

CAOBISCO POSITION PAPER ON THE EU PROPOSAL FOR A REGULATION ON PROHIBITING PRODUCTS MADE WITH FORCED LABOUR ON THE UNION MARKET

- ✦ The EU Chocolate, Biscuits and Confectionery Industries are committed to ensuring that their products are manufactured responsibly and to the highest standards, respecting the human rights of those involved in their supply chains. CAOBISCO members firmly believe that forced labour is an unacceptable practice and are committed to addressing forced labour risks in their operations and across their business relationships.
- ✦ Guided by international standards¹, CAOBISCO members have voluntarily started integrating human rights and environmental due diligence processes into their policies and procedures throughout their supply chains, increasing traceability and transparency.
- ✦ CAOBISCO welcomes the European Commission's ambition to step up action to address the issue of forced labour in global supply chains. Beyond prohibiting products on the EU market, the proposed EU Regulation should be guided by the goal of driving positive outcomes for vulnerable individuals and communities at risk of forced labour and improve working conditions.
- ✦ This EU Regulation should be developed as part of a "smart mix" of mutually reinforcing measures that foster human rights protection, particularly through partnerships and multistakeholder engagement both inside and outside the EU, and in collaboration with governments, that will effectively tackle the root causes of forced labour where it occurs.
- ✦ The EU Regulation must be coherent with the upcoming EU Directive on Corporate Sustainability Due Diligence and the revised EU Directive on Corporate Sustainability Reporting, which should remain the cornerstones of the EU legislative framework addressing the responsibility of companies to respect human rights, including addressing risks of forced labour.
- ✦ The EU Regulation should provide legal certainty and a level playing field among all actors along the supply chains, including a harmonised approach to the implementation of enforcement and investigation obligations by Member States, the imposition of penalties as well as additional provisions for competent authorities' mandates.
- ✦ This position paper provides CAOBISCO's first reaction and highlights priority areas to achieve an effective and impactful EU Regulation on prohibiting products made with forced labour on the Union market.

1. Fostering cooperation to tackle the root causes of forced labour

Forced labour is a complex issue for which the root causes can be multiple, including (but not limited to) awareness amongst farm workers of their rights, weak labour laws and poor law enforcement, unclear labour contracts, illiteracy, a lack of education, and cross border human trafficking. To ensure the EU Regulation is effective and impactful, this should be developed as part of a "smart mix" of mutually

¹ [UN Guiding Principles](#) on Business and Human Rights; [OECD Guidelines](#) for Multinational Enterprises; [ILO Declaration](#) on Fundamental Principles and Rights at Work

reinforcing measures, to support governments, civil society, and local communities in their efforts to address the root causes of forced labour.

The European Commission should exert direct leverage and support the creation and strengthening of enabling environments to advance better on human rights protection outcomes in their relationships with third countries. CAOBISCO welcomes the inclusion of Article 26 on International Cooperation. However, this article should be strengthened to specify that cooperation with third countries should focus on providing technical and financial support to help create enabling environments that tackle the root causes of forced labour.

The EU Regulation should foster cross-sectoral industry collaboration and on-the-ground engagement with key stakeholders to support the efforts by governments and companies in preventing and mitigating forced labour risks. This should include the elaboration of a database (Article 11) to ensure the identification and monitoring of forced labour risks and forced labour related products, in countries where forced labour has been occurring, and with a view to strengthening long-term partnership agreements with non-EU governments and other relevant stakeholders.

2. Coherence with existing and future frameworks

CAOBISCO supports the efforts by the EU to build a robust regulatory framework to promote the respect for human rights in global supply chains. Beyond prohibiting products on the EU market, the proposed EU Regulation on prohibiting products made with forced labour on the Union Market (hereunder “EU Regulation”) must be a priority work to yield positive outcomes for vulnerable individuals and communities at risk of forced labour and improve working conditions.

The proposed EU Directive on Corporate Sustainability Due Diligence (hereunder “EU CSDD”) should become the overarching EU legislative framework to address the responsibility of companies to respect human rights in their operations and supply chains, implementing an obligation on companies to carry out human rights due diligence, in line with international principles² and worldwide recognised definitions³.

CAOBISCO welcomes the recognition in the EU Regulation of the role of due diligence, as the means by which economic operators can provide evidence to competent authorities on how they identified, prevented, mitigated, or brought to an end, risks of forced labour⁴ in their operations and supply chains. By undertaking effective due diligence, companies will be able to detect and address risks of forced labour in their supply chains. Any duplication of due diligence obligations should therefore be avoided between the requirements in the EU Regulation and the CSDD.

