

“Effectively banning products produced, extracted or harvested with forced labour” – Call for Evidence

We thank the Commission for the opportunity to participate in the call for evidence concerning the the upcoming initiative on effectively banning products produced, extracted or harvested with forced labour. At the CSD meeting on 9 June the Commission said that they would welcome comments on the call for evidence in any form. This paper is the EuroCommerce response to that call for evidence.

Key points

- **Our sector is committed to sustainability and being part of the solution. It is involved in multiple voluntary initiatives and responsible business agreements, including ensuring respect of human rights and the environment. These and other initiatives are described on our website www.eurocommerce.eu; sustainable-commerce.com**
- **The use of forced labour is not acceptable, be it inside or outside the EU. We fully support the aims of the fundamental ILO Conventions No. 29 and 105 and the global commitment to eradicating forced labour by 2030 (Sustainable Development Goal 8.7)**
- **Any legislative measure should provide for market measures rather than stopping consignments at customs. If nonetheless the Commission proposes a customs-based solution, there should also be a clear time-limit by which a decision is taken on whether the consignment can be released. This includes a timeline for gathering evidence to refute claims.**
- **It will be important that any legislative measure is consistent with the provisions of the proposal on corporate sustainability due diligence (CSDD), and not seek to extend its scope and coverage.**
- **The legislation should have clear criteria and explicit processes for deciding on which products are affected, and require a published explanation of why they are applied to a specific product.**
- **The measure should provide for maximum harmonisation to ensure consistency between member states on applying these, and the Commission may wish to consider a Regulation.**
- **Reversal of the burden of proof will be particularly onerous on SMEs. These will need clear exemptions as in CSDD and not have obligations imposed on them which they are simply not equipped to fulfil. The Commission should ensure that the measure is consistent with the SME Act.**
- **Civil (or even criminal) liability should be only applicable if there is evidence of wilful negligence by a company.**
- **We regret that the normal requirements of better regulation in terms of an impact assessment and proper consultation with the usual deadlines have not been observed in the preparation of this initiative.**

Background

European retailers and wholesalers condemn all forms of forced labour, be it inside or outside the European Union, and welcome initiatives that contribute to its abolition. Our sector has long been committed to be part of the solution and has been involved in setting measurable and transparent actions such as:

- Organisations' own voluntary due diligence measures against violations of human rights and the environment, accompanied by responsible business agreements with outside bodies.
- Developing and participating in corporate schemes focused on improvements in human rights in specific commodities and regions.
- Cooperation among companies to tackle human rights and environmental challenges
- Commitments to carbon neutrality.

General comments

We acknowledge the Commission initiative in holding a CSD workshop on 9 June. However, in the absence of a concrete proposal it is difficult to make a comprehensive assessment or very detailed contribution to the initiative.

In this context, we acknowledge that the EU has published [Guidance on due diligence](#) to help EU companies address the risk of forced labour in their operations and supply chains in 2021 as well as the [Communication on Decent Work Worldwide](#) earlier this year.

EuroCommerce regrets nonetheless that this important initiative is to be adopted on a very short timescale after many years of the issue of forced labour having been on the agenda. It is particularly regrettable that it not accompanied by a fully-fledged public consultation process and impact assessment.

On this basis we would offer the following comments:

- The use of forced labour is not acceptable, be it inside or outside the EU. We fully support the aims of the fundamental ILO Conventions No. 29 and 105 and the global commitments to eradicating forced labour by 2030 (Sustainable Development Goal 8.7) in this respect.
- We believe it is pivotal that the EU enhances the dialogue with partner countries to support the effective ban of forced labour.
- EU trade-related initiatives so far follow an incentive-based approach which has proven to be effective, such as the sustainability provisions in GSP+ and the Trade and Sustainability Chapters in modern EU trade agreements, and we believe that punitive measures should be a last resort.
- Retailers and wholesalers are at the end of the supply chain, selling products to businesses or consumers. The due diligence measures recognise that it is not possible or practicable for a retailer or wholesaler to go beyond checking that its Tier 1 supplier has applied due diligence with other parts of the supply chain, or duplicate checks already carried out by others. This is a particular concern for SMEs, which we understand from the CSD meeting, would be covered by the legal obligations of this proposal. We would remind the Commission of the SME Act and its obligation to carry out the SME Test on any proposal of this sort.
- If a marketing ban is imposed on a product due to forced labour allegations, in the absence of wilful negligence and if the company has in place a robust due diligence system aligned with Directive on corporate sustainability due diligence, companies should not bear the costs of the ban.
- The Commission should help to facilitate collaboration between companies if products are produced with the use of forced labour.
- If a product is identified having been produced under forced labour conditions should the trader terminate the relationship, or would there be scope for putting pressure on the supplier to improve the working conditions?

- A marketing ban of products should also be accompanied by transparent criteria for establishing that their production involved forced labour and public explanation of how these have been applied. The measure should include a clear timetable for companies to show that they have applied appropriate due diligence to establish whether products were produced by forced labour.
- This initiative should be coherent with the EU Strategy for Sustainable and Circular Textiles which tackles destruction of unsold textiles.
- Does the Commission envisage creating a traceability standard to enable better visibility in global supply chains?
- Experience from the US and Canada has shown major shortcomings in terms of consistency, transparency and legal uncertainty in a customs-based approach, with no timescale for deciding on the status of consignments held up, or explanation when they are released. This is not a model the EU should follow.
- The intention to leave the implementation to Member States risks inconsistent implementation and application by Member States with differing authorities' competences, and we would ask for maximum harmonisation or a regulation.
- It is important to ensure that any measure is not discriminatory under WTO rules and to minimise the risk of retaliation by third countries. It should also address abuses within the EU with the same criteria.
- The European Union has introduced and is working on several initiatives to which require due diligence action from companies. The initiative on banning products involving the use of forced labour should be coherent with these proposals and not lead to a duplication of reporting or extend the scope of the CSDD beyond that decided by co-legislators, and ensure that obligations are designed to be able to be fulfilled by those on whom they are imposed, particularly SMEs.

About EuroCommerce

EuroCommerce is the principal European organisation representing the retail and wholesale sector. It embraces national associations in 27 countries and 5 million companies, including leading global players and many small businesses. Over a billion times a day, retailers and wholesalers distribute goods and provide an essential service to millions of business and individual customers. The sector generates 1 in 7 jobs, offering a varied career to 26 million Europeans, many of them young people. It also supports millions of further jobs throughout the supply chain, from small local suppliers to international businesses. EuroCommerce is the recognised European social partner for the retail and wholesale sector.

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