



**Independent  
Retail Europe**

**PROPOSAL FOR A REGULATION ON  
PROHIBITING PRODUCTS MADE WITH FORCED  
LABOUR ON THE UNION MARKET**

**- POSITION OF INDEPENDENT RETAIL EUROPE -**

**17 FEBRUARY 2023**



## EXECUTIVE SUMMARY

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Independent Retail Europe commends the European Commission for its proposal for a Regulation to prohibit the import of products made with forced labour. It is unacceptable that in 2022, 27.6 million people (as assessed by the International Labour Organisation - ILO), still have to conduct work or provide services that are extracted from them under the menace of a penalty and for which they have not offered themselves voluntarily.

We particularly welcome the choice of instrument, a Regulation, to ensure that these rules are uniformly applied across the Single Market. Furthermore, we welcome that the legislation is complementary to the legislation on supply chain due diligence, and that it places the responsibility on national authorities rather than companies, which already face important information and scrutiny requirements. We also appreciate that several provisions, such as the prospective guidelines on due diligence (Article 23) or time limits to comply with orders (Article 7) will “take account of the economic operators’ size and economic resources”. Finally, we strongly welcome the approach of the Commission to act on the basis of suspicions, rather than a blanket or “catch all” approach, which allows to focus resources there where they are most needed.

Our members are fully committed to fighting forced labour and removing from the market any product that demonstrably presents elements of forced labour in their supply chains. We fully support the objectives, process and mechanisms put forward in this Regulation. Our comments in this position paper aim to seek clarifications on companies’ obligations, an efficient approach to investigations, avoidance of unfounded and unnecessary withholding of goods, as well as the possibility to donate goods instead of their destruction.

## POSITIONS OF INDEPENDENT RETAIL EUROPE ON FORCED LABOUR

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### 1. Information requirements should be handled closest to the source: For independent retailers, at the level of the central organisation

As the Regulation does not define a particular scope, the legislation could require any company, including SMEs and micro-enterprises, to provide information on a good under suspicion of having been made with forced labour. Our members are groups of independent retailers, cooperative groups whose members are independent SME retailers. By creating a group, these retailers are able to compete with large integrated chains in highly competitive retail markets (food and non-food), by purchasing jointly, pooling resources, reducing burdens and maximising efficiency. The central organisation of the group is responsible for the joint purchasing activities, the quality control of goods, and other shared tasks, such as financing, marketing, or communications.

In these groups, the central organisation is therefore best placed to deal with the obligations under this Regulation, on behalf of its members. Therefore, **we ask policy-makers to consider the particularities of these group models, and for investigations only to require information from the actors responsible for the sourcing of products, namely the central wholesale organisation of groups of independent retailers. The central organisations of each group are able to ensure that all of their SME retailers withdraw the products from the market. This would therefore also be much more efficient for authorities to enforce than having to reach out to thousands of individual SME retailers.**

**For reasons of efficient enforcement, we consider that, upon identifying a suspicion of forced labour, it should be the economic actor that is closest in the supply chain to where the forced labour took place that should be investigated and be required to provide information.**

## **2. Timeframes for providing information**

We believe that the period of 15 days as foreseen in Article 4 is too short to respond to the requests of the competent authority for information on actions taken to identify, prevent, mitigate or bring to an end risks of forced labour in operations and supply chains. With many thousands of products on the shelves, **retailers should be given sufficient time, and at least 25 working days** to compile and complete these information requirements. While the CSDDD can help retailers to fulfil information requirements, the requirements of that legislation will be process and not product specific. Moreover, **the text should fully align with the legislation on corporate “supply chain” or “value chain” due diligence**, which at this stage has not yet been finalised.

## **3. Time limits on investigations**

While Article 4 presents a clear time limit on preliminary investigations, Article 5 does not put any time limit on investigations. This means that authorities could continue to require more information from retailers for months or even years, dragging on administrative procedures, and creating a significant workload for companies. It is therefore important for the legislation to set a clear, reasonable timeframe **for the conclusion of such investigations**.

## **4. Suspension**

Time is of the essence in the retail sector. “Fast moving consumer goods” need to move quickly to reach the stores in time, particularly fresh food products. It is therefore essential that these goods keep moving to ensure that they are delivered to the stores just in time. With different customs procedures already taking a lot of time, it is important that verifications do not interrupt supply chains further, as suggested by provisions in Articles 17 and 18. The information system in Article 22 should be designed in such a way, that it enables the authorities to establish rapidly whether a good has been subject to a decision under Article 15(3) and **whether to release it into circulation or not**. Blocking goods on a suspicion that it could have been subject to such a decision for any amount of time will affect the efficiency of the supply chain and lead to rapidly increasing costs (storage, transport, spoilage, waste...), with negative environmental consequences. Since Article 6(4) foresees that economic actors would have to “*withdraw from the Union market the relevant products that have already been placed or made available on the market*”, products can easily be withdrawn from the market even after having gone through customs.

