

TDHIF feedback on the Proposed EU Regulation on prohibiting products made with forced labour on the Union market¹

Terre des Hommes welcomes the European Commission call for feedback on the proposed Regulation on prohibiting products made with forced labour on the EU market.

At global level there are 27.6 million people in situations of forced labour on any given day. More than 3.3 million of all those in forced labour are children.² The COVID-19 pandemic, increased armed conflicts and climate crisis in recent years have led to unprecedented disruption to employment, education, household livelihoods, social protection and social security systems, increases in extreme poverty, forced and unsafe migration, and a sharp rise in violence, exploitation and abuse.

All these factors exacerbate the risk of all forms of modern slavery above all for those families and children who are already in situations of multiple vulnerability. Due to the above-mentioned factors, an additional 9 million children are at risk of being pushed into child labour by the end of 2022³. There is a high risk of reverting years of progress.

Across the globe, Terre des Hommes has developed a multi-sectoral and evidence-based approach to realize the right to decent work for children and families while identifying and responding to child protection risks and concerns for children affected by (or at risk of) the worst forms of child labour both in the international supply chains and in the informal sectors of small unregulated businesses.

In view of the significant rise⁴ in modern slavery across the world, we see an urgent need to accelerate action towards eliminating this grave human rights violation. The proposed Regulation is an important step forward to eradicate forced and child labour, however it significantly fails to reach its full potential and in particular to put children and workers at the center.

At the heart of our concern is the impact that the implementation of the ban of products made with forced labour may have on affected or potentially affected families and children which could mean:

- a) depriving them of their livelihood as often the entire family is dependent on the income generated through the production of these goods, and/or;
- b) risking to driving to even more hidden forms of forced labour as affected children and families see no alternative income opportunities and struggle to survive, making it even harder to detect and thereby perpetuating the problem.

¹ European Commission, COM(2022) 453, 14.09.2022, https://single-market-economy.ec.europa.eu/document/785da6ff-abe3-43f7-a693-1185c96e930e_en

² ILO/ Walk Free Foundation/ IOM (2022): Global Estimates of Modern Slavery: Forced Labour and Forced Marriage, https://www.ilo.org/global/topics/forced-labour/publications/WCMS_854733/lang--en/index.htm

³ ILO/ UNICEF (2021): Child Labour – Global Estimates 2020, Trend and The road forward, https://www.ilo.org/ipec/Informationresources/WCMS_797515/lang--en/index.htm

⁴ ILO/ Walk Free Foundation/ IOM (2022): Global Estimates of Modern Slavery: Forced Labour and Forced Marriage, https://www.ilo.org/global/topics/forced-labour/publications/WCMS_854733/lang--en/index.htm

I. Embedding a child and people-centred approach in the EU Regulation

Terre des Hommes fights against child labour which involves work that is harmful to the development of children and interferes with their right to education. We also fight against the Worst Forms of Child Labour, as defined in ILO Convention 182, as children being enslaved, separated from their families, exposed to serious hazards and illnesses and/or left to fend for themselves on the street, often at a very early age.

Terre des Hommes draws the attention to the following considerations and calls on the European Parliament and the EU Member States to amend the current text of the Regulation and fully integrate a child and people-centred approach.

In particular, we note and recommend the following:

The ban of products alone and in itself is not the solution if it does not take into account the potential impact that it may have on children and their families and if is not accompanied by adapted and supportive measures, including alternative and long-term sustainable solutions for the livelihoods of children and families. A pre-assessment of the impact of the ban of a product should be carried out, involving communities, CSOs/NGOs, workers, trade unions, employers and children themselves.

In addition, there is no evidence about the effectiveness of a product ban. A research⁵ carried out by Justice Care shows indeed that *“import bans may help change corporate behaviour and improve working conditions in supply chains over the short run -particularly in industries that rely on just-in-time supply, [...]. There is however considerable uncertainty about the broad, long-term impact of import bans”*.

Terre des Hommes underlines that whenever implemented, the ban should be part of a mix of interventions and the **kick-off for an intense transition period** in which the current production chains are reviewed and improved to secure the transition to responsible production mechanisms on the basis of the realization of human rights – including children’s rights. This should include corrective action by the economic operator that ensures the long-term elimination of forced/ child labour from their supply chain as well as remediation for its victims. **Monitoring mechanisms on businesses compliance with labour standards and human rights should be put in place.**

The proposal embeds an EU market and law-enforcement perspective and fails to take into account the rights of children and families in forced labour, including the right to remedy. Therefore, we call on the European Parliament and EU Member States to reformulate the draft regulation and ensure the process of pre-investigation, investigation, final decision, remediation and further enforcement process are **child and people centred**.

Participation of children and young people in discussions and decision-making around the EU Regulation should be ensured as per EU commitments embedded in the EU Strategy for the Rights of the Child⁶. Making sure that affected and potentially affected families and children’s views are taken into account at all stages of the investigation and decision processes is key. Children have a right to be heard in all matters affecting their

⁵ Justice Care: Modern Slavery in Global Supply Chains: The state of evidence for key government and private approaches. July, 2022. https://media.business-humanrights.org/media/documents/JC-Research-Brief-Supply-Chains_Jul-2022_TuwclU.pdf

⁶ European Commission, COM/2021/142 final, EU Strategy on the Rights of the Child, 24.03. 2021, https://eur-lex.europa.eu/resource.html?uri=cellar:e769a102-8d88-11eb-b85c-01aa75ed71a1.0002.02/DOC_1&format=PDF

lives (Art. 12 UN CRC), they can provide essential information on how to maximize the impact of this regulation and how to find alternatives that promote sustainable change. In addition, this will help to refine and improve the investigation, remediation and enforcement processes and ensure the Regulation responds to the well-being of children and is in the best interests of affected children and their families.

