

CALL FOR EVIDENCE FOR AN INITIATIVE (without an impact assessment)

TITLE OF THE INITIATIVE	Effectively banning products produced, extracted or harvested with forced labour
LEAD DG – RESPONSIBLE UNIT	GROW D3, TRADE C4
LIKELY TYPE OF INITIATIVE	Legislative
INDICATIVE TIMING	Q3-2022
ADDITIONAL INFORMATION	—
<p><i>This document is for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by this document, including its timing, are subject to change.</i></p>	

A. Political context, problem definition and subsidiarity check

Political context

In line with the EU treaties, the EU promotes respect for human rights worldwide, including labour rights as part of its commitment to promote decent work. In this context, combating forced labour and promoting due diligence standards are priorities of the EU's agenda on business and human rights¹.

The EU Charter of Fundamental Rights explicitly prohibits forced labour. Its use is addressed by current EU legislation and forthcoming legislative initiatives², and by many international and European (development) programmes. These proposals and legal acts include due diligence obligations, and also address forced labour. The Commission and the EEAS have also published [Guidance on due diligence](#) to help EU companies address the risk of forced labour in their operations and supply chains, based on international standards.

As announced by President von der Leyen in her [State of the Union speech on 15 September 2021](#) and in the [Communication on Decent Work Worldwide](#), further EU legislative action is needed to tackle the use of forced labour in the value chains of companies operating in the single market, and specifically address the relevant products.

Problem the initiative aims to tackle

The International Labour Organization (ILO) provides the following [definition of forced labour](#): ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’. The ILO identified the elimination of all forms of forced or compulsory labour as a fundamental labour right, which is covered by the fundamental ILO Conventions No. 29 and 105. People in forced labour suffer various forms of coercion, such as (threats of) violence, restriction of movement, isolation, abusive working and living conditions, withholding of

¹ E.g. the EU action plan on human rights and democracy for 2020-2024.

² E.g. the [Responsible Minerals Regulation 2017/821](#) and the proposals for a [batteries regulation](#) and a directive on [corporate sustainability due diligence](#).

<p>wages and identity documents, or direct violence and threats against them and/or their family.</p> <p>The international community has committed to eradicating forced labour by 2030 (Sustainable Development Goal 8.7). However, its use remains widespread. The ILO has estimated the global number of people in forced labour at 24.9 million (it will publish new estimates in July 2022). Despite the protection the EU Charter of Fundamental Rights should provide, the problem also exists in the EU. This illustrates the need for strong measures, including in international value chains, to prevent the use of forced labour.</p> <p>Forced labour related to production, extraction or harvesting is not easy to detect. The basic characteristics of the product itself, e.g. a piece of clothing or a food product, do not reveal whether it has been made with forced labour. However, the working conditions associated with it do. Therefore, it is necessary to understand the value chain of a product to identify and address forced labour risks and impacts.</p> <p>Existing legislation does not tackle or only partially tackles the placing of products made with forced labour on the market. Existing initiatives on due diligence do not address the products directly but rather target the economic operators, such as companies above a certain size or in certain sectors, and their supply chains (e.g. the proposed corporate sustainability due diligence directive and the responsible minerals regulation). Therefore, products made using forced labour could still be present on the EU market.</p> <p>Information collected by international organisations, e.g. the ILO and civil society organisations on forced labour risks in supply chains by sectors and geographic regions worldwide, provide useful guidance on the ramifications of forced labour and would be helpful for the implementation of a future EU standard.</p>
Basis for EU action (legal basis and subsidiarity check)
Legal basis
<p>Products linked to forced labour originate in both EU and non-EU countries. A ban on such products in the EU market will require both of these aspects to be addressed. The relevant legal basis could therefore be Article 114 TFEU, combined with Article 207 TFEU if needed.</p>
Practical need for EU action
<p>Member States' legislation alone in this area is unlikely to be sufficient and effective, not least since many companies operate EU-wide or globally. Value chains expand to other Member States and to non-EU countries.</p> <p>Furthermore, companies operating across the single market and beyond need legal certainty and a level-playing field for their sustainable growth. Without EU action, products linked with forced labour in supply chains cannot be prevented from entering the EU market, and significant differences among Member States would lead to legal uncertainty, additional costs, and administrative burden for companies.</p> <p>Two Member States have domestic laws that address the issue of forced labour. However, none of those laws regulate the placing on the market of products but only the responsible conduct of market operators. Compared with individual action by Member States, a measure at EU level can ensure a harmonised implementation of a ban on placing products on the single market.</p>
B. What does the initiative aim to achieve and how
<p>This legislative initiative aims to effectively ban the placing on the EU market of products made wholly or in part by forced labour (marketing prohibition). The ban would cover both domestic (EU) and</p>

