

FORCED LABOUR REGULATION: A 'CARDING SYSTEM'

Briefing

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The Environmental Justice Foundation (EJF) is an international non-governmental organisation which exists to protect the natural world and defend our basic human right to a secure environment. Amongst other campaigns, EJF is working to expose and eradicate illegal fishing and the associated crimes, including human trafficking. We investigate and expose abuses and support environmental defenders, Indigenous peoples, communities, and independent journalists on the frontlines of environmental injustice.

Summary

The European Commission's proposal to prohibit products made with forced labour on the European Union market is a welcome tool in the universal fight against human rights abuses. However, in its current form the product ban fails to address the **upstream root causes of systemic forced labour**. Introducing a 'carding system' within the Forced Labour Regulation, drawing from processes already in place in the EU Illegal, Unreported and Unregulated (IUU) Fishing Regulation,¹ would give the Commission the opportunity to engage with third countries in formal dialogues to address systemic forced labour issues associated with the production of specific goods in their territory.

1 Carding under the EU Illegal, Unreported and Unregulated (IUU) Fishing Regulation

The EU's IUU Fishing Regulation, which came into force in 2010, is a piece of fisheries legislation which uses trade measures to prevent, deter and eliminate IUU fishing practices globally. Under this Regulation, third countries that do not meet agreed international obligations on fishing practices can be **pre-identified or 'yellow carded'**. The third country's 'yellow card' status is then made public and a formal dialogue between the Commission and the third country begins, allowing for dynamic cooperation and engagement to address areas of concern. If the third country does not improve standards, the Commission can decide to *identify* it as **non-cooperating, issuing it a 'red card'**. Acting on a proposal by the Commission, the Council can decide to list the identified, red-carded country on the list of non-cooperating countries, with the consequence of **banning fisheries products originating from that country from entering the Union market**. In the vast majority of cases, third countries responded positively to this process upon receiving, or even before receiving, a 'yellow card'. Of the more than 60 countries that have been part of a bilateral dialogue under the Regulation, the majority did not receive a card and only four currently have a 'red card'.²

Case study: Thailand

In April 2015, Thailand was given a 'yellow card' by the EU for not sufficiently tackling IUU fishing.³ Following formal engagement with the European Commission through the 'carding system', it undertook a significant transformation in relation to how it approaches fisheries governance.⁴ There have been notable improvements in fisheries legislation and regulation since 2015.⁵ This has led the way for enhanced monitoring systems to prevent IUU fishing practices, such as increased inspections of fishing activities (supported by EU-sponsored training).⁶ Furthermore, an increase in the number and value of sanctions point to a considerable improvement in compliance and enforcement.⁷

As a result of these actions, the EU removed Thailand's 'yellow card' in January 2019, citing the comprehensive review of its legal framework relevant to fisheries, strengthening its monitoring, control and surveillance tools, and the improvement of administrative procedures.⁸

2 Addressing root causes of systemic forced labour: third country dialogues

Core to the proposal for the Forced Labour Regulation is a ban on placing products made with forced labour on the EU market. And while banning products which stem from human rights abuses is an important and non-negotiable step, the Regulation would significantly benefit from an EU IUU Fishing Regulation inspired 'carding system' which would drive

significant progress for human rights worldwide. In this scenario, the EU would issue cards related to specific goods from third countries where forced labour is identified as systemic in their production (e.g., cotton from Turkmenistan, garments from Vietnam, electronics from China)⁹. Benefits from this system would include: third countries harnessing the momentum generated by a card to leverage reforms to restore reputational trust in their labour markets by adopting and complying with international labour and human rights standards; opportunities for engagement between the Commission and third countries through structured dialogues; and the imposition of trade-restrictive measures.

As seen from the evidence on the implementation of the IUU Fishing Regulation, receiving a card can generate momentum inside a country, unifying key stakeholders to restore reputational trust in that country's fisheries sector.¹⁰ Receiving a card in the forced labour context could similarly provoke a strong national discourse around the issue of labour and human rights standards, emboldening governments to work with civil society to push for structural reforms leading to compliance with international obligations relating to forced, bonded and slave labour, and human rights. Third countries identified as failing to address systemic forced labour in the production of specific goods would therefore work to address these issues to avoid cards or have them removed as swiftly as possible to **restore public and market confidence in their labour standards**.

A 'carding system' would enable the EU to work with third countries to improve meaningful compliance with international labour and human rights obligations and instil long-term changes in policy and implementation. By providing a **structured engagement framework**, including **formal dialogues**, **capacity building** and **technical support**, the Commission could empower third country governments to implement or better enforce existing national laws, improving compliance with international obligations related to forced labour.

Furthermore, a 'carding system' could impose a wide array of **measures** on third countries that fail to address systemic forced labour, including prohibiting the import into the EU of specific goods from that country or an area within that country, for which it has been established were produced by forced labour. This would imply extending the scope of the Forced Labour Regulation beyond individual products, however it would not go as far as banning all products and goods from a country or area. Wishing to avoid the negative consequences of inaction on forced labour on its local industries, third country governments would be empowered to address systemic labour abuses through **enhanced monitoring**, **sanctions** and **awareness raising**.

