

# EBCA POSITION PAPER: PROPOSAL FOR A REGULATION ON PROHIBITING PRODUCTS MADE WITH FORCED LABOUR ON THE UNION MARKET

30 November 2022

The [European Branded Clothing Alliance](#) (EBCA) welcomes the European Commission's [proposal for a Regulation](#) aimed at prohibiting products made with forced labour on the EU market. We support the ambition of the Commission to **effectively address human rights concerns along supply chains**. Forced labour is a serious concern that our members take very seriously. No efforts are spared when working with national authorities to eradicate forced labour as part of our ongoing efforts to uphold the highest standards of due diligence.

We would like to provide key considerations for EU decisionmakers that should be considered during the ordinary legislative procedure in the Council and European Parliament.

## 1. Establish an evidence-and risk-based framework

EBCA welcomes the European Commission's proposal for national competent authorities to follow a **risk-based approach** for assessments, investigations and enforcement of the EU internal market (considering size and resources of the economic operators concerned, quantity of products concerned, location in the value chain and the scale of suspected forced labour). We believe that a risk-based and **holistic legislative approach** should incentivise sustainable sourcing, leading to long-term structural change in the regions where forced labour is thought to or proven to take place.

EBCA members also support the use of **evidence-based allegations** and of **due diligence statements** as a system to certify industry's best efforts to eradicate forced labour in their value chains. This is instead of a system that requires proof of no forced labour. It is also positive that the Commission's proposal **does not include any provision of rebuttable of presumption**.

However, a **clearer interpretation** of "substantiated concern" and "well-founded reason to suspect" is needed. Additionally, it is unclear to what extent having a solid human rights due diligence will be considered sufficient by competent authorities. Clarity must be provided concerning the **information** that will be **included in the database** of risk areas/products.

Moreover, we support the Commission's proposal that the **burden** of proof for forced labour is on competent authorities. Nevertheless, it is unclear how CAs will prove that specific products are made with forced labour considering that it is indistinguishable in the physical characteristics of a product. Clear **criteria and risk indicators of reference** must be established.

EBCA believes that those who file complaints about the supply chain of a company must provide supporting evidence to prove it. Using the **Single Entry Point** as an existing evidence-based tool could be a way of ensuring that complaints are based on facts.

In addition to the Commission's proposal, EBCA suggests introducing a scheme like the US Customs Trade Partnership Against Terrorism (CTPAT) that introduces a **trusted trader program** as part of a risk-based approach.

## 2. Guarantee a progressive implementation and EU-wide enforcement

EBCA welcomes the Commission's proposal for a **progressive and phased-in implementation** of regulatory requirements and **EU-wide enforcement**. However, we raise concerns about the strong role given to **Member States in enforcing** the Regulation. EBCA members stress the importance of **avoiding fragmentation** in the EU single market to guarantee predictability and legal certainty for companies, while safeguarding EU industry competitiveness and its leverage on the international stage.

Additionally, we call for **sector-specific guidance** and an **enforcement strategy** to be provided before enforcement starts (opposite to what has been done in the US). Issuing guidelines (including on risk indicators and due diligence) at the latest 18 months from the entry into force of the Regulation does not constitute a reasonable timeframe for industry to adjust to new rules and implement them. **Appropriate guidance and capacity building for authorities** are also fundamental to ensure **collaboration** between the different authorities involved for an effective enforcement.

## 3. Ensure policy coherence and alignment at EU and international level

EBCA members welcome the overall **alignment** of the Commission's proposal with existing **international standards** such as the WTO rules and the ILO Forced Labour Convention, 1930 (No. 29).

We believe that the Commission's proposal should aim to adopt a **holistic legislative approach**. **Horizontal** and **harmonised minimum requirements** that are coherent with the Corporate Sustainability Due Diligence Directive (CSDDD) and Corporate Sustainability Reporting Directive (CSRD) are needed.

