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**COMMISSION STAFF WORKING DOCUMENT**

**Prohibiting products made with forced labour on the Union market**

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## 1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

**Despite clear international commitments to abolish forced labour, the phenomenon is still widespread.** The most recent report on Global Estimates of Modern Slavery<sup>1</sup> indicates that the global number of people in a situation of forced labour in 2021 was 27.6 million, which represents an increase of 2.7 million since 2016. According to data from the International Labour Organization (ILO), 880 000 people were in forced labour in the European Union (EU) in 2012<sup>2</sup>.

**Within the EU there are strong commitments, as well as dedicated measures and initiatives aimed at combatting forced labour.** Respect for human dignity and the universality and indivisibility of human rights are enshrined in the Treaty on European Union,<sup>3</sup> and forced labour is explicitly prohibited by the EU Charter of Fundamental Rights<sup>4</sup>. All EU Member States have ratified the fundamental ILO Conventions on forced labour (see section 3.1). The EU Anti-Trafficking Directive<sup>5</sup> requires Member States to ensure that trafficking in human beings, including trafficking for forced labour, is punishable by law. The EU public procurement Directives<sup>6</sup> require EU Member States to take appropriate measures to ensure that contractors and suppliers effectively comply with the obligations stemming from the ILO Conventions, including those on forced labour.

**EU external policy also contributes to the eradication of forced labour through its various instruments.** This includes trade policy: for instance, EU trade agreements include legally binding and enforceable commitments requiring the parties to work towards the ratification and effective implementation of all fundamental ILO Conventions, including those on forced labour. Those Conventions include an obligation to suppress the use of forced or compulsory labour in all its forms, which applies to countries benefiting from the special incentive arrangement for sustainable development and good governance (GSP+) under the EU's Generalised Scheme of Preferences (GSP). All 71 beneficiary countries of EU GSP are required not to commit serious and systematic violations of the principles laid down in the fundamental ILO Conventions. Promoting responsible and sustainable supply chains is also one of the pillars of the recent EU trade strategy<sup>7</sup>.

**The Commission also works to enhance the contribution of the private sector to the fight against forced labour** (see chapter 3 for details). The EU actively promotes the effective implementation of international standards on responsible business conduct and has put in place or proposed mandatory standards on responsible sourcing in some

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<sup>1</sup> *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM), Geneva, 2022.

<sup>2</sup> 2012 ILO Regional Fact Sheet European Union ([https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/genericdocument/wcms\\_184976.pdf](https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/genericdocument/wcms_184976.pdf))

<sup>3</sup> Consolidated version of the Treaty on European Union, OJ C 326, 26.10.2012, p. 13–390.

<sup>4</sup> Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391.

<sup>5</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1–11).

<sup>6</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance (OJ L 94, 28.3.2014, p. 65–24).

<sup>7</sup> Trade Policy Review Communication - An Open, Sustainable and Assertive Trade Policy (COM/2021/66 final).

sectors (e.g. certain minerals<sup>8</sup> and batteries<sup>9</sup>). The Corporate Sustainability Reporting Directive<sup>10</sup>, includes detailed reporting requirements on human rights and labour rights, including the elimination of forced labour, covering all large and all listed companies. On 23 February 2022, the Commission put forward a proposal for a directive on Corporate Sustainability Due Diligence<sup>11</sup>, which would require large companies above certain thresholds operating in the single market to put in place due diligence procedures in order to ensure compliance with international human rights standards, including on forced labour. On 13 July 2021, the Commission and the European External Action Service published a guidance document on due diligence<sup>12</sup> to help EU companies address the risk of forced labour in their operations and supply chains, in line with international standards.

**The European Parliament has called for EU measures to combat forced labour.** In 2016, Parliament called on the Commission to develop legislation to prohibit imports of goods produced with any form of forced labour or modern slavery<sup>13</sup>. In 2020, Parliament called for a ban on the importation of products linked to severe human rights violations such as forced labour or child labour<sup>14 15</sup>.

On 16 May 2022, the European Parliament's Committee on International Trade (INTA) voted on a motion for a resolution on 'a new trade instrument to ban products made by forced labour'. The resolution, adopted by Parliament's plenary on 9 June 2022<sup>16</sup>, called for the Commission to propose a trade instrument that would ban the import and export of products made or transported by forced labour and which should be complemented with measures for intra-EU trade. It referred to the need to build on ILO forced labour indicators and stressed the importance of ensuring compatibility with World Trade Organization (WTO) rules and with due diligence legislation, as well as proportionality, non-discrimination, and cooperation with non-EU countries. The resolution also called on the Commission to avoid unnecessary burdens for SMEs (but not to exempt them) and give companies the opportunity to demonstrate the absence of forced labour in their products; to create guidelines for companies, and set up a risks database and a coordination system at EU level to support Member States' authorities; to include in the new instrument an export ban and a ban on products transported by forced labour; and to create and maintain a public list of sanctioned entities, regions and products.

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<sup>8</sup> Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (OJ L 130, 19.5.2017, p. 1–20).

<sup>9</sup> Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266, 26.9.2006, p. 1–14).

<sup>10</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting (COM/2021/189 final). The European Parliament and the Council reached a political agreement on the Corporate Sustainability Reporting Directive in June 2022.

<sup>11</sup> Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM/2022/71 final).

<sup>12</sup> [Guidance on due diligence for EU businesses to address the risk of forced labour in their operations and supply chains \(europa.eu\)](#)

<sup>13</sup> [Texts adopted - A forward-looking and innovative future strategy for trade and investment - Tuesday, 5 July 2016 \(europa.eu\)](#)

<sup>14</sup> [Texts adopted - EU Trade Policy Review - Thursday, 26 November 2020 \(europa.eu\)](#)

<sup>15</sup> [Texts adopted - Forced labour and the situation of the Uyghurs in the Xinjiang Uyghur Autonomous Region - Thursday, 17 December 2020 \(europa.eu\)](#)

<sup>16</sup> [Texts adopted - A new trade instrument to ban products made by forced labour - Thursday, 9 June 2022 \(europa.eu\)](#)



## 2. ISSUE IDENTIFICATION

### 2.1. Definition of forced labour and availability of data

**Forced labour covers a wide variety of coercive labour practices where work or service is exacted from persons that have not offered it themselves voluntarily.** Article 2.1 of the ILO Forced Labour Convention defines forced labour as ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily’<sup>20</sup>. The ILO has developed a set of eleven indicators with the most common signs pointing to the possible existence of forced labour<sup>21</sup>. Such indicators are: abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime.

**Forced labour constitutes a serious violation of human dignity and fundamental human rights**<sup>22</sup>. The ILO has declared the elimination of all forms of forced or compulsory labour as a principle concerning fundamental rights and classifies ILO Convention No 29 (‘ILO Convention No 29’), the 2014 Protocol to Convention No 29<sup>23</sup> and the ILO Convention No 105 on the abolition of forced labour<sup>24</sup> (‘ILO Convention No 105’) as fundamental ILO Conventions<sup>25</sup> (see section 4.1 for details).

**While some studies and databases on forced labour are available, the information and data is relatively limited.** The ILO publishes a comprehensive study that estimates the presence of forced labour in the world every 5 years. However, estimates for a specific geographical area such the EU are rarer. The latest estimates on forced labour looking specifically at the EU were published by the ILO in 2012. One major reason for the limited data is that forced labour is often found in criminal environments, developing countries, state-imposed settings or in processes relating to intermediary products (i.e. products used as input for a final product for example in manufacturing). There is also a general lack of awareness by consumers, businesses and governments about forced labour and its presence in our daily lives.

**Some initiatives to enhance the availability of data on forced labour have been developed in recent times.** The ILO has published guidelines for the measurement of forced labour<sup>26</sup>. The ILO has also encouraged its members to collect data on forced labour in their respective countries (including by means of standard questionnaires, manuals and sampling tools for statistical surveys) and provided recommendations for the collection and analysis of forced labour statistics, in order to facilitate their international comparability. The ILO’s Forced Labour Observatory<sup>27</sup> provides comprehensive global and country information on forced labour related to international and national legal and institutional frameworks, enforcement, prevention, including fair recruitment and due diligence, protection, access to justice, remedies, and cooperation. The Observatory aims to provide an overview of the situation of forced labour in the world, with country profiles available for all 187 ILO member states.

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<sup>20</sup> [Convention C029 - Forced Labour Convention, 1930 \(No 29\) \(ilo.org\)](#)

<sup>21</sup> ILO Indicators of Forced Labour, International Labour Organization (ILO), Geneva, 2012 ([wcms\\_203832.pdf \(ilo.org\)](#))

<sup>22</sup> As recognised in the Preamble to the 2014 Protocol to ILO Convention No. 29.

<sup>23</sup> [Protocol P029 - Protocol of 2014 to the Forced Labour Convention, 1930 \(ilo.org\)](#)

<sup>24</sup> [Convention C105 - Abolition of Forced Labour Convention, 1957 \(No. 105\) \(ilo.org\)](#)

<sup>25</sup> [Conventions and Recommendations \(ilo.org\)](#)

<sup>26</sup> ILO Guidelines concerning the measurement of forced labour. International Labour Office (ICLS/20/2018/Guidelines).

<sup>27</sup> [Forced Labour Observatory \(ilo.org\)](#)

## 2.2. Forced labour in the world

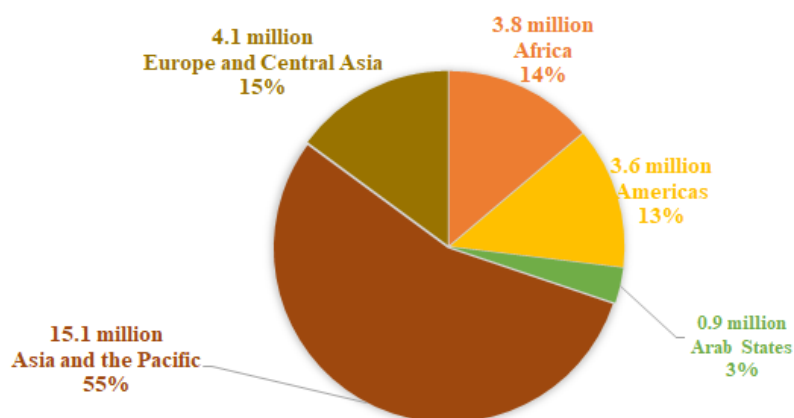
The most recent report on Global Estimates of Modern Slavery<sup>28</sup> elaborated by the ILO, Walk Free Foundation, and International Organisation for Migration (IOM), estimates the global number of people in forced labour at 27.6 million in 2021<sup>29</sup>. According to the report, forced labour exists predominantly in the private economy (86% of the total, affecting 23.7 million people) as compared to state-imposed policies (14% of the total, affecting 3.9 million people). Women and girls make up 11.8 million of the total in forced labour. More than 3.3 million of all cases of forced labour involve children.