To respond in a flexible manner, the **Commission, with input from the Council when appropriate, should be empowered** to decide on the modes of engagement with third countries, as well as to consider the penalties to be applied when goods from third countries are carded. The European Commission has experience successfully administering a system similar to this through the IUU Fishing Regulation for over a decade. It therefore already has the deep institutional expertise to make a 'carding system' in the context of forced labour a success.

Conclusion

The IUU Fishing Regulation's provisions for carding and formal dialogues between the Commission and third countries have been regarded by the EU's own reports as a success¹¹. As a result of formal dialogues through this mechanism, several countries have aligned their domestic laws to meet international obligations, and in doing so, have reformed their fisheries management standards.¹² It will therefore be crucial that a 'carding system' for this regulation is developed around fundamental **international obligations** related to combatting **forced labour**, **trafficking** and **slavery-like practices**. There is an urgent need for these successes to be captured and applied to the issue of forced labour. A 'carding system' provision would enable the European Union to champion positive change for human rights globally by leveraging access to its single market for **specific goods** from third countries/areas, where it has been established that they were produced by forced labour.

Recommendations

EJF is proposing the introduction of a **'carding system' in the Forced Labour Regulation** which would:

- allow the EU to **grant yellow and red cards for specific goods from third countries/areas** where it considers forced labour practices pertaining to their production to be systemic,
- allow for **structured formal dialogues** between the Commission and non-complying third countries with a bespoke action plan for identified countries to address systemic forced labour practices,
- make the **carding status** of identified goods from third countries/areas publicly available,
- impose stricter import requirements such as a **minimum percentage of checks for goods that have been 'yellow carded'** and a **ban on specific goods that have been 'red carded'**, or additional measures that would support addressing systemic non-compliance with international obligations relating to forced labour.

References

¹ Official journal of the European Union, Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999, accessed 12.05.2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008R1005>

² As of May 2023

³ European Commission, Commission lifts "yellow card" from Thailand for its actions against illegal fishing, accessed 12.05.2023, https://ec.europa.eu/commission/presscorner/detail/en/IP_19_61

⁴ Environmental Justice Foundation, Driving improvements in fisheries governance globally: Impact of the EU IUU Carding Scheme on Belize, Guinea, Solomon Islands and Thailand, joint report by the Environmental Justice Foundation (EJF), Oceana, The Nature Conservancy, The Pew Charitable Trusts and WWF, accessed 12.05.2023, <https://ejfoundation.org/reports/driving-improvements-in-fisheries-governance-globally-impact-of-the-eu-iuu-carding-scheme-on-belize-guinea-solomon-islands-and-thailand>

⁵ Environmental Justice Foundation, Driving improvements in fisheries governance globally: Impact of the EU IUU Carding Scheme on Belize, Guinea, Solomon Islands and Thailand, joint report by the Environmental Justice Foundation (EJF), Oceana, The Nature Conservancy, The Pew Charitable Trusts and WWF, accessed 12.05.2023, <https://ejfoundation.org/reports/driving-improvements-in-fisheries-governance-globally-impact-of-the-eu-iuu-carding-scheme-on-belize-guinea-solomon-islands-and-thailand>

⁶ Ibid.

⁷ Ibid.

⁸ European Commission, Commission lifts "yellow card" from Thailand for its actions against illegal fishing, accessed 12.05.2023, https://ec.europa.eu/commission/presscorner/detail/en/IP_19_61

⁹ The identification of goods could draw inspiration from the U.S. Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005 and subsequent reauthorisations, which requires U.S. Department of Labor's Bureau of International Labor Affairs (ILAB) to produce a list of goods from countries for which it has reason to believe are produced by forced labour or child labour in violation of international standards. "The ILAB maintains the TVPRA List primarily to raise public awareness about child labour and forced labour around the world and to promote efforts to eliminate them. The TVPRA List serves as a catalyst for more strategic and focused coordination and collaboration among those working to address these problems." (p. 21, 2022 List of Goods Produced by Child Labor or Forced Labour, U.S. Department of Labor, September 2022, accessed 12.05.2023, https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2021/2022-TVPRA-List-of-Goods-v3.pdf)

¹⁰ Environmental Justice Foundation, Driving improvements in fisheries governance globally: Impact of the EU IUU Carding Scheme on Belize, Guinea, Solomon Islands and Thailand, joint report by the Environmental Justice Foundation (EJF), Oceana, The Nature Conservancy, The Pew Charitable Trusts and WWF, accessed 12.05.2023, <https://ejfoundation.org/reports/driving-improvements-in-fisheries-governance-globally-impact-of-the-eu-iuu-carding-scheme-on-belize-guinea-solomon-islands-and-thailand>

¹¹ European Commission, 09.12.2020, Report from the Commission to the European Parliament and the Council on the application of a Council Regulation (EC) No 1005/2008 establishing a community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing (the IUU Regulation), accessed 12.05.2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0772>

¹² Ibid.

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