



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

FRUCOM Feedback on a Proposed Regulation Effectively banning products produced, extracted, or harvested with forced labour

FRUCOM represents European Union importers, and growers, processors, and traders, of edible nuts, dried and processed fruit and vegetables, and processed fish and seafood.

Many of these products are either not produced in the EU or the production volume is not sufficient to meet the market demand, hence the need for imports. Sourcing is global, from both developed and developing countries.

FRUCOM welcomes the efforts of the European Commission to put in place a framework to address forced labour in the production, extraction, or harvesting of goods that will be placed on the European Union's single market.

Because FRUCOM supports and recognises the importance of ending forced labour worldwide, FRUCOM wishes to highlight some critical considerations for the industries it represents, in relation to this proposal:

(1) Scope and Approach

The European Commission must consider with utmost care the product scope and the approach to identify the presence or risk of forced labour in the production, extraction or harvesting of products and goods placed on the EU market.

In relation to scope, this covers both the temporal and physical scope of the ban. The proposed regulation must classify the product that is found to be produced, extracted or harvest with forced labour to the most specific level possible, ideally using the HS code of the goods or products which are affected. Additionally, the proposed regulation must not present any opportunity for retroactive application, which is to say, the regulation should not be used to ban goods already manufactured and placed on the market.

FRUCOM strongly recommends that any ban on products produced, extracted or harvested with forced labour should focus on the final product or good that is placed on the EU's single market (i.e. the actual good that is imported, where non-EU goods are concerned). This way the proposed regulation can be workable for all parties concerned, including industry, customs authorities, and other Member State authorities involved in the implementation and enforcement of the measure.

(2) Impact on SMEs

It is critical that the measure is one that can be implemented by affected industries and operators, particularly small and medium-sized enterprises.

As has often been highlighted in the context of the Corporate Sustainability Due Diligence Directive, the global agri-food sector is composed of complex, disperse, and disaggregated supply chains. Within these are many micro, small and medium-sized operators, who individually cannot exert significant, if any, influence on the supply chain, and less so in relation to segments of the supply chain beyond those where they have immediate business relations.



It is therefore essential that the proposed framework for the forced labour product ban is sufficiently clear and detailed in the methodology used to reach a determination about the risk or confirmed presence of forced labour in any given product.

When a final good is made using many inputs, which may be produced, extracted, or harvested from different sources, the approach for evaluating or determining the risk or presence of forced labour in relation to the final good must be clear, detailed, transparent, consistent, and predictable.

The same must apply in relation to the burden of proof operators must meet to demonstrate products or goods are free from forced labour.

(3) Level Playing Field

Consistency in the application of any new framework is critical as the European Commission intends for Member State's authorities to enforce the proposed ban on products linked to forced labour. Therefore, in order to ensure that this new measure does not result in the distortion of the level playing field in the single market, every possible effort must be made to guarantee the consistent and predictable treatment of operators and enforcement of the measure across Member States and throughout the single market.

Given that the proposed forced labour product ban will apply to all sizes of operators, the European Commission and Member States must put in place considerable support systems to ensure that the micro, small and medium sized operators are able to comply and adapt to the new framework.

Detailed and comprehensive guidelines alone are not sufficient, though these are always welcome. Secondary legislation must be used to ensure that comprehensive and easy to use tools are made available to operators to help them evaluate, assess, and monitor the risk or finding of forced labour in relation to goods or products, as determined by Member State's authorities.

(4) Support functional tools and existing approaches that counter forced labour

In this regard, FRUCOM would strongly encourage the European Commission to consider the use of the Access to Markets portal as a single "one-stop shop" where operators and interested parties can find definitive information on the status of specific goods or products by HS code and country, as far as any risk or confirmation of forced labour in relation to such goods/ products.

Finally, many FRUCOM members are already covered by, or participating in complementary frameworks (legal, voluntary, public, or private), which address forced labour in their product supply chains. As such, the European Commission should not disregard existing successful approaches which may be industry-led or developed by national or other government agencies in third countries.

This is more so as many industry-led initiatives work across different jurisdictions and can play an important role in preventing the diversion of products or goods linked to force labour and banned in the EU to other markets.

(5) Legal certainty and Remedies

There are significant legal, financial, logistical, and reputational repercussions that are likely to result from the banning (and withdrawal) of goods from the market should they be found to have been produced using forced labour. Subsequently, from the outset the Commission must answer some imperative questions in relation to ensuring legal certainty and appropriate remedies under the regulation and as part of the new proposed framework to address and ban products made using forced labour. These questions include:

- How 27 different Member State authorities will work, communicate, and coordinate with each other and with the Commission in the implementation and enforcement of the regulation, and

what will be the practical actions taken when one of these agencies flags a good as having been produced, extracted, or harvested with forced labour?

- How will the market ban be implemented and enforced? What penalties are foreseen? What is the burden of proof operators must meet?
- How are Member States authorities determining the risk or probability of forced labour being used in the production of a good – based on what sort of evidence, how is this reviewed or confirmed, and who is involved (NGOs, international organisations, third country agencies?)

FRUCOM remains available to provide further information on best practices to prevent forced labour in supply chains and is interested in being included in future discussions on this topic.