

Position paper on proposed European Commission proposal for a regulation on prohibiting products made with forced labour on the Union market

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Introduction

The European Cocoa Association welcomes the proposed Regulation on prohibiting products made with forced labour on the Union market. The cocoa industry is fully committed to address human rights issues in the cocoa production. Forced labour is a rare occurrence in the cocoa sector and one that the Members of the European Cocoa Association condemn in the strongest possible terms. If identified in their supply chain, the Members of the European Cocoa Association report such cases to local law enforcement authorities in cocoa producing countries who have the power to bring any perpetrators to justice.

Scope

The European Cocoa Association shares the belief that products verifiably made with forced labour should not be sold on the EU market and therefore agrees with the European Commission's approach of having this Regulation apply to all companies regardless of size or turnover.

Identifying forced labour

The cocoa supply chain is one that is characterised by the large number of smallholder farmers that are dependent on access to the EU single market. Worldwide, roughly 95% of cocoa is farmed by smallholders.¹ The Members of the European Cocoa Association have taken significant efforts to identify, and address forced labour issues through their due diligence systems. Despite these efforts, isolated cases of forced labour do occur in the cocoa supply chain, largely due to factors that are not within the control of individual companies, such as the level of law enforcement. This approximately affects less than 0.4% of adults working in cocoa in Ghana and Côte d'Ivoire and less than 1% of children living in cocoa growing areas in these countries.²

¹ Globally, smallholders are considered to have less than 5 hectares of land while in Ghana and Côte d'Ivoire the majority of smallholders operate on less than 3 hectares. Of the roughly 5 million smallholder farmers in cocoa, 2 million are in these two countries.

² [Forced labour in cocoa, International Cocoa Initiative](#)

The Regulation aligns the definition of 'forced labour' with the definition laid down in ILO Convention No. 29 and specifies that it includes 'forced child labour' (art. 2 (a)). However, the Regulation does not define the 'forced child labour' concept to bring it in line with the ILO Conventions relevant thereto. The European Cocoa Association recommends that for legal certainty, art.2 (a) of the Regulation makes reference to Point A of Article 3 of ILO Convention on the Worst Forms of Child Labour Convention (No. 182).

Enforcement

The European Cocoa Association welcomes the risk-based approach that competent authorities will have to follow. Given the non-systemic nature of forced labour in the cocoa sector, a risk-based monitoring approach is appropriate. Operational tools provided by the competent authorities, including the database on forced labour risk areas or products, should minimise the administrative burdens on operators. Consequently, the European Cocoa Association believes that scale and/or geographic areas presenting the highest risk should be prioritised.

In addition, duplication with the obligations flowing from the proposed Directive on Corporate Sustainability Due Diligence should be avoided. Furthermore, the extent of information to be provided during an investigation to competent authorities under Article 5(3) will need to be clarified, specifically in the case of agricultural sectors composed of millions of smallholder farmers.

The European Cocoa Association welcomes the fact that the Regulation in its recitals (recital 26) explicitly places the burden of proof on the competent authorities of establishing that forced labour has been used in a particular case. However, for legal certainty, such fundamental principles should also be made explicit in the text of the Regulation itself.

While welcoming the system of a preliminary investigation prior to the initiation of an investigation under Article 5, the European Cocoa Association would like to obtain clarity on how operations could be affected throughout the duration of a (preliminary) investigation.

In addition, and to allow for enhanced legal certainty, decisions taken by competent authorities should be taken within a strictly defined period of time from the date an investigation was initiated.

Furthermore, the decisions, on a possible violation of the prohibition of products made with forced labour, taken by competent authorities under Article 6, should apply exclusively to a

specific shipment and operator, and only in the event of actual and verified cases of forced labour.

To avoid undue costs on the side of operators, competent authorities should take the utmost care to prevent situations in which companies' operations are disrupted as a result from the suspension of the release for free circulation. Consequently, this suspension should only be applied in case of well-motivated serious and specific concerns related to a specific shipment of products.

The European Cocoa Association welcomes the proposal for a complaint mechanism, as this is an important step to allow stakeholders to raise their concerns. At the same time, the legislation should ensure that these provisions are accompanied with clear requirements on substantiated evidence and control mechanisms, so that they do not expose competent authorities and companies to excessive investigations.

Uniform application

In order to ensure the most effective and equal implementation of the proposed Regulation, the European Cocoa Association would like to underline the importance of extensive cooperation among competent authorities.

Consequently, the Members of the European Cocoa Association welcome the proposed establishment of the 'Union Network Against Forced Labour Products' and calls for this network to identify discrepancies between enforcement at the level of different EU Member States, including by ensuring that sanctions in case of non-compliance are uniform across all EU Member States.

In addition, this Network should be enabled to provide recommendations to the European Commission and the European External Action Service (EEAS) to address identified systemic cases of forced labour in third countries or within the European Union itself.

Sector-specific guidelines

The European Cocoa Association welcomes the inclusion of guidelines in the proposed Regulation. These guidelines should be published as soon as possible, and preferably at least 12 months before the date of application.

In addition to risk indicators and the facilitation of the competent authorities' implementation of the Regulation, guidance should also be provided for agricultural sectors that are almost exclusively composed of smallholder farmers in non-EU countries.

Consequently, operators with due diligence systems recognised as sufficiently effective by competent authorities should be classified as low risk and treated accordingly, as per the provisions in Recital 22. These provisions should also be reflected in the actual text of the Regulation.

Enabling environment

For the legislation to deliver optimal results, the provisions as proposed should be combined with strong and ambitious cooperation with producing countries, to underpin the development and enforcement of appropriate national laws and policies. Companies rely on producing countries to strengthen their governance and thereby gradually create an enabling environment for sustainable cocoa production.

Local enforcement of existing regulations in origin countries, along with the provision of support services for any identified victim of forced labour, is key to achieve positive change in cocoa producing countries. Stronger advocacy and support from the EU authorities are therefore needed to incentivise partner countries through trade preferences and development cooperation to develop, implement, and enforce relevant laws and policies that effectively address the practice of forced labour.

Hence, the EU must consider as a priority the negotiation of partnership agreements with producing countries, coupled with the necessary significant financial incentives, to ensure consistency between EU legislation and existing local legislation or standards (such as the African Regional Standard for Sustainable Cocoa (ARS)).

Conclusion

To effectively address the issue of forced labour in supply chains, the creation of a supportive enabling environment, in which risk factors for forced labour are addressed, is imperative. The European Cocoa Association is looking forward to engaging with the co-legislators in ensuring that the proposed Regulation is fit for purpose and implementable.