The Global Estimates report registers an increase of 2.7 million in the number people in forced labour between 2016 and 2021, which translates to a rise in the prevalence of forced labour from 3.4 to 3.5 per thousand people in the world. The increase in the number of people in forced labour was driven entirely by forced labour in the private economy.

The report differentiates between the different forms of coercion that victims of forced labour are subjected to. The withholding of wages is the most common form of coercion, with 36% of the victims having experienced it. One in five victims experiences abuse of vulnerability through threat of dismissal. Other forms of coercion include forced confinement, physical and sexual violence and deprivation of basic needs. The length of time that victims are subjected to forced labour varies from a few days to weeks, months or even years.

While forced labour is a worldwide phenomenon, regional differences can be observed (see figure No 1). The ILO estimates that Asia and the Pacific alone account for more than half of the global total (15.1 million), followed by Europe and Central Asia<sup>30</sup> (4.1 million), Africa (3.8 million), the Americas (3.6 million), and the Arab States (0.9 million).

**Figure No 1: Presence of forced labour by region**



Source: 2022 Global Estimates of Modern Slavery. ILO, Walk Free, and IOM.

<sup>28</sup> *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM), Geneva, 2022.

<sup>29</sup> Forced marriage and early marriage are included in the definition of modern slavery but they are not considered forced labour.

<sup>30</sup> Europe and Central Asia cover: EU27, Albania, Andorra, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Faeroe Islands, Georgia, Gibraltar, Guernsey, Hungary, Iceland, Isle of Man, Israel, Jersey, Kazakhstan, Kosovo, Kyrgyzstan, Liechtenstein, Moldova, Monaco, Montenegro, North Macedonia, Norway, Russian Federation, San Marino, Serbia, Switzerland, Tajikistan, Türkiye, Ukraine, United Kingdom, Uzbekistan.

As a proportion of the population, the Arab States rank first (with 5.3 cases of forced labour per thousand people), followed by Europe and Central Asia (with 4.4 cases per thousand), the Americas and Asia and the Pacific (both 3.5 per thousand), and Africa (2.9 per thousand).

Migrant workers are especially vulnerable. In 2021, adult migrant workers were three times more likely to be in forced labour compared to non-migrant workers.

**The COVID-19 crisis** has exacerbated the situation of many people trapped in forced labour, especially in countries with a weaker social safety net and with large informal economies. As one of the main drivers of forced labour, socio-economic vulnerability has increased significantly and has pushed many people into forced labour<sup>31</sup>. Due to the loss of employment, a weak or non-existent safety net, and rising health costs, many have found themselves in a precarious situation. Debt bondage, already a major contributor to forced labour before the COVID-19 pandemic, has become even more prevalent, as many individuals take on debt to cover their loss of income and increasing expenses. The pressure on companies to reduce costs in the face of falling revenues caused by the pandemic, has pushed them to make greater use of forced labour<sup>32</sup>. The strain on public finances from COVID-19 has led to weaker supervision and enforcement of rules<sup>33</sup>. **International conflicts** such as Russia's unprovoked and unjustified military aggression against Ukraine have caused a sharp rise in energy and food prices, which are also likely to augment the risk factors associated with forced labour<sup>34</sup>.

According to the Global Estimates report five economic sectors alone account for 87% of all forced labour: services (including trade, transport, hospitality, but not including domestic work), manufacturing, construction, agriculture (not including fishing), and domestic work.

The U.S. Department of Labor's Bureau of International Labor Affairs (ILAB) publishes a list of goods (and their source countries) which it has reason to believe are produced by child labour or forced labour in violation of international standards<sup>35</sup>. Based on the latest update published in September 2022, the list covers 122 products from 41 countries made with forced labour. The findings of the US reports have been corroborated and complemented by reports from academia, civil society and others<sup>36 37 38 39 40 41 42 43 44</sup>.

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<sup>31</sup> *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM), Geneva, 2022.

<sup>32</sup> *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM), Geneva, 2017, page 7.

<sup>33</sup> *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM), Geneva, 2022, page 27.

<sup>34</sup> [2022-CHRB-Insights-Report\\_FINAL\\_23.11.22.pdf \(worldbenchmarkingalliance.org\) page 5](#)

<sup>35</sup> *2022 List of Goods Produced by Child Labor or Forced Labor*, United States' Department of Labor, available at: <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods#>.

<sup>36</sup> [Turkmenistan: Systematic Forced Labor in the 2021 Cotton Harvest – Cotton Campaign](#)

<sup>37</sup> [Cotton Harvest 2019 Review: Disastrous in Parts of Turkmenistan | turkmen.news](#)

<sup>38</sup> [Laundering Cotton | Sheffield Hallam University \(shu.ac.uk\)](#)

<sup>39</sup> [Forced labour in China presents dilemmas for fashion brands | The Economist](#)

<sup>40</sup> [NHS rubber gloves made in Malaysian factories linked with forced labour | Global development | The Guardian](#)

<sup>41</sup> [Modern Slavery PEC | Forced labour in the Malaysian medical gloves supply chain](#)

<sup>42</sup> [Lehr ConnectingDotsXinjiang\\_interior\\_v3\\_FULL\\_WEB.pdf \(csis-website-prod.s3.amazonaws.com\)](#)

<sup>43</sup> [In Broad Daylight: Uyghur Forced Labour in the Solar Supply Chain | Sheffield Hallam University \(shu.ac.uk\)](#)

<sup>44</sup> [Fears over China's Muslim forced labor loom over EU solar power – POLITICO](#)

### 2.3. Forced labour in the EU

**Forced labour is also present in the EU. According to ILO estimates from 2012, 880 000 persons are victims of forced labour in the EU<sup>45</sup>.** While most cases involved EU citizens, victims also came from Africa, Asia, and Central and South-Eastern Europe, often as migrant workers. Out of the 880 000 forced labourers, 30% were estimated to be victims of forced commercial sexual exploitation, while the remaining 70% were victims of other types of forced labour exploitation. Most victims were women (58%).

The European Union Agency for Fundamental Rights (FRA) interviewed 237 adult migrant workers, both third-country and EU nationals, who were victims of forced labour or worked in high-risk sectors in seven EU Member States and the United Kingdom<sup>46</sup>. The workers were mainly active in the following sectors: domestic work (21%), hospitality (16%), construction (15%), and agriculture (14%). The FRA study showed that, similarly to other regions in the world, common pathways to forced labour include false promises by recruitment agencies and high recruitment fees, leading to debt bondage, confiscation of identity, documents, and threats of violence.

Forced labour is a form of trafficking in human beings pursuant to article 2(3) of Directive 2011/36/EU on the prevention and combatting trafficking in human beings and protecting its victims. According to the third Commission report on the progress made in the fight against trafficking in human beings<sup>47</sup>, labour exploitation affects 15% of all victims of trafficking within the EU, with an increasing number of victims remaining undetected. EU Member States reported a total of 14 145 registered victims of human trafficking for 2 years (2017 and 2018). The report identifies a number of sectors with a high risk of labour trafficking, including agriculture, construction, hospitality and cleaning, domestic work, forestry, textiles and garments and food manufacturing<sup>48</sup>. In a focused study of exploited workers<sup>49</sup>, most of them under conditions of forced labour as defined by the ILO, 25% of the victims interviewed individually were recognised as being trafficked by victim support organisations or authorities.

**Incidences of forced labour have also been reported in the EU agricultural sector.** Victims are lured by recruitment agencies or criminal groups, who promise them well paid employment. They are often subjected to debt bondage (through recruitment fees), wages and documents being withheld, and threats of violence. For instance, in 2019 Bulgarian and French law enforcement authorities, supported by Europol and Eurojust, dismantled an organised crime group which trafficked Bulgarian citizens for labour exploitation and forced labour in the agricultural sector in France<sup>50</sup>. Forced labour in the EU agricultural sector was also reported in several Member States<sup>51</sup>. Victims usually come from poorer Member States and non-EU countries.

**In addition to the existence of people in forced labour in the EU, it is necessary to consider also the presence of forced labour in the supply chains of companies**

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<sup>45</sup> [Forced labour: an EU problem \(ilo.org\)](https://www.ilo.org/eu)

<sup>46</sup> *Protecting migrant workers from exploitation in the EU: workers' perspectives*, European Union Agency for Fundamental Rights, 2019.

<sup>47</sup> Third report on the progress made in the fight against trafficking in human beings (COM (2020) 661). Updated information and data on the fight against trafficking in human beings will be presented in the next Commission's progress report which is expected by the end of 2022.

<sup>48</sup> *Severe labour exploitation: workers moving within or into the European Union*, European Union Fundamental Rights Agency, (2015).

<sup>49</sup> *Protecting migrant workers from exploitation in the EU: workers' perspectives*, European Union Agency for Fundamental Rights, 2019, pg. 26

<sup>50</sup> [Bad harvest for Bulgarian-French network exploiting vineyard workers | Europol \(europa.eu\)](https://www.europol.europa.eu/news-room/2019/09/bad-harvest-for-bulgarian-french-network-exploiting-vineyard-workers)

<sup>51</sup> [302 potential victims of labour exploitation in the agricultural sector identified in pan-European action | Europol \(europa.eu\)](https://www.europol.europa.eu/news-room/2019/09/302-potential-victims-of-labour-exploitation-in-the-agricultural-sector-identified-in-pan-european-action)

**operating on the EU market.** Forced labour may take place at a single stage in the supply chain (e.g. harvesting), at several stages (e.g. harvesting and processing), or throughout the entire supply chain (e.g. from harvesting to cotton production to the finished textile product sold to the end consumer). Reports<sup>52</sup> suggest that, when forced labour is used in the production of a product, it generally takes place at an early stage in the supply chain, for example in mining and harvesting, making it harder to detect for companies that produce or market the final product.