We welcome the fact that the proposal tries to integrate forced labour due diligence measures, however this should be done in a more effective way. **Effective consistency and complementarity** between this Regulation and the EU Directive on Corporate Sustainability Due Diligence currently under negotiations should be ensured and strengthened. A needed link to Art. 10 of the EU Directive on Corporate Sustainability Due Diligence is the integration of criteria to measure the appropriateness of due diligence measures taken by the companies and go beyond non-mandatory due diligence obligations as listed in Art. 4(3) of the proposed Regulation. Art. 4(3) currently provides a window of opportunity for companies to use the mere existence of a due diligence system to fend off the opening of an investigation.

In addition, it should be explored whether the ban of products made with forced labour should be the only sanction imposed by the EU regulation. In combination with the EU Due Diligence Directive, it would be important indeed to **focus more on the realization of children and human rights along the supply chains of these products to ensure a responsible production rather than simply banning them** as this could lead to a more sustainable solution to the problem and help to address the root causes of forced and child labour. Other trade instruments should likewise be applied, such as the Generalised System of Preferences (GSP), “rewarding countries that uphold labour standards by granting them preferential access to EU markets” (Justice Care, page 37).

We are happy to see that SMEs, making up the majority of companies in the EU, do not benefit from exclusions in the proposed EU regulation. However, merely stating that the size and economic resources of the economic operators should be taken into account during investigations (Art. 5(3 and 5)) and the setting of time limits for economic operators to comply with orders (Art. 7(1.b)) causes unclarity in design, compliance and enforcement. We therefore recommend further specifying limits to these.

We regret to see that a remedy perspective is fully missing in the draft regulation. Access to remedy should be ensured to **all workers regardless of their age, racial and ethnic origin, religion or belief, disability, nationality, migration and residence status, sex and sexual orientation**. Access to remedy must be adapted to children’s ages and needs, it must respect all their rights and give primary consideration to the best interests of the child.

Access to remedy should include: (1) a timely remediation for those dependent on this income for survival (2) a remediation that is proportionate to the breaches incurred. Reporting procedures should provide anonymized ways of communication and prevent retaliation. In addition, access to remedy needs to be communicated to all workers to increase knowledge and awareness about these options.

II. Good practice for fair and responsible supply chain: Mica Mining in India

The following example shall highlight the impact the proposed Regulation may have on the affected children and families. Initial research undertaken by Terre des Hommes (2022)⁷ disclosed that about 30.000 children are involved in mica mining in deep illegal mines in India. Mica mining fulfills at least five of the eleven ILO indicators for forced labour⁸ and would thus fall under the proposed EU regulation (i.e. abuse of vulnerability, debt bondage, abusive working and living conditions, physical and sexual violence and excessive overtime). Moreover, it is not the number of indicators that is complied with but rather the severity of the breaches that determine whether this can be classified as forced labour. In case the EU regulation is adopted in the current form, this would imply a severe worsening of the situation of these families and children due to the following reasons:

- The affected families and children have no alternative income opportunities as the region is characterized by harsh living conditions. The risk is high that the workers would turn to even more exploitative or illegal and hidden activities to ensure survival.
- The dependence on the mica income is so high that the products are at risk of being re-routed to other destinations or produced in even more hidden or illegal ways as the burden of proof for the destruction of the banned products lies with the member states and not with the companies which may result in lengthy investigations.

Our collaboration with the [Responsible Mica Initiative](#) (RMI) has shown how fruitful the collective action with all involved stakeholders, including private sector, can be and that the production of responsible mica is more promising for sustainable change than a simple ban of these products. The ban should be part of a mix of interventions that should oblige companies in the supply chains where forced child labour occurs to perform their due diligence and prevent forced labour for both children and adults.

III. Conclusions

We call on the EU institutions to strengthen and keep dialogue with civil society organizations, NGOs, Trade Unions, private sector and children themselves during the negotiations to ensure that the best interest of children and workers' rights are given primary consideration in the final adoption of the Regulation.

IV. TDHIF Sources

- Report: [Behind the Glittering Façade](#) (2022)
- Report: [Global Mica mining and the impact on children's rights](#) (2019)
- Report: [Child Labour in Madagascar's Mica Sector](#) (2019)
- Report: [Beauty and a Beast – child labour in India for sparkling cars and cosmetics](#) (2016),
- Report: It's Time to Talk! – Children's Views on Children's Work (2017), Terre des Hommes & Kindernothilfe, https://www.dialogue-works.com/wp-content/uploads/2021/07/T2T_Report_EN.pdf
- TDHIF [Position Paper on Child Labour](#) (2019)
- Website of the [Dialogue Works Campaign](#)

⁷ Terre des Hommes (2022): Behind the Glittering Façade – Exploitation of Children in Mica Mining in India, https://www.tdh.de/fileadmin/user_upload/inhalte/04_Was_wir_tun/Themen/Kinderarbeit/Mica/2022-06_Exploitation-of-Children-in-Mica-Mining.pdf

⁸ ILO (2012): ILO indicators of Forced Labour, https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm

- Website of the [Responsible Mica Initiative](#)
- Website of the [Clarissa network](#)

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