the notion of improvement is included in the proposal to help and provide incentives for producers to halt deforestation.

As such, to prevent local operators shifting their deforestation impacts to other commodities and markets, the Commission should **implement its obligation to establish ‘structured dialogue’ and partnerships with producer countries, before this proposal enters into force**.

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<sup>9</sup> <https://www.cdp.net/en/info/about-us>



## ANNEX

### Key learnings from our long-standing experience on responsible supply chain management initiatives

We ask the following points to be recognised and addressed for successful implementation:

- Commit to a long-term vision and efforts to tackle global deforestation.
- Recognise that access verifiable and reliable information at the source is a lengthy and complicated process.
- Provide a smart mix of tools to support commitments by all actors of the food, non-food, and wood supply chain.
- Incorporate existing voluntary and mandatory tools, including internal policies, standards certification and verification schemes.
- Set customized, flexible measures and timelines for the various commodities.
- Adopt multi-stakeholder solutions based on a process of continuous improvement by learning.
- Establish partnerships and cooperation agreements with producing countries, regions, producers.
- Facilitate harmonised implementation across member states to support a level playing field.
- Ensure consistency with other existing and upcoming legislation especially in relation to corporate social responsibility and to forests (such as LULUCF, Farm to fork, taxonomy, etc).
- Ensure feasibility and practicality of the implementation.
- Provide standards to guide supply chain engagement processes.
- Ensure appropriate scale and speed of support to producer countries to address the impact of the regulation.
- Align with other reporting obligations relevant for businesses, such as the Sustainable Corporate Governance proposal or CDP Forest.

Countries of origin for ingredients using the example of a muesli bar

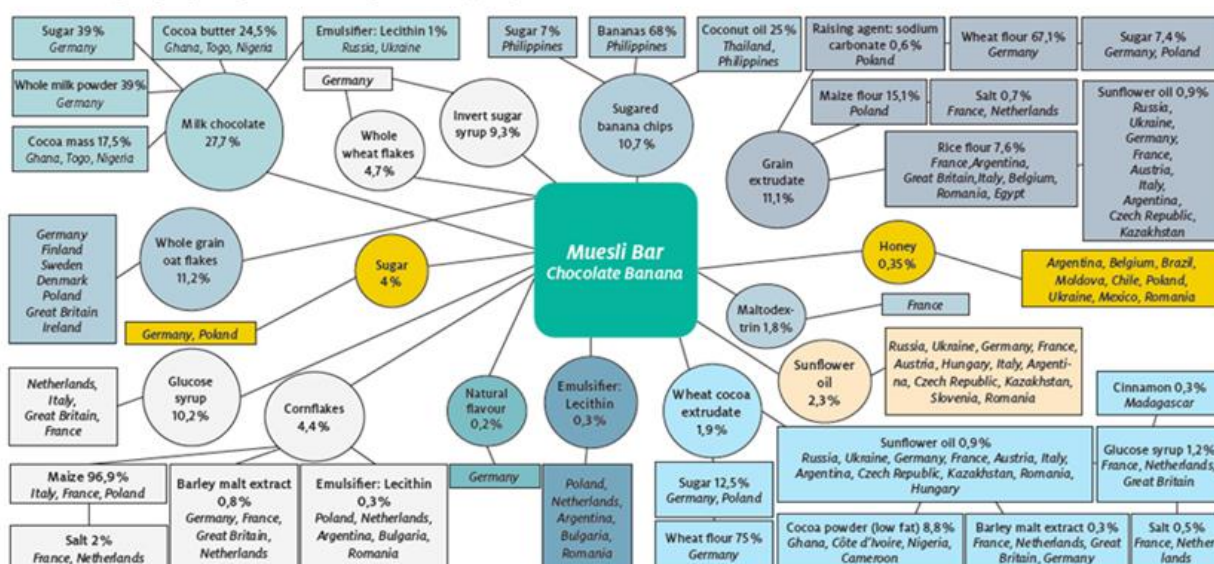


Illustration: Bundesverband des Deutschen Lebensmittelhandels (BfVH)





## Examples of multi- stakeholder fora

<b>Global</b>	<ul style="list-style-type: none"> <li>• <a href="#">CGF Forest Positive</a></li> <li>• The Tropical Forest Alliance (TFA)</li> <li>• Partnerships with NGOs (WWF)</li> </ul>
<b>Region</b>	<ul style="list-style-type: none"> <li>• <a href="#">Statement of Support for the Cerrado Manifesto</a></li> <li>• EU Multi-Stakeholder Platform on Protecting and Restoring the World's Forests</li> </ul>
<b>Cattle</b>	<ul style="list-style-type: none"> <li>• The Global Roundtable for Sustainable Beef (GRSB)</li> <li>• The European Roundtable for Sustainable Beef (ERSB)</li> </ul>
<b>Palm oil</b>	<ul style="list-style-type: none"> <li>• <a href="#">Palm Oil Transparency Coalition</a></li> <li>• The Roundtable for Sustainable Palm Oil (RSPO)</li> <li>• ProTerra Foundation (Brazil focused)</li> <li>• The Retailer Palm Oil Group (RPOG)</li> </ul>
<b>Soya</b>	<ul style="list-style-type: none"> <li>• The Round Table for Responsible Soy (RTRS)</li> <li>• The Retailer Soy Group (RSG)</li> <li>• Donau Soja Organisation</li> </ul>
<b>Wood</b>	<ul style="list-style-type: none"> <li>• FSC</li> <li>• PEFC</li> <li>• FLEGT Action Plan and Voluntary Partnership Agreements</li> <li>• Timber Regulation compliance</li> </ul>
<b>Coffee</b>	<ul style="list-style-type: none"> <li>• Sustainable Coffee Challenge</li> <li>• The Hub</li> <li>• Rainforest Alliance</li> </ul>
<b>Cacao</b>	<ul style="list-style-type: none"> <li>• UTZ label</li> <li>• Rainforest Alliance</li> <li>• National platforms: Beyond Chocolate, DISCO, SWISCO, GISCO <a href="https://www.idhsustainabletrade.com/sectors/cocoa/">https://www.idhsustainabletrade.com/sectors/cocoa/</a></li> </ul>

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