

## **STAKEHOLDER ENGAGEMENT WORKSHOP ON THE LEGAL REQUIREMENTS FOR COCOA PRODUCTION AND TRADE IN GHANA**

### **Meeting Report**

**Date:** July 3, 2024 **Time:** 9:00 AM - 1:00 PM **Venue:** AH Hotel, Accra

### **1. Introduction**

This report summarizes the stakeholders' meeting on the legal requirements for cocoa production and trade in Ghana, held on July 3, 2024. The meeting, organized by TaylorCrabbe Initiative (TCI), focused on presenting initial findings on the EU Deforestation Regulation (EUDR) legal requirements and due diligence challenges. Attendees included representatives from Ghana Cocoa Board (COCOBOD), industry, civil society organizations, and cocoa farmers, who provided feedback on the findings. (A list of attendees is attached as **Appendix 1**)

### **2. Opening Remarks**

The meeting began with opening remarks by Mr. Michael Amoah, COCOBOD's Deputy Director of Research & Development. He summarized the steps COCOBOD and the Forestry Commission have taken to ensure cocoa cultivation complies with the EUDR and emphasized the importance of the gathering in discussing the alignment of Ghana's legal framework with the EUDR requirements and supporting stakeholders in meeting these obligations.

Fabienne Yver, Technical Advisor on Sustainable Cocoa at the European Forest Institute (EFI), provided an overview of the EUDR and detailed EFI's role in supporting Ghanaian stakeholders in complying with the regulation. (A copy of the presentation is attached as **Appendix 2.**)

### **3. Presentation Of Findings**

Clement Kojo Akapame and Albert Agyepong from TCI presented their initial findings, outlining the assignment's objectives and deliverables. They clarified that the EUDR's scope of legality aims to ensure compliance with existing local laws, not drive legal reform. Therefore, stakeholders are only expected to comply with requirements already enshrined in law. They demonstrated the methodology they adopted in their study, highlighting how the work started from the broader cocoa legal framework before narrowing it into the relevant applicable laws. They invited the stakeholders to provide feedback and comments on the findings. The feedback is categorized as follows:

### ***1. Clarification on the Scope of EUDR***

A question was raised regarding whether COCOBOD's jurisdiction extends to cocoa derivatives as outlined in Annex I of the EUDR. A government stakeholder clarified that the EUDR considers the origin of production for both cocoa and its derivatives. For compliance with traceability standards, sellers must provide the geolocation of the original plant for each product. Consequently, COCOBOD is indirectly responsible for cocoa derivatives, as it may need to supply geolocations and other relevant details of cocoa trees and pods produced in Ghana.

Another question concerned the scope of fertilizers and agrochemicals and whether they fall within the EUDR's purview. According to a government stakeholder, fertilizers and agrochemicals are regulated by Ghana's legal system rather than the EUDR. Currently, the EUDR does not monitor these inputs, though this may change following future reviews.

[Editorial Note: For clarification, fertilisers and pesticides, contrary to the statement made, fall within the environmental protection requirement under the EUDR.]

### ***2. Scope of legality***

In response to the presentation, several stakeholders expressed a desire to include additional aspirational areas of concern, such as Free, Prior and Informed Consent (FPIC), mining and international human rights. The presenters clarified that the EUDR references relevant applicable laws, which pertain specifically to cocoa farming, production, and sale. The explained that FPIC is currently not applicable in this context, as Ghana has no laws

requiring FPIC for cocoa production. Similarly, mining falls outside the EUDR's scope. Regarding international human rights laws, the presenters noted that these are only applicable if they have been incorporated into domestic law, given Ghana's status as a dualist state.

The presenters recommended that the issues not currently deemed relevant to cocoa production represent an opportunity to advocate for legislative and policy reform nationally and, secondly, for their inclusion in the EUDR during its next review.

### ***3. Land Use***

The stakeholders agreed that there was minimal concern regarding cocoa farms outside forest reserves, as most of these farms are situated on legally acquired land and are considered low-risk areas. The presenters reiterated that the absence of documentary evidence of customary land rights related to these farms was not an indication of illegality and non-compliance with the EUDR.

The stakeholders acknowledged that cocoa from admitted farms posed a high risk, given the potential for boundary encroachment. This uncertainty about whether the cocoa originated from a permitted area or an encroached area heightened the risk.

TCl presented findings from a preliminary interview with the Forest Commission, revealing that the Reserve Commissioner's report included the names and sizes of admitted farms but omitted their specific locations. However, the stakeholders indicated they had encountered schedules within the Reserve Commissioner's report that provided the exact coordinates of admitted farms. TCl requested copies of these reports to address better concerns related to land use.

### ***4. Environmental Issues***

Several stakeholders suggested that environmental concerns should be included as a key area of focus. They proposed incorporating issues such as biodiversity conservation, pesticide use, and wildlife management into the due diligence system.

### ***5. Child labour***

The presenters inquired about how farmers address issues of child labour and verify the ages of their workers. Some farmers present at the meeting stated that they ensure workers are of legal working age by inspecting national identification cards, such as Voter's Identification and Ghana Cards, with the presumption that the information on these documents is accurate. They are aware of the regulations regarding permissible work for children.

The presenters noted that child labour is an area of concern because it has always been an issue in agricultural supply chains. Specific to cocoa, the problem is not with farmers directly engaging children; the issue is with farm hands (who are of age) engaged by the farmers bringing their children to work on the farms. COCOBOD has a national monitoring system to monitor the use of children by employees. This makes child labour a due diligence concern as farmers will struggle to demonstrate compliance.

### ***6. Workers' rights***

The presenters explained that workers' rights encompass all aspects, from recruitment to contract termination. Most cocoa farmers in Ghana are subsistence farmers and do not operate on large scales. As such, the labour requirements are not strictly complied with. Stakeholders expressed concerns about the ability of smallholder farmers to prove compliance, as many may not maintain proper employment records because most workers on cocoa farms are hired through oral contracts, with no written evidence of the terms and conditions of service. The absence of compliance records does not automatically indicate illegality. There is no law mandating farmers to maintain a database of employees, so the lack of such records does not conclusively prove the presence of forced labour. Farmers are responsible for ensuring that the rights of their contracted workers are respected. This makes workers' rights an area of concern for due diligence.

### ***7. Taxes, Trade, Customs and Anti-Corruption***

There was a discussion on taxes, trade, customs and anti-corruption. The presenters noted that there are no tax concerns for cocoa production because it under Ghanaian law the production of cocoa was tax-free. As regards trade, the law was clear that only a licenced

buying company could trade in cocoa. This requirement is complied with and documented and is not a legality concern for.

#### 4. Findings and Recommendations

During the discussions, stakeholders made several key observations. Firstly, there was confusion between the legality and deforestation requirements of the EUDR, highlighting the need for further training and capacity building to clarify these distinctions. Secondly, there was a misconception that the EUDR's legality requirement aims to address legal gaps and drive legislative reform, influencing some stakeholders' perceptions and expectations.

Stakeholders also agreed that the Ghanaian legal framework includes detailed requirements in most of the areas of law listed in the EUDR, some of these requirements are not applicable to small-scale cocoa farming. The relevant Ghanaian legal requirements to determine the legality of cocoa are thus concerned with four key issues: land use, child labour, environmental concerns, and workers' rights. Therefore, they concluded that the focus of the due diligence system should be directed towards these specific issues rather than the broader legal framework.

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