## **5. Timeframe for the adoption of guidelines**

Article 23 foresees that the Commission can issue guidelines on the due diligence process in relation to forced labour and the information on risk indicators of forced labour, “*no later than 18 months after entry into force of this Regulation*”. However, without such guidelines being published from the onset, both authorities and companies will remain in the dark about exactly what is required from them, and create confusion and delays in the way investigations are undertaken. **Therefore, guidelines should be drawn up and published at the time of the entering into force of the legislation as they will form an essential part of the legislation.**

## 6. Donation of non-compliant goods

It is important that no economic benefit is obtained from goods that have been produced with forced labour. Therefore, we welcome that the Commission aims to prohibit any further commercialisation of these goods. There is however from our perspective no added value in requiring these goods to be destroyed as this would have a negative environmental impact. Rather, **it should be permitted to economic actors to donate these goods**, and in other cases, it should be ensured that these goods are disposed of in line with the waste hierarchy.

## 7. Avoid conflicting requirements as regards due diligence of operators

Last, but certainly not least, forced labour falls under adverse impacts of human rights and consequently, for companies, the future Directive on Corporate Responsibility (Due Diligence) should apply as this Directive states that *“This Directive lays down rules on obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the value chain operations carried out by entities with whom the company has an established business relationship.” (Article 1.1 (a))*

As of now, there is not yet clarity on how due diligence for Forced Labour will be applied, as the Commission is entrusted to provide Guidelines on due diligence within 18 months from the entry into force of the Regulation (Article 23). However, it is important to ensure that the Forced Labour Regulation do not deviate from the Due Diligence proposal as regards due diligence for forced labour. Moreover, deviating national legislation as regards forced labour that the Regulation mentions, for example under Article 4.3, should be avoided. With regard to the deadline for the guidelines, it is very important to allow companies sufficient time to adopt due diligence protocols.

Lastly, as regards the extent of due diligence, we wish to reiterate here (as mentioned in our position paper on Directive on Corporate Responsibility, that due diligence across supply/value chains/chain of activity, from start to finish, whether with regard to forced labour or other human rights or environmental adverse impacts, is disproportionate for EU retailers at the end of the supply chain, where (tens of) thousands of products accumulate in retailer warehouses and on the shelves of stores.

It is not possible to apply due diligence efforts at all levels of the supply chain for the many products/ingredients that could constitute a risk. Moreover, it will lead to a duplication of due diligence efforts by companies, leading to unnecessary costs. Due diligence efforts should be limited to direct business partners (with whom a company maintains contractual relations) in the supply chain, and companies should be able to rely on recognised certificates supplied by partners in the chain. SME retailers should be excluded. Further going due diligence requirements will have a serious negative impact on the EU's competitiveness.

→ **For reason of efficiency, authorities should ensure that they investigate actors that are closest to the source; For that same reason only central organisations of groups of independent retailers should be required to provide information on behalf of their retailers.**

- Retailers should be given sufficient time, and at least 25 working days to compile and complete information requirements of authorities, as these are product-specific requirements.
- There should be a reasonable time limit on the investigation phase.
- The work of authorities should not delay the release of goods: With the help of technology, there should be an immediate decision of whether to release a good into circulation or not.
- The guidelines should be released at the same time as the entry into force of the Regulation, as they are essential to its implementation.
- For reasons of sustainability, there should be a possibility to donate goods found to be in violation of this Regulation instead of destroying them.
- The Regulation (Art. 4.6) should be in line with the Directive on Corporate Responsibility as regards the obligations on operators concerning forced labour.
- Due diligence requirements should be limited to direct business partners and companies should be able to rely on recognised certificates provided by partners.

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*Established in 1963, **Independent Retail Europe** (formerly UGAL – the Union of groups of independent retailers of Europe) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors.*

*Independent Retail Europe represents retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer. Our members are groups of independent retailers, associations representing them as well as wider service organisations built to support independent retailers.*

*Independent Retail Europe represents 23 groups and their over 403.900 independent retailers, who manage more than 759.000 sales outlets, with a combined retail turnover of more than 1,314 billion euros and generating a combined wholesale turnover of 484 billion euros. This represents a total employment of more than 6.620.000 persons.*

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