When the final product reaches consumers, they are often not aware there is a risk it has been produced with the use of forced labour at some stage in the production process. This means that EU consumers may indirectly sustain forced labour by unwittingly consuming products made with it. Usually, the more components a supply chain has, the more difficult it is for companies and consumers to detect forced labour, particularly if it has occurred at an early stage in the production process. Companies might believe that their suppliers are free from forced labour, without realising they might be sourcing materials from businesses producing with forced labour. For complex goods that require many different components and production steps, identifying forced labour can be especially challenging. Hence, the measures to monitor the supply chain and due diligence are important.

Without more precise details on the extent of the problem in relation to specific products, it is difficult to quantify the production or trade potentially affected by forced labour. By extrapolating from the U.S. data from the ILAB list, we can get an indication of goods imported into the EU that could potentially be produced with forced labour. Thus, for some products like fireworks, bricks and toys imported into the EU, a significant amount could be tainted by forced labour<sup>53</sup>. Other products like garments, footwear, textile, electronics and timber are also at an increased risk.

The examples above are not exhaustive and are provided exclusively for illustrative purposes, without prejudice to any forthcoming assessment by the EU or national authorities. Any potential decision concerning specific products will need to be based on the rules and procedures set out in the future EU Regulation adopted the basis of the Commission's legislative proposal.

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<sup>52</sup> *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM), Geneva, 2022, pages 28, 30.

<sup>53</sup> Own calculations based on the 2022 US 'List of Goods Produced by Child Labor or Forced Labor', taking into account the preponderance of these products from the respective countries in the EU imports.

### 3. LEGISLATION AND OTHER INITIATIVES TO ADDRESS THE PROBLEM WITHIN THE EU AND ELSEWHERE

#### 3.1. International standards, guidelines and instruments

Due to the global presence of forced labour, international organisations have a key role to play in eradicating forced labour and have developed universal standards and guidelines on how to best tackle the issue.

##### **International Labour Organization (ILO)**

The 1998 **ILO Declaration on Fundamental Principles and Rights at Work**<sup>54</sup> affirms the obligations and commitments arising from ILO membership, namely to respect, promote and realise fundamental rights, including the elimination of forced and compulsory labour.

The ILO classified the following **legally binding instruments** on forced labour as **fundamental**: the ILO Forced Labour Convention, 1930 (No 29) supplemented by its Protocol of 2014, and the ILO Abolition of Forced Labour Convention, 1957 (No 105). A further Forced Labour Recommendation No 203<sup>55</sup> was adopted in 2014 to supplement the above standards.

**ILO Convention No. 29** establishes the international definition of forced labour and commits its members ‘to suppress the use of forced or compulsory labour in all its forms within the shortest possible period’. Ratifying members must make the illegal extraction of forced or compulsory labour a penal offence punishable by ‘adequate and strictly enforced’ penalties. Of the 187 ILO members, 180 members have so far ratified ILO Convention No. 29, including all EU Member States<sup>56</sup>.

**ILO Convention No. 105** mainly concerns forced labour imposed by state authorities and prohibits specifically the use of forced labour as punishment for the expression of political views, for the purposes of economic development, as a means of labour discipline, as a punishment for participation in strikes, and as a means of racial, religious or other discrimination. 178 ILO members have ratified Convention No. 105, including all EU Member States.

The 2014 **Protocol** requires members to take effective preventive, protective and remedial measures to comply with the requirement of Convention No. 29 to eliminate forced labour. Each member country must apply the Protocol in a way that takes its national circumstances into consideration. The Protocol also encourages the development of a comprehensive national strategy on forced labour and requires countries to develop a national policy and plan of action on forced labour. The measures adopted must include supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour. The Protocol also requires cooperation among members. The Protocol has been ratified by 59 ILO members, including 19 EU Member States.

The **Recommendation** No. 203 provides non-binding practical guidance on strengthening national law and policy for the prevention of forced labour, the protection of victims, victims’ access to justice and remedies, enforcement and international cooperation. It builds on the Protocol and should be read in conjunction with it.

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<sup>54</sup> [The text of the Declaration and its follow-up \(DECLARATION\) \(ilo.org\)](#)

<sup>55</sup> [Recommendation R203 - Forced Labour \(Supplementary Measures\) Recommendation, 2014 \(No 203\) \(ilo.org\)](#)

<sup>56</sup> [Ratifications of ILO conventions: Ratifications by Convention](#)

The **ILO 2015 Handbook on Combating Forced Labour**<sup>57</sup> is aimed at assisting businesses and employers' organisations in understanding and tackling forced labour by providing tools and practical guiding principles, as well as checklists and guidance for assessing compliance. In addition to some service sectors, the handbook lists the following product sectors in which cases of forced labour are frequently reported: agriculture, forestry, and fishing; construction, manufacturing, and utilities; garments and textiles under sweatshop conditions; and mining and logging. The handbook also presents statistics and an overview of the key issues across sectors and geographic regions.

The **ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy**<sup>58</sup> (MNE Declaration) was adopted in 1977 and amended in 2017. It contains principles and social policy guidelines on decent work relating to social security, forced labour, transition from the informal to the formal economy, wages, safety and health, access to remedy and compensation of victims. In line with the MNE Declaration, all companies are to carry out due diligence to identify, prevent and mitigate adverse impacts on human rights, and take immediate measures to eliminate forced labour in their operations. Governments should develop national policies and plans for systematic action.

Finally, the ILO takes part in numerous projects to monitor and improve labour conditions in collaboration with the private and public sector<sup>59</sup>.

- **Organisation for Economic Cooperation and Development (OECD)**

The **OECD Guidelines for Multinational Enterprises**<sup>60</sup> specify and develop the concept of human rights and environmental due diligence. They were first adopted in 1976, and last updated in 2011. Consistent with applicable laws and internationally recognised standards, the guidelines provide non-binding principles and standards for responsible international business conduct.

The implementation of the Guidelines is supported by a system of national contact points (NCPs). These are agencies established by the 42 adhering governments to promote and implement the Guidelines. The role of NCPs is to help companies and other stakeholders to take appropriate action based on the Guidelines. Whenever practical issues arise, the NCPs can also serve as a platform for mediation and conciliation. The 2011 version of the Guidelines introduced a new and comprehensive approach to due diligence and responsible supply chain management.

A stocktaking exercise was launched in 2020 by the OECD Working Party on Responsible Business Conduct. The purpose was to get a clearer picture of whether the Guidelines for Multinational Enterprises are still fit for purpose. The stocktaking report<sup>61</sup> was published in 2022 and the OECD is aiming for a targeted update of the guidelines in early 2023.

The OECD has adopted **Due Diligence Guidance on Responsible Business Conduct**<sup>62</sup>, providing practical support for companies on implementation of the Guidelines for Multinational Enterprises. The due diligence guidance gives practical explanations and

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<sup>57</sup> Combating forced labour: a handbook for employers and business / International Labour Office, 2nd ed., Geneva: ILO, 2015.

<sup>58</sup> Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, International Labour Organization, 2017.

<sup>59</sup> [Programmes and projects \(ilo.org\)](https://www.ilo.org/programmes-and-projects)

<sup>60</sup> OECD Guidelines for Multinational Enterprises, OECD Publishing, OECD, 2011.

<sup>61</sup> [Stocktaking report on the OECD Guidelines for Multinational Enterprises, OECD, 2022.](https://www.oecd.org/stocktaking-report-on-the-oecd-guidelines-for-multinational-enterprises)

<sup>62</sup> OECD Due Diligence Guidance for Responsible Business Conduct, OECD, 2018.

aims to promote a common understanding of due diligence among governments, companies, and stakeholders. The guidance was adopted by 51 countries (OECD members and other relevant countries). It covers all sectors of the economy and calls on companies to review and update their corporate policies on issues such as labour, human rights, disclosure, and corruption. The guidance identifies the following due diligence steps for companies: (1) integrating due diligence into policies and management systems, (2) identifying and assessing adverse impacts on human rights and the environment, (3) preventing, ceasing or minimising actual and potential adverse impacts on human rights and the environment, (4) assessing the effectiveness of measures, (5) communicating, (6) providing remediation.

The OECD has also adopted **sectoral guidance**<sup>63</sup> to help companies create supply chain resilience and manage uncertainty. Sectoral guidance has been issued to promote a common understanding of due diligence among stakeholders in the extractive sector, mineral supply chains, agricultural supply chains, garment supply chains, and the financial sector. The guidance for some sectors serves as the basis for EU regulatory measures fostering due diligence of supply chains<sup>64</sup>.

- **United Nations (UN)**

The UN ‘Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework’<sup>65</sup> provide guidance for governments and companies on preventing, addressing and remedying human rights abuses relating to business operations. They were endorsed by the UN Human Rights Council in 2011 and provide the first internationally agreed framework on business and human rights. Following the review of the first decade of implementation, in November 2021 the UN published a ‘Roadmap 10+’ with forward-looking recommendations for the next decade of business and human rights<sup>66</sup>.

- **Alliance 8.7**

Alliance 8.7<sup>67</sup> is a global partnership that is committed to achieving target 8.7 of the 2030 Sustainable Development Goals<sup>68</sup> outlined by the UN in 2015. Sustainable development goal 8 is about ‘decent work and economic growth’ and target 8.7 calls for immediate and effective measures to eradicate forced labour and other violations of human rights. The Alliance is made up of 26 member countries (including 3 EU Member States - Germany, France, and the Netherlands) and 375 partners (international/regional and civil society organisations, etc.) It also brings together organisations to generate data and research. The 2017 Global Estimates of Modern Slavery and Child Labour<sup>69</sup> was the result of the collaborative effort between Alliance partners.

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<sup>63</sup> [Sectors - Organisation for Economic Cooperation and Development \(oecd.org\)](https://www.oecd.org/)

<sup>64</sup> The existence of such guidance for these sectors is used as one of the criteria for selection of ‘high-impact sectors’ in the Commission Proposal for a Directive on Corporate Sustainability Due Diligence (COM(2022) 71 final).

