

ICI summary: European Commission proposal for a regulation on prohibiting products made with forced labour on the Union market

23 September 2022

On September 14th 2022, the European Commission presented its proposal for a [EU Regulation on prohibiting products made with forced labour on the EU market](#). The initiative of such a proposal had been made by President of the EU Commission Ursula von der Leyen in her State of the Union Speech a year ago. In the meantime, references to such a proposal were included in the [EU Communication on Decent Work Worldwide](#) as well as the [EU Commission's proposal for a Directive on Corporate Sustainability Due Diligence](#), both announced on February 23rd 2022.

The Regulation proposal builds on the recommendations made by stakeholders as part of the call for evidence launched by the European Commission between May 23rd and June 20th 2022, in which ICI participated.

This document offers a summary of the main elements and next steps relevant to the cocoa sector.

Main elements of the legislative proposal

Instrument	<ul style="list-style-type: none"> • Regulation, to ensure uniform enforcement across the EU and avoid unfair trading conditions. <i>(Regulations have general application, meaning that they become entirely and immediately enforceable as law in all EU Member States simultaneously. In contrary, Directives, such as the Corporate Sustainability Due Diligence Directive proposal introduced in February 2022, are binding as to the result to be achieved but leave the choice of form and methods to the Member States)</i>
Objective	<ul style="list-style-type: none"> • Effectively prohibit the placing, making available on the EU market and the export from the EU of any products made with forced labour, including forced child labour.
Scope	<ul style="list-style-type: none"> • Products made in the EU and imported products, of any provenance (excl. services) • Concerns all economic operators (incl. SMEs) yet following a risk-based approach (see section on proportionality).
Enforcement	<ul style="list-style-type: none"> • Implementation lies with competent authorities designated by Member States. • Customs authorities primarily act based on the decisions issued by the Member States' competent authorities, to identify and stop products made with forced labour. • Risk-based enforcement framework: competent authorities are advised to focus their efforts where the risks of forced labour are most prevalent, and where the impact is likely to be largest (estimated to be primarily on larger economic operators at early stages of the EU value chain).
Investigation	<ul style="list-style-type: none"> • Competent authorities initiate an investigation where they establish that there is a substantiated concern of violation of the prohibition. • When an investigation is initiated, competent authorities should inform the economic operator subject to the investigation within 3 working days.

	<ul style="list-style-type: none"> • Before initiating an investigation, competent authorities should request from the operator information on the actions taken to mitigate, prevent and bring to an end the risks of forced labour. • Where requested to do so, economic operators under investigation shall submit any information that is relevant and necessary for the investigation, incl. information identifying the products. • Economic operators shall respond to the request of the competent authority within 15 working days from the day they receive such request.
Proportionality	<ul style="list-style-type: none"> • In their assessment of the likelihood of the violation of the prohibition, competent authorities should focus on where the risk of forced labour is likely to occur and take into account the size and economic resources of the economic operator, the quantity of the products concerned as well as the scale of the suspected forced labour.
Burden of proof	<ul style="list-style-type: none"> • Competent authorities should bear the burden of establishing that forced labour has been used at any stage of production, manufacture, harvest or extraction of a product. • Economic operators should have the opportunity to provide information in their defence to the competent authorities through investigation.
Decision	<ul style="list-style-type: none"> • Where competent authorities establish a violation, they shall without delay prohibit to place or make the products concerned available to the EU market, to withdraw the relevant products from the EU market that have already been placed or to dispose of the products. <ul style="list-style-type: none"> • In that decision competent authorities should state the findings and related information of the investigation and set a reasonable time within which the economic operator should comply with the decision, as well as information allowing for the identification of the product to which the decision applies. • Economic operators should have the possibility to request a review of the decision after having provided new information showing that it cannot be concluded that the relevant products have been made with forced labour. • Where competent authorities cannot establish a violation, their investigation shall be closed.
Penalties	<ul style="list-style-type: none"> • Member States shall lay down the rules on penalties applicable to non-compliances. They shall be effective, proportionate and dissuasive.
Guidelines	<ul style="list-style-type: none"> • The European Commission shall issue guidelines including information on: <ul style="list-style-type: none"> • Due diligence in relation to forced labour, taking into account the size and the economic resources of the operators • Risk indicators of forced labour • List of publicly available sources for the implementation of the Regulation.
Administrative & international cooperation	<ul style="list-style-type: none"> • Efficient cooperation among the competent authorities of the Member States shall be ensured by the European Commission, through facilitating and coordinating the exchange and collection of information and best practices. This is to ensure consistency in the actions and decisions taken. • The EU Commission may cooperate, engage and exchange information with, among others, authorities of third countries, international organisations and CSOs or business organisations.

Next steps

The Regulation proposal will be discussed with the European Parliament and the Council of the EU (Member States). It will apply two years after entering into force.

It can be expected that agreement could be reached by the end 2023, which would mean that the Regulation would come into force by end 2025.