



EUROPEAN FEDERATION OF THE TRADE IN DRIED FRUIT & EDIBLE NUTS • PROCESSED FRUIT & VEGETABLES • PROCESSED FISHERY PRODUCTS • SPICES • HONEY

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## **Due diligence consultation: FRUCOM position paper**

### Summary

- FRUCOM supports the introduction of a EU due diligence legal framework, and believes it important for companies to consider their impact on issues like human rights and the environment in their long term decision making.
- FRUCOM believes that the EU should define a minimum set of requirements regarding the necessary processes and provide harmonised definitions. This should be complemented by a sectoral approach, as more focus should be placed on due diligence requirements for the sectors most at risk.
- Providing a harmonised, legally certain and balanced approach to due diligence (i.e. taking into account proportionality, context and risk) is important, and there should be applicable rules for all stakeholders in the supply chain.
- Special consideration should be taken for micro and small sized enterprises (< 50 people) which should be exempt and SMEs which ( between 50 to 250 people) who should have lighter requirements. Support should be provided to businesses to adapt to any new rules on due diligence.
- It is important that rules on due diligence do not create a legislative burden for businesses or disadvantage EU companies with respect to the playing field with third party countries. In this respect, a threshold in terms of turnover generated in the EU should be set for third country companies, above which due diligence rules should apply. It is also important to maintain a level playing field by ensuring due diligence obligations are incorporated into EU free trade agreements.
- Enforcement of any duty of due diligence should be supported through a competent national authority, which has the power to pass sanctions that should be applied with due process and with the possibility of appeal. In order to promote harmonisation of enforcement, the Commission should define what sanctions could apply.

### **GENERAL**

FRUCOM is of the opinion that it is important for companies to consider issues like human rights violations and adverse environmental impacts in their decision making since these are relevant to the financial performance of a company in the long term.

FRUCOM is in favour of a European due diligence legal framework. While we do not encourage extra legislative burden, we are in favour of a European regulation to obtain harmonisation on the matter since there are already national laws in vigour or planned on this subject. Harmonisation would increase efficiency and legal certainty. Moreover, it would create a level playing field for all companies. An EU legal framework might also contribute effectively to a more sustainable development.

### **DUE DILIGENCE DUTY**

#### Definition

FRUCOM would like to amend the definition on due diligence proposed by the European Commission. Following changes/additions in yellow are proposed:

“legal requirement for all stakeholders in the supply chain to establish and implement adequate processes with a view to understand, prevent, mitigate, and account for human rights (including labour rights and working conditions), environmental impacts, both in the company’s own operations and in the company’s the supply chain. “Supply chain” is understood within the broad definition of a company’s “business relationships” and includes subsidiaries as well as suppliers and subcontractors. The company is expected to make reasonable efforts for example with respect to identifying suppliers and subcontractors. Furthermore, due diligence is inherently risk-based, proportionate and context specific. This

implies that the extent of implementing actions should be proportionate to the risks of adverse impacts the company is possibly causing and, contributing to or should foresee.”

FRUCOM would like to address the following aspects of the definition:

- Emphasis should not only be put on preventing and mitigating risk but also on understanding it.
- FRUCOM believes that due diligence is a supply chain engagement. Every tier in the supply chain is bound to this practice. Moreover, other business relations like trade unions and civil society organisations that are linked to a company should engage in a similar exercise. Therefore, we would like to suggest changing the term ‘companies’ to ‘all stakeholders in a supply chain.’
- The actions required from a company should be proportionate to the impact of the company in the supply chain.
- The term business relations need further clarification, for example, as to whether it also includes trade unions and civil society organisations
- The definition should be in line with existing definitions in the UN guiding principles and OECD guidelines. More specifically we notice differences in the definition and enumeration of adverse impacts.

#### Approach

FRUCOM is in favour of a ‘minimum process and definitions approach’ for due diligence combined with a sector approach. Namely, FRUCOM believes that the EU should define a minimum set of requirements regarding the necessary processes and provide harmonised definitions on the matter. FRUCOM is in favour of this option because clear definitions of minimum processes and rules are necessary to set a level playing field and enable measurement and comparison.