<sup>65</sup> UN ‘Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework’, United Nations, Office of the High Commissioner for Human Rights, New York, 2011.

<sup>66</sup> UNGPS 10+. A Roadmap for the next Decade of Business and Human Rights, UN Working Group on Business and Human Rights, 2021.

<sup>67</sup> [ALLIANCE 8.7 \(alliance87.org\)](https://alliance87.org/)

<sup>68</sup> <https://sdgs.un.org/goals>

<sup>69</sup> *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM), Geneva, 2017.

### 3.2. EU current and proposed initiatives

The commitment of the European Union to responsible business conduct is demonstrated by a number of EU legislative initiatives promoting supply chain sustainability. The legislative proposal for a ban on products made with forced labour builds on such initiatives, which include legislation and proposals on human rights and environmental due diligence, sustainability reporting, market prohibitions applying to certain products, and rules for the implementation of certification schemes.

The future EU Regulation prohibiting the placing on the market of forced labour products should contribute to reinforce the application of the initiatives described in this section and apply in a manner that is coherent and complementary to them.

- **Regulation (EU) 2017/821 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas**<sup>70</sup>

The Regulation aims to ensure that EU importers of tin, tungsten, tantalum and gold ('3TG') meet international responsible sourcing standards in line with the OECD guidance mentioned in Section 3.1. It also aims to ensure that global and EU smelters and refiners source 3TG responsibly. In addition, the regulation intends to help break the link between conflict and the illegal exploitation of minerals. Under the regulation, EU importers of minerals must identify and assess the risks in their mineral supply chain, implement a strategy to respond to these risks, carry out an independent third-party audit of supply chain due diligence and report annually on their policies and practices for responsible sourcing. The competent authorities in EU countries must carry out checks to ensure that EU importers of minerals and metals comply with their due diligence obligations.

- **Regulation (EU) No 995/2010 laying down the obligations of operators who place timber and timber products on the market**<sup>71</sup>

The Regulation prohibits illegally harvested timber from being placed on the EU market and sets out preconditions for the marketing of timber and timber products in the EU. The regulation requires 'operators' who place timber products on the EU market for the first time to exercise 'due diligence' to ensure they supply products made of legally harvested timber. To this end, operators must use a due diligence system. Operators may set up their own due diligence systems or use one created by a monitoring organisation. Monitoring organisations are recognised as such by the European Commission. Their role is to assist operators in complying with the Regulation. Furthermore, to facilitate the traceability of timber products, all traders who buy and sell timber on the market must keep records of their suppliers and customers. The Regulation applies both to EU-harvested and imported timber. It considers timber or timber products to be legally harvested if they have a forest law enforcement, governance and trade (FLEGT) licence (under Regulation (EC) No 2173/2005), or a Convention on international trade in endangered species of wild fauna and flora (CITES) permit (Regulation (EC) No 338/97). The regulation will be repealed with the entry into application of the deforestation regulation referred to above.

- **Proposal for a directive on Corporate Sustainability Due Diligence**<sup>72</sup>

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<sup>70</sup> Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (OJ L 130, 19.5.2017, p. 1–20)

<sup>71</sup> Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance (OJ L 295, 12.11.2010, p. 23–34).

The Commission adopted its proposal for a corporate sustainability due diligence directive (CSDDD) on 23 February 2022. It sets rules aimed at making companies address adverse environmental and human rights impacts of their own operations, subsidiaries and value chains, inside and outside the EU. This proposed directive would introduce a corporate due diligence duty. This means mandatory due diligence requiring large companies above certain thresholds operating in the EU across all sectors to identify, prevent, mitigate, bring to an end, or minimise their adverse human rights and environmental impacts. The proposal also strengthens civil liability and access to remedy for those affected by such impacts, and establishes a public enforcement regime relying on supervisory authorities.

Furthermore, the proposal also includes clarified and harmonised duties for the directors of the EU companies covered. These duties include setting up and overseeing the implementation of the due diligence processes and integrating due diligence into the corporate strategy. According to the proposal, directors should also be required to take into account the human rights, climate change and environmental consequences of their decisions when fulfilling their duty to act in the best interest of the company.

The scope of the proposed directive covers EU limited liability companies and regulated financial undertakings with more than 500 employees and a net worldwide turnover of more than EUR 150 million. It also covers EU limited liability companies with more than 250 employees if they have a net worldwide turnover of more than EUR 40 million at least 50% of which was generated in one or more high-impact sectors, defined as sectors with high risk of adverse impacts based on various studies and for which OECD guidance exists<sup>73</sup>. Non-EU companies are also covered by the scope of the proposal if they generate more than EUR 150 million turnover in the EU or, in case they operate in a high-impact sector, if they fulfil the lower, EUR 40 million net turnover threshold. Small and medium-sized enterprises (SMEs) are excluded from the scope.

Once adopted, the due diligence legislation will also support the implementation of the prohibition of products made with forced labour. Due diligence is an important tool for companies to monitor their supply chain and take appropriate steps to identify, prevent and remediate forced labour when it is found.

- **Proposal for a regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation**<sup>74</sup>

Under the proposal for a regulation (2021/0366/EU) on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation (repealing Regulation (EU) No 995/2010) operators would be required to submit a due diligence statement before placing products on the EU market or exporting from it, confirming that the products are both legally produced and deforestation-free. The European Parliament and the Council reached a provisional political agreement on the proposal on 6 December 2022.

- **Proposal for a Regulation concerning batteries and waste batteries**<sup>75</sup>

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<sup>72</sup> Proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM/2022/71 final).

<sup>73</sup> See the list of sectoral guidance documents at: [Sectors - Organisation for Economic Cooperation and Development \(oecd.org\)](https://www.oecd.org/).

<sup>74</sup> Proposal for a regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (COM/2021/706 final).

In December 2020, the European Commission adopted a proposal to modernise the regulatory framework for batteries and secure the sustainability and competitiveness of EU battery supply chains, which would replace the 2006 Batteries Directive, would establish mandatory requirements for sustainability (such as carbon footprint rules, minimum recycled content, performance and durability criteria), safety and labelling for the marketing and putting into service of batteries, and requirements for end-of-life management. It would also introduce due diligence obligations for economic operators sourcing raw materials. The European Parliament and the Council reached a provisional political agreement on the proposal on 9 December 2022.

- **Corporate Sustainability Reporting Directive**

In 2021, the Commission put forward a proposal for a corporate sustainability reporting directive<sup>76</sup>, which would amend the existing Non-Financial Reporting Directive (Directive 2014/95/EU). In addition to extending the scope to cover all large and all listed companies, the proposal requires the auditing of reported information. It also empowers the Commission to adopt sustainability reporting standards, for greater comparability. The European Parliament and the Council reached a political agreement on the Corporate Sustainability Reporting Directive in June 2022.

- **Regulation (EC) No 1007/2009 on trade in seal products<sup>77</sup>**

The Regulation sets out harmonised rules for placing seal products on the EU market. Seal products may only be placed on the market in the EU if they come from hunts carried out by Inuit or other indigenous communities. The hunt must be traditionally conducted by the community. Moreover, it should contribute to the community's subsistence in order to provide food and income and not be primarily conducted for commercial reasons. Finally, it should pay due care to animal welfare, while taking account of the community's way of life and the subsistence purpose of the hunt. When placed on the market, a seal product must have a certificate confirming that all the above conditions have been complied with. Bodies authorised by the Commission issue the certificates.

- **Council Regulation (EC) No 2368/2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds<sup>78</sup>**

The Regulation sets up a certification system for importing and exporting rough diamonds. Its main purpose is to implement the Kimberley Process certification scheme which aims to ensure that rough diamond purchases are not used for financing violence by rebel movements seeking to undermine legitimate governments. In order for a rough diamond shipment to be imported into the EU or Greenland, it must be transported in a tamper-resistant container and accompanied by a forgery-proof government-validated Kimberley Process certificate from the exporting country. If those conditions are fulfilled, the EU authority in the country will provide a confirmed certificate to the importer; otherwise, the shipment will be detained. Rough diamond traders must ensure that they only sell diamonds purchased from legitimate sources not involved in funding

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<sup>75</sup> Proposal for a regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 (COM/2020/798 final).

<sup>76</sup> Proposal for a directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting (COM/2021/189 final.)

<sup>77</sup> Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (Text with EEA relevance) (OJ L 286, 31.10.2009, p. 36–39).

<sup>78</sup> Council Regulation (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds (OJ L 358, 31.12.2002, p. 28–48).

conflict. They must guarantee in writing that the diamonds are conflict-free based on personal knowledge and/or written guarantees provided by the diamond suppliers.

- **Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims**<sup>79</sup>

Directive 2011/36/EU lays down a legal framework for combating trafficking in human beings. Forced labour is a form of labour exploitation, punishable under that Directive. Moreover, the Directive establishes the liability of legal persons and lays down administrative and criminal penalties for the forms of exploitation referred to in the Directive, where committed by someone with a leading position in the organisation for their own benefit or where the offence was made possible by a lack of supervision or control. The proposed regulation on prohibiting products made with forced labour will complement that Directive. It will not prevent the competent authorities, including law enforcement authorities, from responding to alleged or confirmed offences involving trafficking in human beings committed for the purpose of exploitation, including forced labour.

- **Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals**<sup>80</sup>

The Directive prohibits the employment of non-EU citizens who are in the EU on an irregular basis, including victims of trafficking in human beings<sup>81</sup>. The proposed regulation on prohibiting goods made with forced labour from the EU market will complement the Directive.

- **Regulation (EU) 2019/125 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment**<sup>82</sup>

The Regulation prohibits the import into, export from and transit through the EU of goods listed which have *no practical use* other than for the purposes of capital punishment or torture. The regulation requires prior authorisation, case by case, for exports of goods which *could be used* for the purposes of capital punishment or torture, but may have other legitimate uses. EU Member States' authorities have the responsibility to decide, on a case-by-case basis, whether to grant an authorisation to export or dismiss an application for the regulated goods. They may refuse to grant an export authorisation when there are reasonable grounds to believe that the goods might be used for torture or other cruel, inhuman or degrading treatment or punishment, including judicial corporal punishment, by a law enforcement authority or any natural or legal person, or used for capital punishment in a third country.

