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BusinessEurope Feedback on European Commission's proposal on a ban of forced labour products from the EU market

The European business community fully condemns, and rejects forced labour. This is a serious human rights violation and is, as such, part of the broader discussion on human rights due diligence and needs to be reflected in the different initiatives undertaken by the EU, including the Corporate Sustainable Due Diligence Directive. In this regard, we generally welcome the European Commission's proposal for a "*Regulation on prohibiting products made with forced labour on the Union market*". Based on our assessment of the proposal, we would like to further clarify certain elements of the proposal as well as raise some broader concerns. You may find our feedback below. We hope that you will find useful in the context of the currently ongoing legislative process.

Relationship with other EU legislative instruments and initiatives

It is important to further clarify the relationship between the Regulation on prohibiting products made with forced labour on the Union market and other EU Initiatives, such as the Corporate Sustainability Due Diligence Directive). We understand that the former is in effect a "marketing ban", a Regulation that focuses on the placement of products, while the latter aims at establishing a framework of mandatory due diligence, ensuring that companies have in place management systems to identify, assess and address risks in supply chains, including in the area of forced labour. However, it is not clear how the two will work together in practice, since there are clear due diligence elements included in the forced labour proposal. A concrete question in this respect is how the efforts of companies that are under the scope of the Corporate Sustainability Due Diligence Directive will be recognised in the process of the implementation and enforcement of the Forced Labour Regulation. Therefore, further clarifying Art. 4.6 of the proposed Regulation, especially when it comes to the obligations of economic operators, is critical. This is important to avoid duplications and additional administrative burden and costs for companies.

As the Regulation focuses on the placement of products on the market, it is crucial that it does not undermine the very notion of placing a product on the market under the New Legislative Framework for products (NLF). The new rules should not bring uncertainty around the harmonised market of goods, there should also be clarity in terms of powers between market surveillance authorities and customs authorities which are addressed in Regulation (EU) 2019/1020.

Implications for the Single Market

It must be ensured that the proposal does not undermine the architecture of free movement of goods and services based on the New Legislative Framework for products (the NLF package of 2008) that has been working well for decades and allowed to make the Single Market a trading area of the safest products on the globe.



Moreover, the relationship between the proposed Regulation and the existing national legislation that protects against forced labour should be better clarified to avoid fragmented application. The proposal states that it is national competent authorities that will be in charge of the implementation and enforcement of the Regulation and that the Commission's role will be supportive, for instance by providing guidelines, creating a database and facilitating coordination among Member States. The Regulation also states that Member States will be developing rules on penalties to be administered in cases of non-compliance, in accordance with national law. How will different approaches to implementation and enforcement among Member States be addressed to avoid fragmentation in the Single Market?

BusinessEurope suggests that the decentralised implementation and enforcement model is fully aligned with responsibilities of market surveillance authorities and customs authorities as defined in Regulation (EU) 2019/1020 (notably, its chapters III to VII). Moreover, a good use of schemes of cooperation between the public authorities and economic operators under Article 9 thereof shall be ensured, which would lead to both consistency in implementation and dialogue on any challenges in this regard.

A concrete request from the European business community also concerns the timelines foreseen under the investigation process. We believe that the time required for companies to provide evidence – which currently stands at 15 days, during the preliminary phase of the process and an additional 15 days in the second phase of the investigation – should be longer.

In a similar manner, the 30-days period offered to companies to withdraw products that are in violation of the Regulation, may be too short. Moreover, more clarity is required on how the withdrawal process would take place in practice, including how the products should be destroyed, in case this is required. There are concerns about possible incompatibilities with existing legislation, including the Waste Framework Directive, as well as the proposal for the Ecodesign for Sustainable Products Regulation.

There is also the question of proportionality when it comes to the decisions and their implementation. How to deal with situations where a small component of a complex end product is found to be produced with forced labour? Would the entire end product have to be withdrawn from the market? There should be a due consideration of the costs, feasibility and potential disruptions in supply chains and the Single Market.

Implications for international trade

Finally, from an international relations and global trade perspective, this proposal will also have implications for trading partners, which may perceive the proposal as an assertive instrument, meant to protect EU interests only. The fact that the Commission's proposal is based on international standards (ILO) is positive. It is also welcomed that it highlights the need for international cooperation to tackle forced labour in global value chains. However, the proposal, together with other EU Initiatives, including the Corporate Sustainability Due Diligence Directive and the Regulation on Deforestation, is expected to have a cumulative impact on trade.



On the one hand, EU companies will be required to abide by conflicting legislations (EU legislation versus foreign jurisdictions), therefore facing an unlevel global playing field. On the other hand, there is also a concern that, in some cases, companies may withdraw from a high-risk market, especially in cases where forced labour is associated with actions sponsored by States, and where obtaining information relevant for the implementation and enforcement of the EU Regulation may be challenging, or impossible. This runs contrary to the objective of the Regulation to address forced labour in supply chains. It is a core belief of European businesses that continuous engagement, building trust with partners and our ability to use our leverage can make a change on the ground.

These challenges, at the very least, require more coordinated efforts from the part of the EU to reach out to trading partners, increase awareness, explain how the proposed Regulation will work in practice and how the EU can help its partners reduce risks related to forced labour. How will the EU concretely work towards this direction? Moreover, how does the EU plan to pursue a dialogue with counterparts such as the U.S., which have recently applied legislation in this field? Given that approaches among trading partners may differ, how could coordination be enhanced to avoid additional legal uncertainty and potential disruptions in supply chains?

Need to develop guidelines as soon as possible

The proposal states that the Commission, no later than 18 months after the entry into force of the Regulation, will issue guidelines to facilitate implementation and enforcement. Although this timeline suggests that the guidelines will be ready before the Regulation is applied (24 months after its entry into force), it is crucial that guidance is published the earliest possible – preferably already at the entry into force of the Regulation – to allow for the better preparation of competent authorities, customs authorities and economic operators alike. This is especially important as implementing the Regulation will imply additional costs for both authorities and companies. It will also require a deep understanding of the risks related to forced labour, exposure to those risks and their severity in order to develop an effective approach to implementation and enforcement.

We understand that work on the future guidelines and the database on forced labour risks has started already. How would existing and under design instruments, such as those developed by the ILO on forced labour or the OECD Guidance for Multinational Enterprises, be used by the European Commission? Both national authorities and economic operators will count on reliable information that will help them comply with the EU Regulation. In this respect, the credibility of the sources used to develop the European Commission's guidelines and database is critical.