Moreover, FRUCOM would recommend the EU to combine this approach with a sector approach. The EU should focus on adopting due diligence requirements for key sectors in terms of risk

#### Drawbacks and conditions for implementation:

FRUCOM identifies several drawbacks/risks for companies and producers linked to a due diligence legislation, namely:

- Increased administrative cost and procedural burden.
- Penalisation of smaller companies with fewer resources
- Competitive disadvantage vis-à-vis third country companies not subject to a similar duty
- Responsibility for damages that the EU company cannot control.
- Disengagement from risky markets, which might be detrimental for local economies.

FRUCOM is therefore asking the Commission to take those risks into account and to consider following recommendations / measures:

#### *Support:*

- Set legislation only once all the tools necessary to make the risk assessment and mitigation are readily available for all risks included in the due diligence exercise.
- Provide capacity building support for all types of companies.
- Set up practical tools for companies (e.g., for risk assessment tool, supply chain mapping tool) and make these tools easily accessible and affordable.
- Set up a national helpdesk for companies to translate due diligence criteria into business practices.
- Provide financial support to companies (e.g., through grants)

The Commission could provide, through chambers of commerce and umbrella associations, training on due diligence compliance for businesses that require it.

An online due diligence advisory and reporting portal (similar to the “Access2Markets” tool) could be useful for businesses to navigate the due diligence rules and carry out the relevant reporting requirements.

The EU should support and stimulate sectoral- and cross-sector partnerships, as collective action is often much more effective.

#### *Position towards SME’s:*

- Exclude micro and small sized enterprises (less than 50 employees) from this legislation, except for SME’s working in the riskiest sectors.
- SME’s (with 50 to 250 employees) should be subject to lighter requirements (“principles-based” or “minimum process and definitions” approaches)

#### *Position towards third country companies:*

- Set up similar requirements for third-country companies importing products in the EU based on e.g., turnover generated in the EU and size of the company.

*Additional measures to foster a more level playing field between EU and third country companies:*

- For the enforcement to be effective, the set of applicable rules and standards must first be defined. Account must be taken of the legal sovereignty of third countries. In third countries, the EU importers can only make claims based on national legislation, treaties and agreements which third countries have signed/ ratified (including FTAs) and international conventions the third countries are party to.
- For measuring environmental compliance, FRUCOM has provided comments on the EU product environmental footprint methodology, its limitations and suggestions for improvement: .  
<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12511-Environmental-performance-of-products-businesses-substantiating-claims>
- To enable enforcement through third country authorities, the EU can see how to include requirements on due diligence in trade and sustainability chapters in FTAs, even if it is not possible retroactively (for those agreements already concluded and signed) it could be valuable in future ones. For existing agreements, the due diligence obligations could be included in trade and sustainability dialogue or relevant chapters in FTAs that are renegotiated.
- The EU can explore international conventions that must be adhered to and /or set up minimum import requirement. An example of such legal instrument addressing both the public authorities and private operators is the EU legislation on preventing illegal fishing, which is based on the instruments third countries are party to internationally, and legislation applicable in the EU for the EU market. Its efficiency in combating illegal fishing and recognition is due to limited focus, comprehensive engagement with stakeholders, dedicated resources nationally and in the EU Commission to primarily oversee implementation and collaborate with third countries, using sanctions as last resort.

Enforcement of the due diligence duty

FRUCOM is in favour of a system of supervision by a competent national authority based on complaints (and/or reporting, where relevant) about non-compliance with setting up and implementing due diligence measures, etc. with effective sanctions (e.g. fines) . However, complemented with a mechanism of EU cooperation/coordination to ensure consistency throughout the EU.

In the consultation, there is no information on the type of sanctions being considered (fine, loss of company license, etc.). FRUCOM is in favour of a fines system because it ensures that sanctioning is first and foremost in the hands of a competent national authority, provided that this is the subject of due process, including the possibility of appeal. Moreover, fines are also less costly to all parties compared to litigation.

Finally, FRUCOM would like to refer to the notion of proportionality and the responsibility of the whole supply chain in this matter. Therefore, sanctions should also be proportionate to this responsibility.