- **Directive 2014/24/EU on public procurement**<sup>83</sup>

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<sup>79</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1–11).

<sup>80</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24–32).

<sup>81</sup> Some exceptions (residence permits of limited duration) may apply for such victims where they cooperate with authorities.

<sup>82</sup> Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (codification) PE/59/2018/REV/1 (OJ L 30, 31.1.2019, p. 1–57).

<sup>83</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance (OJ L 94, 28.3.2014, p. 65–242).

The Directive requires Member States to take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international instruments on environmental, social and labour law provisions listed in an Annex to the Directive. Such instruments include the ILO fundamental conventions.

- **EU Guidance on forced labour due diligence for EU businesses**<sup>84</sup>

On 13 July 2021, the Commission and the European External Action Service published an ‘EU Guidance on due diligence for EU businesses to address the risk of forced labour in their operations and supply chains’. The guidance document explains the practical aspects of due diligence and includes specific considerations to address the risks and impacts arising from forced labour. It also provides an overview of EU and international instruments on responsible business conduct that are relevant for combatting forced labour.

### 3.3. Specific legislation and other policies in EU Member States

**EU Member States are also committed to fighting against forced labour.** All of them have ratified the ILO Forced Labour Convention (No 29) and the Abolition of Forced Labour Convention (No 105), while 19 of them have ratified the Protocol of 2014 to the Forced Labour Convention. The majority of EU Member States have developed national action plans for the implementation of the UN Guiding Principles on Business and Human Rights, and some of them have adopted or are considering national cross-sectoral due diligence legislation (see below table 1).

The legislation and additional measures currently in place or being proposed by Member States promote due diligence for human rights in general or against child labour or forced labour in particular. This can vary from obligations for directors as in Ireland, where directors have to take employees’ interests into account, to a general due diligence requirement for human rights, health, personal security and environmental impacts through the whole supply chain, as in France.

The national measures and initiatives described in this section are an important contribution to the fight against forced labour in the EU and will support the efforts of business and other stakeholders in promoting responsible business conduct and supply chain responsibility for the respect of human rights, including to promote freedom from forced labour.

***Table 1: Overview of Member States’ measures in the field of due diligence for human rights***

<b>Member State</b>	<b>Has adopted cross-sectoral due diligence legislation</b>	<b>Preparing or considering cross-sectoral due diligence legislation</b>	<b>Has adopted a national action plan on business and human rights</b>
<b>Austria (AT)</b>	No	Yes	No
<b>Belgium (BE)</b>	No	Yes	Yes
<b>Bulgaria (BG)</b>	No	No	No
<b>Croatia (HR)</b>	No	No	No
<b>Cyprus (CY)</b>	No	No	No
<b>Czechia (CZ)</b>	No	No	Yes

<b>Denmark (DK)</b>	No	Yes	Yes
<b>Estonia (EE)</b>	No	No	No
<b>Finland (FI)</b>	No	Yes	Yes
<b>France (FR)</b>	Yes	-	Yes
<b>Germany (DE)</b>	Yes	-	Yes
<b>Greece (EL)</b>	No	No	No
<b>Hungary (HU)</b>	No	No	No
<b>Ireland (IE)</b>	No	No	Yes
<b>Italy (IT)</b>	No	Yes	Yes
<b>Latvia (LV)</b>	No	No	No
<b>Lithuania (LT)</b>	No	No	Yes
<b>Luxembourg (LU)</b>	No	Yes	Yes
<b>Malta (MT)</b>	No	No	No
<b>Netherlands (NL)</b>	No	Yes	Yes
<b>Poland (PL)</b>	No	No	Yes
<b>Portugal (PT)</b>	No	No	No
<b>Romania (RO)</b>	No	No	No
<b>Slovakia (SK)</b>	No	No	No
<b>Slovenia (SI)</b>	No	No	Yes
<b>Spain (ES)</b>	No	Yes	Yes
<b>Sweden (SE)</b>	No	No	Yes

Sources: [www.globalnaps.org](http://www.globalnaps.org); <https://www.business-humanrights.org/en/>

Below is a non-exhaustive list of the related measures taken by some of the Member States.

In June 2021, **Germany** adopted the law on cross-sectoral mandatory human rights supply chain due diligence. The law will apply to human rights issues and to a limited number of environmental issues, if – because of them – human rights are violated (e.g. in the case of polluted water) or because the company’s activities are not in accordance with certain international environmental agreements. The law applies, from 2023 onwards, to companies with more than 3 000 employees, and from 2024 onwards, to companies with more than 1 000 employees and covers only direct suppliers unless the company had indications about harm occurring among its indirect suppliers. The law does not impose a product ban per se, as it is mostly focused on companies’ liability and compensation for victims. Offending companies may be barred from public procurement. Also, under Germany’s Corporate Governance Code (2019), management boards and supervisory boards – in line with the principles of the social market economy – are required to take account of the interests of the shareholders, the company’s workforce and the other groups related to the enterprise (stakeholders) to ensure the continued existence of the company and its sustainable value creation (the company’s best interests).

**France** put in place a cross-sectoral due diligence requirement for human rights, health, personal security and environmental impacts through the whole supply chain

(Law No 2017-399 of 27 March 2017). The law applies to any company located on French territory that for two consecutive financial years has employed at least 5 000 employees, or at least 10 000 employees in its own company and in its direct or indirect subsidiaries with a registered office in France or abroad. Such companies have to draw up and implement a vigilance plan based on the UN Guiding Principles on an annual basis. The due diligence duty covers the whole supply chain and parent companies are liable for damage that due diligence could have prevented. The law establishes a reasonable vigilance measure to identify risks and prevent serious breaches of human rights and fundamental freedoms, health, security of persons and the environment. The company is responsible for any breaches and for repairing the consequences of failure to comply with their obligations. Moreover, in 2019, France amended the commercial and civil codes to require companies to be managed in a way that takes account of social and environmental challenges (*Loi PACTE*).

In **the Netherlands**, Dutch law explicitly states that shareholder interests do not take priority over the interests of other stakeholders. Four political parties submitted a draft law on responsible and sustainable international business conduct in the Dutch parliament. Applicable across industry sectors, the law would introduce due diligence obligations for any company that knows or has reasonable grounds to suspect that its activity may have adverse effects on human rights, labour rights or the environment outside the Netherlands. In addition to the legislation focusing on human rights due diligence, other pieces of legislation have indirectly tackled forced labour. This includes national measures to implement EU legislation such as the Public Procurement Directive (2014/24/EU), which explicitly refers to the ILO Convention in its Annex, and the Directive for Non-Financial Disclosures (2014/95/EU), which refers to ‘ILO Conventions’ in its recitals. This overview does not include these pieces of national legislation.

In **Austria**, in March 2021 a political party presented a proposal for a supply chain law, which is to be introduced to the Environment and Justice Committee.

In **Belgium**, in April 2021 the Belgian parliament voted to consider a bill placing duties of care and responsibility on companies throughout their supply chains.

In **Denmark**, in January 2019, three Danish political parties presented a parliamentary motion calling on the government to introduce a bill on human rights due diligence for all large companies and companies in high-risk sectors.

In **Finland**, in June 2020 the government released a study on possible regulatory options for mandatory due diligence. In 2022, a memorandum was published examining the possible content of a due diligence obligation in national legislation.

In **Italy**, the national action plan on business and human rights commits the government to a review of existing law to assess legislative reform introducing human rights due diligence for companies.

In **Luxembourg**, the 2018 coalition agreement committed the coalition partners to supporting government initiatives to strengthen companies’ human rights responsibilities. In May 2021, the Ministry of Foreign Affairs commissioned a study on legislative options for introducing mandatory human rights due diligence at national level.

### **3.4. Legislation in other countries**

The following section outlines a non-comprehensive list of initiatives in non-EU countries to eliminate or curtail the presence of forced labour. Some are focused on forced labour, while others are more general, introducing due diligence obligations that include forced labour considerations (cross-sectoral or sector-specific).

- **United States**

*Section 307 of the Tariff Act*

Section 307 of the 1930 Tariff Act (19 U.S.C. §1307) prohibits the importation of any product that was mined, produced, or manufactured wholly or in part by forced labour, including forced or indentured child labour. This prohibition, enforced by US Customs and Border Protection (CBP), was tightened substantially in 2016 with the elimination of an exception for cases of ‘consumptive demand’ (where the US did not produce enough of the good concerned to meet domestic demand). Under Section 307, if CBP receives a report of likely importation of forced labour goods into the US, it must initiate an investigation if warranted on the basis of the information received. If CBP finds that the information ‘reasonably but not conclusively indicates’ that the imports in question may be the product of forced labour, it issues a ‘withhold release order’ (WRO) and the goods are not released to the importer pending further investigation. To release a shipment that has been subjected to a WRO, specific information must be provided in a detailed statement to CBP regarding the goods’ production and supply chain, proving that the goods were not made with forced labour. CBP makes a determination on a case-by-case basis. When CBP determines ‘probable cause,’ a ‘formal finding’ is issued, which can result in the goods being seized (not just excluded from the US)<sup>84</sup>. From 2016 to 2021, there were 36 WROs (23 of them in 2020-21) and 2 findings<sup>85</sup>.

*Uyghur Forced Labour Prevention Act*

In 2021, the US Congress passed a compromise version of the Uyghur Forced Labor Prevention Act, H.R. 6256 (UFLPA), which President Biden signed into law on 23 December 2021. The UFLPA instructs US CBP to presume that ‘any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in’ the Xinjiang Uyghur Autonomous Region were made with forced labour and are not allowed into the United States<sup>86</sup>. The presumption also includes goods produced by entities, to be identified, that work with the Xinjiang government to recruit, transport, or receive forced labour from Xinjiang as well as entities that participate in ‘poverty alleviation’ and ‘pairing-assistance’ programmes in Xinjiang<sup>87</sup>. This means that under UFLPA, imports from Xinjiang are automatically barred from entry into the United States without a WRO from the CBP or any specific indication of forced labour in the supply chain.

The UFLPA should not be confused with WROs, since the UFLPA does not require the CBP to issue WROs and findings in order to detain and seize goods. Instead, the rebuttable presumption applies from the onset and, if importers cannot rebut the presumption, their goods may be detained, excluded, seized and forfeited.