<p>imported products and it would be combined with a robust, risk-based enforcement framework. The new instrument will build on international standards and complement existing cross-cutting and sectoral EU initiatives, in particular the due diligence and transparency obligations.</p> <p>The enforcement would be risk-based and likely be carried out by the relevant authorities of Member States. The Commission would likely play a supportive role in these efforts to encourage consistent enforcement across Member States, e.g. by issuing guidelines and making information related to forced labour (e.g. reports on forced labour) available.</p>
<p>Likely impacts</p> <ul style="list-style-type: none"> • Social impact and impact on human rights including fundamental labour rights: working conditions would likely improve, as the use of forced labour would decrease if the related products cannot be placed on the EU market. The most positive impact would be on the workers concerned, most of whom are outside the EU. EU consumers would be reassured that the products they buy and consume are produced ethically, without labour exploitation. The implications of possible trade diversion, i.e. that the banned products could still be sold outside the EU, would need to be considered. • Economic impact: while being able to show the absence of forced labour in their supply chain may have an intangible reputational value for companies, businesses involved in supply chains potentially associated with forced labour could see their production costs rise in order to ensure compliance in the supply chain. On the other hand, the playing field would level for companies that already ensure their products are made free of forced labour (as companies already doing proper forced labour due diligence will be able to rely on this). A product ban could have negative consequences for the EU economy if (i) the product concerned is an important input for EU industry, (ii) the product concerned cannot be sourced elsewhere, and (iii) producers do not react to the threat of a ban. The initiative will carefully consider the situation for small and medium-sized enterprises (SMEs) to ensure that their needs are taken into account, while making sure that all products are covered (whether sold by SMEs or other operators). • The EU Commission may set up an enforcement network for Member State authorities. The costs of administrating similar networks is estimated at EUR 3-4 million per year. The expected compliance costs for Member States will depend on their respective enforcement strategies and priorities, but may be at a level similar to their regular product market surveillance costs. • The initiative would have a positive impact on the 8th Sustainable Development Goal of Decent work and economic growth, in particular target 8.7, described above.
<p>Future monitoring</p> <p>If a network of enforcement authorities is set up, its reports and work plans could be a tool for monitoring progress made in implementing the initiative and providing contextual information. Indicators will be developed and data sources identified.</p>
<p>C. Better regulation</p>
<p>Impact assessment</p> <p>Since this initiative requires urgent action, which does not allow for a fully fledged impact assessment to be prepared, a derogation under the European Commission's Better Regulation Guidelines was granted. The Commission's preparations will be informed through specific studies (yet to be contracted) and consultations. The Commission will publish a staff working document that provides evidence and analyses impacts, and reports on expected costs including for businesses and the public.</p>
<p>Consultation strategy</p>

<p>A consultation strategy will be developed. It will not include a classic open public consultation but would rely on targeted consultations. When developing the initiative, the Commission will consider feedback received based on this call for evidence as well as targeted stakeholder consultations that will aim to receive input from relevant stakeholders from both EU and non-EU countries.</p> <p>The main stakeholders to be consulted include companies (including SMEs) and their representative organisations and other operators in supply chains that may be affected by forced labour, trade union organisations, EU Member States and non-EU countries, international organisations (notably ILO and OECD), business and civil society organisations/NGOs.</p> <p>The consultation will draw on input from (i) relevant Member States' authorities and stakeholders through meetings with existing platforms and networks such as the European Product Compliance Network, (ii) DG Trade's Civil Society Dialogue and (iii) the Commission Expert Group on Trade and Sustainable Development.</p>
<p>Why we are consulting?</p>
<p>To give stakeholders an opportunity to comment on the need for action and the envisaged initiative; and to provide input on any further issue to consider when developing this policy field.</p>
<p>Target audience</p>
<p>Experts and representatives of any interested parties, such as business associations, importers or manufacturers, consumers, NGOs, trade unions, retail businesses and national representatives, including national authorities in charge of enforcing relevant rules.</p>