Moreover, we commend the Commission for pushing for the use of the **EU Single Window Environment** for customs to ensure a harmonised exchange of information between relevant authorities. EBCA members call for **coherence** between the proposal and the upcoming **Revision of the Union Customs Code** as well as the **EU Data Strategy**. Given the number of legislative initiatives that will rely on customs authorities for their implementation (e.g., the Deforestation proposal and the proposal for an Ecodesign for Sustainable Products Regulation), we stress the need for connecting all these initiatives through an **harmonised and centralised system** centred on customs and a **single data entry point**. Harmonisation with the Data Act and the Green Deal Data Space must be guaranteed, while **common data spaces** must be established.

Coordination could be ensured by an **EU supervisory body**, as suggested by the Wise Persons Group's recommendation for a European Customs Agency to be introduced under the revision of the UCC. Such a supervisory body could also take care of implementing and enforcing the **Mutual Recognition Agreements** with third-countries concerning the conformity assessment of regulated products.

## 4. Strengthen international cooperation

The Regulation should not be considered in isolation and be part of a **smart mix of policy instruments** and other supporting initiatives. While industry is committed to combat forced

labour, this complex and evolving issue cannot be solved without **strong collaboration and capacity building**.

We would like to highlight the importance of **international regulatory cooperation** to ensure coherence and alignment between the ongoing legislative processes and proposed mechanisms in the EU, Canada, UK and the US. As collaboration amongst actors is key to address the root causes of forced labour, we strongly encourage the European Commission and the EU to continue collaborating with governments of third countries and international actors.

Moreover, when third countries are not able to or do not provide the information required by CAs for their assessment and investigation, this should not be considered as a presumption of the existence of forced labour. In many cases, the **inability of third countries to provide information** is the result of lack of adequate infrastructure and resources. Hence, the EU should provide **support (financial and capacity building)** to those countries as well as **special and differential treatment**, especially for LDCs, as provided under WTO rules.

#### **5. Provide clarity on investigations and management of goods**

EBCA members reiterate the importance of ensuring a **quick release of goods** to avoid operational disruption where there is no evidence base to support allegations of products made using forced labour. **Transparency** is needed on why a shipment is being scrutinised and clear expectations on what is required to demonstrate that a particular shipment is not tainted with forced labour.

Furthermore, we point out that the **proposed deadlines** for companies to provide responses to CAs are very challenging. EBCA suggests **an extension** of deadlines.

Additionally, EBCA believes that, when investigations are long and the burden of proof is low, companies should be able to **redirect the goods** to other markets.

In the case of tainted goods, we suggest sending the goods to **recycling/upcycling instead of destroying** them to ensure alignment with the objectives of the Ecodesign for Sustainable Products Regulation.

#### **6. Prioritize support rather than sanctions**

EBCA call on the Commission to **incentivise responsible business practices** rather than penalise companies.

Moreover, EBCA members want to reiterate the importance of providing **technical and financial incentives**, which would significantly support a rapid transition to the types of technologies and information sharing platforms that are necessary to make efforts effective, and thus meet legislative objectives. This support is critically important for SMEs and actors that are upstream in the supply chain.

**Standardised traceability** and **improved digitalisation** would also help to get compliance technologies up and operating at scale.

Lastly, it is important that the legislation and related guidance **recognize and promote industry-led multistakeholder initiatives and standards**, which, alongside global standards, are an important piece of the puzzle to support with the implementation of this Regulation and the eradication of forced labour.

## About EBCA

*The European Branded Clothing Alliance is a coalition of leading global retail brands that represent over 60 brands. The alliance works to ensure a positive trade agenda and a more predictable business environment for a leading industry sector in the EU that contributes to jobs, innovation and research and development. Via their global value chains, members also contribute to jobs and sustainable development in countries in which they source and produce. Please visit our website at <http://www.ebca-europe.org/> for further information. Contact: [secretariat@ebca-europe.org](mailto:secretariat@ebca-europe.org)*