The CBP issued operational guidance for importers<sup>88</sup> on 13 June 2022 and, on 17 June 2022, the Forced Labor Enforcement Task Force published its enforcement strategy<sup>89</sup>. The strategy and operational guidelines (largely overlapping) shed light on how the CBP will enforce the UFLPA. In particular, they include the type of information CBP considers relevant when enforcing the legislation.

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<sup>84</sup> [How does CBP enforce 19 USC Section 1307?](#)

<sup>85</sup> [Withhold Release Orders and Findings List | U.S. Customs and Border Protection \(cbp.gov\)](#)

<sup>86</sup> [Text - H.R.6256 - 117th Congress \(2021-2022\): To ensure that goods made with forced labor in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China do not enter the United States market, and for other purposes. | Congress.gov | Library of Congress.](#) (Sec. 3(a)).

<sup>87</sup> See footnote 87 (Sec. 2(d)).

<sup>88</sup> [Uyghur Forced Labor Prevention Act U.S. Customs and Border Protection Operational Guidance for Importers \(cbp.gov\)](#)

<sup>89</sup> [Strategy to Prevent the Importation of Good Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China \(dhs.gov\)](#)

### *Other acts*

The US Federal Acquisition Regulation from 2001 is a principal set of rules on government procurement in the United States. It prohibits contractors, contractor employees, subcontractors, subcontractor employees and their agents from engaging in trafficking, using forced labour, charging recruitment fees, withholding documents and forced labour actions.

In 2010, the California Transparency in Supply Chains Act was enacted which requires companies to make certain disclosures and provide consumers with information on their efforts to eliminate slavery and human trafficking from their supply chains, so that consumers can make better and informed purchasing choices. This requirement only applies to companies which (a) identify themselves as a retail seller or manufacturer in their tax returns, (b) satisfy the legal requirements for ‘doing business’ in California and (c) have annual worldwide gross receipts exceeding USD 100 million.

- **Canada**

Importing goods made with forced labour has been illegal in Canada since July 2020, as part of the implementation of the US-Mexico-Canada Agreement. Canadian authorities are empowered to detain shipments suspected of being made by forced labourers but have to gather ‘legally sufficient and defensible evidence’ in order to bar the goods from entering Canada. The Canada Border Services Agency (CBSA) has provided guidance<sup>90</sup> to importers about the evidence they will be expected to produce if their goods are detained because the CBSA suspects that the goods were produced by forced labour. To establish that the goods at issue were not produced with forced labour, an importer will be expected to have documentation in support of the importers’ complete supply chain, described as ‘the entire system of producing and delivering the goods from the initial stage of sourcing raw materials to delivery of the product in Canada.’ Records maintained should include documentary evidence to establish the origin, purchase and transportation of all materials (including raw materials) from suppliers involved in the mining, manufacture, or production of the good and its components.

- **United Kingdom**

Under the UK’s 2015 Modern Slavery Act introduces compliance disclosure and transparency requirements for organisations with an annual turnover of at least GBP 36 million (approximately EUR 42 million) that sell goods or services in the UK. Specifically, such organisations are required to annually publish a slavery statement demonstrating what they are doing to ensure that there is no slavery or human trafficking in the business or the supply chain. This also applies to organisations based outside the UK selling goods and services into the UK. As the UK’s official accompanying guidance on the disclosure/transparency requirements states, organisations must ‘paint a detailed picture’ of all the steps that they have taken. This compliance obligation has been in force since 29 October 2015 and many organisations that fall under it have already published their statements in the last few years.

- **Australia**

The Modern Slavery Act came into force on 1 January 2019. It requires entities either based or operating in Australia with an annual consolidated revenue of more than AUD 100 million, to report annually on the risks of modern slavery in their operations and supply chains, and on how they are preventing and addressing those risks. The Act defines ‘modern slavery’ with reference to the Commonwealth Criminal Code and international law. It captures conduct that would constitute slavery and slavery-like

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<sup>90</sup> [Memorandum D9-1-6 - Goods manufactured or produced by prison or forced labour \(cbsa-asfc.gc.ca\)](#)

offences, whether or not the conduct took place in Australia. Slavery and slavery-like conduct would include forced labour, deceptive recruitment and debt bondage. Each year, reporting entities must submit a ‘modern slavery statement’ to the Minister for Home Affairs, through a publicly accessible registry. The Act gives the government the power, in certain circumstances, to publicly name entities that fail to comply. The government can also require entities that fail to comply to take remedial action.

- **Norway**

In 2021, Norway introduced the Act on Business Transparency and Work on Basic Human Rights and Decent Working Conditions. Companies covered by the Act need to complete due diligence assessments to get an overview of the consequences their business, supply chains and business partners have on fundamental human rights and working conditions. The Act applies to public limited companies, listed companies and other accounting entities. Also included are companies which meet at least two of the following three conditions:

- over NOK 70 million in sales revenue
- over NOK 35 million in balance sheet total
- over 50 person-years in the average number of employees in the financial year

Companies must also be based within Norway and offer goods or services in or outside Norway or be a company that offers goods and services in Norway and is taxable in Norway according to Norwegian law.

### **3.5. Private-sector initiatives**

In an effort to combat forced labour, a number of private-sector initiatives have been developed. They include a variety of actors among companies, trade unions, civil society organizations, academia and other stakeholders. Through these frameworks, participants cooperate and pull together knowledge and resources to bring meaningful change in workers’ conditions along the supply chains. The initiatives often contain codes of conduct grounded in international conventions, capacity-building programs, monitoring of non-compliance and reporting processes. They can be sectorial or more comprehensive. Some focus on forced labour, while others have a wider scope and cover, for example, environmental, economic and safety conditions.

Whilst it is important for the private sector to address the problem through various initiatives, action at EU level is needed to tackle the issue comprehensively and to draw up a common framework for combating forced labour. The structures and efforts put in place by these initiatives may facilitate the efforts of economic operators to prepare the implementation of the future regulation on forced labour products.

A non-exhaustive list of some private sector initiatives is outlined below, in no particular order. Inclusion or exclusion of specific initiatives in this section should not be understood as endorsement or disapproval of the respective initiatives by the European Commission,

- The Responsible Business Alliance (RBA)<sup>91</sup>

Established in 2004 (initially known as Electronic Industry Citizenship Coalition), RBA is a non-profit organisation made up of companies in the electronics, retail, automotive and toy sectors. The RBA set out a responsible labour initiative, stakeholders work together to ‘to improve working and environmental conditions and business performance through leading standards and practices’. RBA members, as well as their Tier 1 suppliers,

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<sup>91</sup> [www.responsiblebusiness.org](http://www.responsiblebusiness.org)

are required to operate in line with the RBA Code of Conduct. The Code sets out social, environmental, and ethical industry standards with reference to international norms such as: the Universal Declaration of Human Rights, ILO International Labour Standards, OECD Guidelines for Multinational Enterprises, ISO standards, Social Accountability International standards and others. More than 500 members are part of the RBA and its responsible minerals, labour and factory initiatives, with a combined revenue of USD 7.7 trillion.

- Amfori Business Social Compliance Initiative<sup>92</sup>

Amfori is a business initiative that brings together retailers, importers, brands and associations from various countries. One of its key features is the business social compliance initiative (BSCI) focused on ‘improving social performance in global supply chains’. In order to achieve this goal, members must comply with the Amfori BSCI Code of Conduct that sets up values and principles to be implemented in supply chains. The Code refers to international conventions such as ‘the Universal Declaration of Human Rights, the Children’s Rights and Business Principles, UN Guiding Principles for Business and Human Rights, OECD Guidelines, UN Global Compact and ILO Conventions and Recommendations relevant to improve working conditions in the supply chain’. The Code is built around 11 principles which cover, for instance, bonded labour, decent working hours and fair remuneration. Amfori has more than 2 400 members, mostly headquartered in Europe (89%). The largest sectors represented are general merchandise (25.8%) and the garment and textile industry (21.8%). By type, importers account for 66% of the members, followed by brands (19%), retailers (11%) and holdings (4%).

- The ethical trading initiative (ETI)<sup>93</sup>

ETI is an ‘alliance of companies, trade unions and NGOs that promotes respect for workers’ rights around the globe’ ETI’s vision is built on the principle of ethical trade which requires retailers, brands, and suppliers to take responsibility for improving the working conditions of their employees at any stage of production in the supply chain. ETI’s members collaborate to deal with issues that are too complex to be addressed by individual companies on their own. All ETI members are required to adopt the ETI Base Code of labour practice that is founded on the ILO Conventions and is an internationally recognised code of good labour practice. The Code contains nine clauses referring to the ILO Conventions most relevant to labour practices. ETI members have a combined turnover of over GBP 166 billion and their union members represent nearly 160 million workers.

- ILO Global Business Network on Forced Labour (ILO GBNFL)<sup>94</sup>

The ILO GBNFL ‘is a global business network coordinated by the ILO’. Its members include ‘businesses of all sizes and sectors, employer and membership organisations, industry trade groups and sectoral associations’. Businesses collaborate with each other to face the challenge of eradicating the root causes of forced labour. The ILO GBNFL operates internationally across all sectors to develop new tools and solutions in relation to forced labour and supports micro, small and medium-sized enterprises in facing this challenge. The ILO GBNFL is a partner of Alliance 8.7. Within this partnership, member companies are given direct access to the Alliance 8.7 community and participate actively in work to deliver on Sustainable Development Target 8.7 and eliminate all forms of forced labour. The ILO GBNFL is focused on four key areas. The first involves

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<sup>92</sup> [www.amfori.org](http://www.amfori.org)

<sup>93</sup> [www.ethicaltradealliance.org](http://www.ethicaltradealliance.org)

<sup>94</sup> [www.flbusiness.network](http://www.flbusiness.network)

*connecting* business actors across various sectors and geographical locations in order to improve coordination and collaboration in facing the common challenge of forced labour. The second key area is *convening*, by supporting businesses to establish dialogue with government bodies in pursuit of novel ways to eradicate forced labour. The third focus area is *innovating*, by identifying gaps and devising original solutions to forced labour. Finally, the last key area is *supporting* by sharing data, information, and resources across various businesses.