Similarly, CAOBISCO calls for the EU CSDD to be considered and explicitly mentioned under Article 23 (Guidelines) of the EU Regulation. These guidelines should also provide clarity on how companies can identify, prevent, mitigate, or bring to an end risks of forced labour, as these processes can significantly differ between commodities and sectors.

In order to provide companies with sufficient time to set up their due diligence processes, CAOBISCO would advise the co-legislators to ensure that the timing of the entry into force and the application of the

² [UN Guiding Principles](#) on Business and Human Rights; [OECD Guidelines](#) for Multinational Enterprises; [ILO Declaration](#) on Fundamental Principles and Rights at Work

³ ILO definitions of ‘forced labour’ and ‘forced child labour’

⁴ The EU Regulation aligns the definition of ‘forced labour’ with the definition laid down in ILO Convention No. 29 and specifies that such includes ‘forced child labour’ (art. 2 (a)). Therefore, the Regulation should explicitly mention the definition of ‘forced child labour’ under article 2 and refers to ILO Convention 182, article 3 (a)

EU Regulation is aligned with or follows the entry into force and application of the proposed EU CSDD. In addition, any guidance and/or guidelines should be published within the 6 months following the entry into force of the EU Regulation, aligned with those foreseen in the EU CSDD.

3. Promoting harmonised enforcement and application across Member States

A harmonised approach to the implementation of enforcement and investigation obligations by Member States, as well as the imposition of penalties, will be key in providing legal certainty and a level playing field among companies covered by the Regulation. With a view to avoid such divergences, the establishment of a coordination body among national enforcement bodies at EU level should be explored.

CAOBISCO takes note of the possibility for relevant stakeholders to raise concerns on risks of forced labour (Article 4), for example through a complaint mechanism⁵. The EU Regulation should ensure provisions are set with clear requirements on the need to provide substantiated evidence, and control mechanisms should also be put in place to help with monitoring the seriousness of complaints.

CAOBISCO welcomes the risk-based approach in the EU Regulation whereby national competent authorities will be responsible for conducting preliminary phases of investigation and investigations (Articles 4 and 5) when there is suspicion and/or risk of forced labour. CAOBISCO takes note that Recital 26 explicitly places the burden of proof on the competent authorities for establishing that forced labour has been used in a particular case. CAOBISCO believes that for legal certainty purposes such fundamental principle should also be made explicit in the EU Regulation's provisions.

In that regard, competent authorities should also be empowered with adequate knowledge, capacities, and resources to appropriately assess the likelihood and presence of forced labour risks, conduct their investigations and reviews, as per Article 12(5), collaborating with companies and avoiding additional burdens on these.

Additional clarifications should be provided on the type of information to be requested by the national competent authorities during the preliminary phase (Article 4), as well as how company's due diligence processes will be considered and evaluated in case of in-depth investigations (Article 5), taking into account its size and capacities, as well as its due diligence obligations under the EU CSDD. CAOBISCO would also welcome additional guidelines and/or clear provisions specific to SMEs to ensure compliance, including technical and financial support where relevant.

The roles and responsibilities between competent authorities and customs authorities should be clearly defined to help with the investigations, as foreseen in Article 7 and Article 15. CAOBISCO welcomes the use of implementing acts to specify the details of the information to be made available to customs authorities (Article 16). CAOBISCO also supports the creation of an interconnection between information and communication systems (Article 22), as well as a Union network for coordination (Article 24) to ease collaboration between national competent authorities, Member States and the European Commission for a harmonised implementation and enforcement.

To achieve maximum efficiency and to avoid a fragmentation of requirements and sanctions between Member States' national legal regimes, the EU Regulation should specify the types of sanctions and penalties in case of non-compliance. Allowing Member States to define their own set of sanctions might

⁵ Reference page 7, draft European Commission's Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union Market. Brussels, 14.9.2022 COM(2022) 453 final 2022/0269 (COD)

create an uneven playing field for companies operating across the EU single market and might encourage companies to relocate to Member States with lower penalties.

4. Additional consideration: providing guidance for complex supply chains

Clarity is needed in the legislation on how the rules will apply to products linked to supply chains including mass balance sourcing methods, in particular with regard to the provisions on product withdrawal in instances of non-compliance.

Given the prevalence of mass balance for critical commodities, it is important to set clear guidance for companies and competent authorities on how products with such ingredients (made of mass balance) should be handled under the EU Regulation.

CAOBISCO is the Association of the Chocolate, Biscuits & Confectionery Industries of Europe. We represent more than 12,000 European chocolate, biscuits, and confectionery manufacturing companies, 99% of which are SMEs. The sector is a major player in the European economy, with over 225, 000 direct employees and an annual turnover of over €42 billion.