- The Consumer Goods Forum (CGF)<sup>95</sup>

The CGF is a global organisation that associates consumer goods retailers and manufacturers. Through common collaboration members aim to ‘secure consumer trust and drive positive change, including greater efficiency’. The CGF established coalitions of action built around four key pillars: environmental and social sustainability; health and wellness; food safety; and data accuracy and the end-to end supply chain. Within each coalition, members focus on a key subject and propose strategies that are then implemented into agendas and require ‘company commitments and reporting processes to ensure action and transparency’. Within the human rights coalition, the CGF is advancing towards the eradication of forced labour. This process is regulated by the CGF’s Social Resolution on forced labour that is built on the UN Guiding Principles on Business and Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, and the UN sustainable development goals. The CGF’s 400 members directly employ 10 million people, with a further 90 million related jobs estimated along the supply chain.

- Fair Labor Association (FLA)<sup>96</sup>

The FLA is a non-profit association based on the ‘model of collaboration with companies, civil society organisations, and universities’. FLA’s key mission is to guarantee fair working conditions for all workers. It proposes original business policies and practices that serve to improve conditions for workers across all sectors and geographical locations. The FLA operates by establishing standards, accreditation, and monitoring noncompliance. The FLA assesses companies’ business practices against international standards for global supply chains in agriculture and manufacturing. In addition, the FLA also follows its Fair Labor Code, common to both sectors. The Code sets standards for workers’ rights in factories and on farms.

- Global Business Coalition Against Human Trafficking (GBCAT)<sup>97</sup>

GBCAT is a business coalition aimed at tackling forced labour and human trafficking by ‘advancing cross-industry progress’. GBCAT operates in compliance with its Operating Charter, which lays down how GBCAT is governed and specifies members’ rights and obligations. GBCAT operates in three main focus areas that serve to address the subject of modern slavery, namely:

- *survivor empowerment and employment*, which targets survivors of human trafficking;
- *building capacity among SMEs* (‘mapping of existing resources for SMEs and corporate suppliers’, ‘developing a toolkit on preventing and addressing forced labour’, and ‘SME partnership on implementation’); and
- *navigation and guidance*, which assists businesses of all sizes in navigating existing resources.

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<sup>95</sup> [www.theconsumergoodsforum.com](http://www.theconsumergoodsforum.com)

<sup>96</sup> [www.fairlabor.org](http://www.fairlabor.org)

<sup>97</sup> [www.gbcat.org](http://www.gbcat.org)

- Forest Stewardship Council (FSC)<sup>98</sup>

FSC is a non-profit multi-stakeholder organisation operating internationally. FSC sets standards for sustainable forest management taking into consideration economic, social and environmental conditions. FSC's mission is to shift 'the global forest trend toward sustainable use, conservation, restoration, and respect for all'. One of FSC's focus areas is to protect workers' rights in line with international labour standards guaranteeing basic rights, such as the elimination of forced labour, fair pay or freedom of association. In 2017, *FSC's Board of Directors* decided to apply *ILO Core Labour Conventions* to all its members, followed by the *ILO's Core Conventions* and the *ILO Declaration on Fundamental Principles and Rights of Work in 2021*. FSC provides resources to assist its members in ensuring workers' rights and identifying and eradicating any forms of forced labour. More than 1 500 companies are licensed to promote FSC-labelled products.

- Fair Wear Foundation (FWF)<sup>99</sup>

The Fair Wear Foundation is a non-profit multi-stakeholder organisation that brings together 'brands, factories, workers, trade unions, NGOs and other industry influencers'. Fair Wear's main goal is to guarantee universal workers' rights in the garment industry. Fair Wear believes this can be achieved by improving companies' 'internal mechanisms', 'mitigating and remediating risks and violations of labour rights' in supply chains, establishing 'an enabling environment for the effective enforcement of labour rights', and 'shifting power imbalances' by empowering workers to fight for their rights. Fair Wear member companies are required to comply with the *Fair Wear Code of Labour Practices* based on standards provided in *ILO Conventions* and the *UN Declaration on Human Rights*. Moreover, Fair Wear member businesses need to carry out due diligence on their supply chains following the *OECD due diligence guidance for responsible supply chains in the garment and footwear sector* and to satisfy the requirements in the *OECD Guidelines for Multinational Enterprises*. Currently 149 brands are members of the Fair Wear Foundation.

- Better Cotton Initiative (BCI)<sup>100</sup>

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<sup>98</sup> [www.fsc.org/en](http://www.fsc.org/en)

<sup>99</sup> [www.fairwear.org](http://www.fairwear.org)

<sup>100</sup> [www.bettercotton.org](http://www.bettercotton.org)

BCI is a multi-stakeholder sustainability initiative for cotton, and it is the ‘world’s largest cotton sustainability programme’. The initiative encompasses various stakeholders including leading retailers and brands, manufacturers, civil societies and development organisations. BCI has established the better cotton standard system (BCSS) view to stimulate constant improvements in the environmental, economic and social aspects of cotton production. Currently ‘nearly a quarter of the world’s cotton is produced under the BCSS’, comprising the better cotton principles and criteria, which, in turn, are based on seven leading principles, one of which is decent work. Within the decent work principle, BCI has come up with the decent work strategy to address the main challenges of ensuring workers’ rights. The strategy was developed in accordance with the requirements laid down by the ILO in its Declaration on Fundamental Principles and Rights at Work. Its objective is to uphold four principal standards: ‘freedom of association and the right to collective bargaining, the elimination of forced labour, the abolition of child labour, and the elimination of discrimination in employment and occupation’. The BCI members come from civil society, producer organisations, suppliers and manufacturers, retailers and brands, and associates, totalling 2 400 members.

- Social Accountability International (SAI)<sup>101</sup>

SAI is an international non-governmental organisation founded in 1997 as a multi-stakeholder initiative encompassing the ‘private sector, governments, NGOs, labour unions, and academia’. SAI’s main mission is to ‘is to advance human rights in workplaces globally’. SAI has introduced various training courses set up capacity-building programmes, and offers members a number of tools and services, such as the multi-industry SA8000 standard, which is based on global standards as described in the ‘Universal Declaration of Human Rights, ILO Conventions and national laws’. It includes forced labour. Together, the SAI certification system and, the SA8000 standard constitute a framework for doing businesses in a proper and equitable manner. Moreover, to promote sound supply chain management, the SAI has set up the Social Fingerprint System to support companies in handling their supply chains.

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<sup>101</sup> [www.sa-intl.org](http://www.sa-intl.org)

## 4. CONSULTATION STRATEGY AND ITS RESULTS

The consultation included publication of the call for evidence, the targeted consultation and other outreach activities and ad hoc feedback. The aim of the consultation strategy was to receive input from relevant stakeholders from both EU and non-EU countries. The main stakeholders consulted included companies (including SMEs) and their representative organisations and other operators in supply chains that may be affected by forced labour, trade union organisations, EU Member States and non-EU countries, international organisations (notably ILO and OECD), business and civil society organisations/non-governmental organisations (NGOs).

### 4.1. The targeted consultation

Between 19 May and 23 June 2022, the Commission consulted relevant Member States' authorities and stakeholders through meetings with existing platforms and networks. The initiative was presented at 14 such meetings, including the European Product Compliance Network, the civil society dialogue hosted by the Commission's Directorate-General for Trade (DG TRADE), the Commission Expert Group on Trade and Sustainable Development, and at the exchange of views with European social partner organisations. Some written feedback was received after these meetings. Representatives of Member States and more than 450 other stakeholders participated in the targeted consultation.

In general, all stakeholders agreed that forced labour is a complex issue and that it needs to be tackled and brought to an end; however, some indicated that this should be achieved through Member States' national criminal laws. Both representatives of Member States and other stakeholders underlined that the planned EU instrument has to be WTO-compatible and based on international standards, for example, on ILO's definition of forced labour and referring to the ILO indicators of forced labour. Many stakeholders questioned the absence of an impact assessment.

The majority of stakeholders stressed that the new instrument should be compatible and interlinked with the CSDDD proposal, and should not duplicate it, especially where implementation and enforcement are concerned.

A few stakeholders suggested that companies' and partner countries' efforts and commitments to addressing forced labour should be acknowledged and rewarded.

Many stakeholders expressed a wish for proportionality, with no additional burden for companies, particularly SMEs, and for guidance, particularly on risk identification. Some stakeholders expressed concerns about possible differences in implementation of the new instrument in different Member States.

Stakeholders stressed the importance of transparent and unambiguous requirements, and highlighted the challenges of traceability. Some asked for increased cooperation with trade unions to help ensure the new instrument was transparent and effective. They also suggested that the new instrument should require government labour inspection systems as an essential and compulsory method of identifying, addressing and preventing forced labour.

### 4.2. The call for evidence

The call for evidence document was published<sup>102</sup> on the Better Regulation portal (also known as 'Have Your Say' Portal), to give stakeholders an opportunity to comment on the need for action and the envisaged initiative; and to provide input on any further issues to be considered when developing this policy field. The target audience included experts

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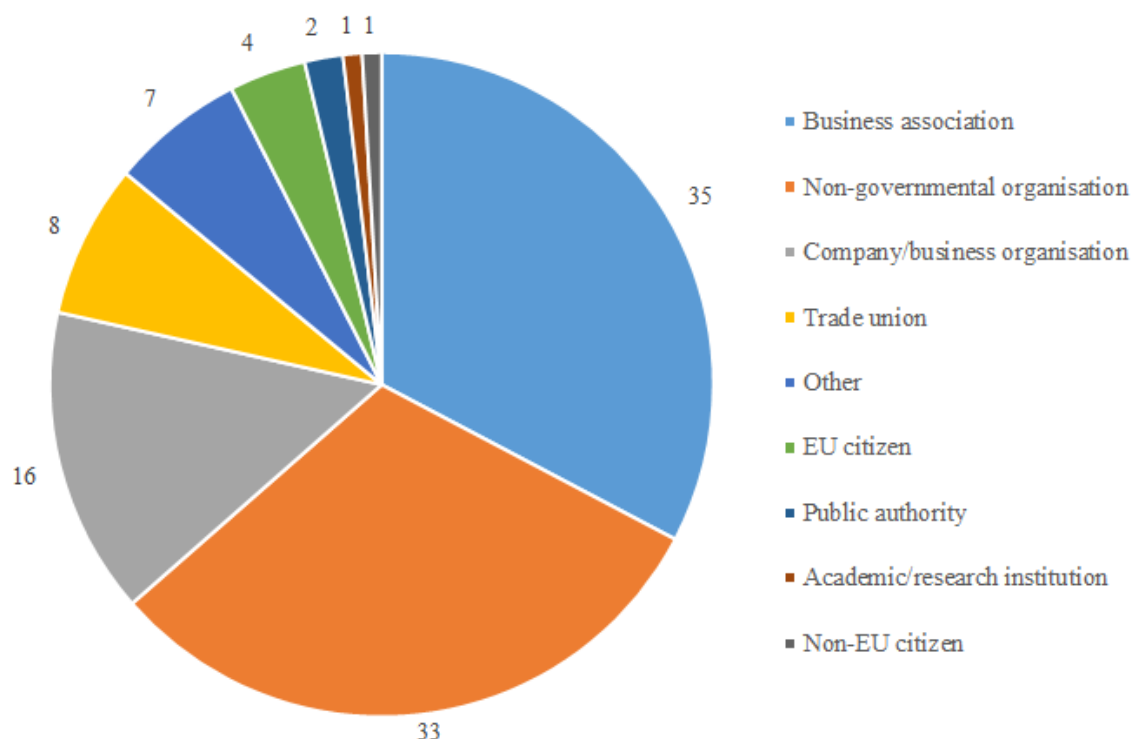
<sup>102</sup> [Effectively banning products produced, extracted or harvested with forced labour \(europa.eu\)](#)

and representatives of interested parties, such as business associations, importers or manufacturers, consumers, NGOs, trade unions, retail businesses, and national representatives, including national authorities in charge of enforcing relevant rules.

The call for evidence was open for public comments and feedback from 23 May 2022 until 20 June 2022. In total 107 responses were received, 76 of which had additional information or a position paper attached to them.

The respondents were mainly business associations, representatives of NGOs and companies/business organisations, followed by trade unions, EU citizens, public authorities, academic/research institutions, and non-EU citizens (see figure 2).

**Figure 2: Feedback received to the Call for Evidence by category of respondent**



Source: European Commission's 'Have Your Say' portal<sup>103</sup>

Out of the 107 submissions, 49 could be attributed to a specific sector. The dominant sectors were agriculture (12), the textile industry (clothes, shoes and other apparel) (12) and the solar industry (7), the remaining 18 coming from other sectors.

Stakeholders from 22 countries on five continents provided their feedback. Most of the responses were received from stakeholders based in Belgium (33 – including those who provided their feedback through their representation in Belgium), Germany (19) and the USA (12). In total, 83 out of 107 submissions were received from stakeholders based in the EU, while the remaining 24 were provided from outside the EU.

Additionally, several instances of feedback and position papers were submitted bilaterally after the deadline for the call for evidence, and a few bilateral meetings were organised ad hoc at the request of the stakeholders.

A number of concerns, suggestions and questions were raised in the submissions from stakeholders. These varied strongly depending on the type of stakeholder, industry they

<sup>103</sup> [Effectively banning products produced, extracted or harvested with forced labour \(europa.eu\)](https://europa.eu)

operate in, as well as the country in which the organisation resides. Stakeholders from civil society stakeholders and the private sector often had contrasting views on the issues at hand. Many issues raised in the targeted consultations also came up in the replies to the call for evidence.

Most stakeholders agreed that the Commission proposal should use the ILO definition of forced labour (Article 2.1. of the Forced Labour Convention No 29): ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily’. An overwhelming majority expressed the importance of eradicating forced labour from EU and global supply chains and offered their support for the Commission’s efforts.

One of the most widely shared concerns by stakeholders was the lack of an impact assessment to accompany the proposal. Views were expressed that such a major regulation needed a detailed analysis, and that future implications should be carefully considered. Some stakeholders, notably from trade unions, NGOs, and civil society organisations, agreed with the Commission’s position that the urgency of the issue of forced labour allowed no time for an impact assessment.

Many stakeholders referred to systems and regulations in place in other countries to ban products made with forced labour. Of the submissions that mentioned non-EU-country initiatives, the majority mentioned the US, followed by Canada. Company/business organisations and business associations complained about a lack of transparency of those non-EU-country measures. They noted that it was often unclear which shipments were seized and the reasoning behind it, making it difficult for importers to provide the necessary evidence.

NGOs saw it as problematic that importers could re-export products to other locations after they were refused admission to the US market, as those products were often re-routed to the EU, Japan or other countries. The new proposal would need not only to ban goods found to be produced with forced labour from the single market but also to prevent them from being re-routed to countries that do not have a ban in place, or do not have the capacity to investigate and/or enforce. NGOs also underlined the importance of increased cooperation with authorities in non-EU countries to ensure that products that were not allowed to enter their markets, did not end up on the EU single market and vice versa.

Regarding public authorities in Member States that will be in charge of enforcement, most stakeholders agreed that the same standards should be in place for all 27 Member States, and that the risk of fragmentation should be avoided. National authorities needed clear guidelines, and the necessary resources (training and staff) to monitor and enforce effectively. The EU should play a coordination role.

On the issue of SMEs, views were also divergent. Representatives of civil society stressed that SMEs should not benefit from exclusions or special provisions, as they did for the CSDDD. As they make up the majority of companies in the EU, their full inclusion is crucial for the new instrument to have a meaningful impact. On the other hand, a significant number of stakeholders identifying as business associations or companies/business organisations advocated for SMEs to receive special attention, by either providing them with detailed guidelines, specific provisions or even exclusions from the instrument. The main argument put forward to support the need to give special attention to SMEs was that smaller companies have fewer resources to conduct in-depth due diligence and less market power to put pressure on suppliers to make additional efforts or provide access to their production sites and employees.

Regarding the scope of the instrument, views were split between whether each specific consignment should be looked at individually or the instrument should focus on specific products, product groups, industries, production sites, or regions and countries.

Representatives of NGOs (especially from the USA), advocated for a similar ban as under the US Uyghur Forced Labor Prevention Act, where all products originating from the Xinjiang Uyghur Autonomous Region are automatically presumed to be made with forced labour, unless the importer can prove otherwise to the US CBP.

In the same line, there were disagreements between what evidence is needed by authorities to withhold a shipment at the port of entry. Stakeholders from civil society expressed the desire for rebuttable presumptions for specific products, industries, production sites, regions and countries that have a significant incidence of forced labour. National authorities should also be allowed to initiate investigations if they have reasonable suspicion that the products contain elements of forced labour in the supply chain. In addition, a complaint mechanism should be put in place to allow civil society and trade unions to submit complaints for investigation. The private sector would prefer a country- and product-agnostic approach, where investigations are initiated based on reasonable suspicion. Submissions also diverged in terms of the burden of proof, and if it should be on the importer to prove that their goods do not contain traces of forced labour, or if it should be the responsibility of the competent authorities to prove that forced labour was used in the production of the investigated shipment. In any case, most stakeholders agree that specific processes and investigative standards should be in place, to ensure predictability and uniformity.

The ability to release the goods after they have been suspended was also discussed in depth. Private-sector organisations wanted the authorities to have to provide clear reasons why the goods were suspended and what the concrete steps would be to release them. Civil society organisations, such as NGOs and trade unions, demanded that goods should be released only if the importer provided evidence (accepted by public authorities and civil society organisations), that forced labour was not used across the supply chain. If elements of forced labour were found to be present, the importer could still have goods released if they proved that forced labour was no longer present in their supply chain and that affected victims had received redress.

Submissions from the private sector often mentioned that combating forced labour should be a task for public authorities and governments. According to them, the public sector could not simply shift responsibility for monitoring and enforcement onto companies. They emphasised that progress had been made by including labour-related provisions in free-trade agreements and in the EU's Generalised Scheme of Preferences, as well as by implementing trade defence instruments. The EU should therefore focus on using the economic and diplomatic tools at its disposal to drive positive change in non-EU countries, instead of focusing on the regulation of private enterprises. Some stakeholders criticised the possible inclusion of products produced exclusively in the EU in the proposal.

When forced labour is detected, companies may disengage from suppliers using forced labour, or chose to engage in order to address the issue. A majority of stakeholders agree that disengagement should be avoided and only be the last resort if no dialogue is possible (e.g. in cases of state-sponsored forced labour). The initiative should not lead to unintended consequences, such as companies disengaging entirely from certain suppliers, leaving employees with no employment. The approach should rather focus on dialogue to make sure practices that fall under forced labour cease and that employees have access to decent work. NGOs and trade unions also put a heavy emphasis on remedies being provided to victims of forced labour. This means redressing not just the initiating factors that lead to forced labour, such as taking on debt to pay for recruitment fees, but also all the negative economic, physical and psychological consequences that arise afterwards.

The value of a database with forced labour risk indicators was also discussed. Public authorities could provide a registry of sanctioned and banned entities and products. This

would help companies, especially SMEs, as they could avoid problematic suppliers. A number of stakeholders also asked for customs to disclose their data for transparency reasons. Civil society organisations called for importers to be required to map and provide details on all of their suppliers.

Multiple stakeholders (companies/industries) presented the company- or sector-specific initiatives they had put in place to pro-actively address forced labour in their supply chains, and the results they had achieved. In addition, users of third-party certification schemes asked that these should be recognised as evidence. These efforts, and the experience the private sector has in this domain, should be taken into account and stakeholders should be actively involved in discussions on how to best address the issue.

The relationship to other regulations was often brought up by stakeholders. Private-sector respondents often mentioned the issue of coordination with existing EU and national regulations, to avoid duplication of effort by companies and increased red tape. Other respondents rather saw the initiative as filling in the gaps left by other regulations, such as the exemption of SMEs from the CSDDD. The CSDDD was mentioned by 59% of submissions. Other regulations referred to (albeit to a much lesser extent) included: the Conflict Minerals Regulation, the Batteries Regulation, the Timber Regulation, the Corporate Sustainability Reporting Directive and the Deforestation Regulation.

Commenting on the role of international organisations, stakeholders largely supported using the ILO's definition of forced labour and the 11 indicators of forced labour. Stakeholders also often referred to the OECD Guidelines for Multinational Enterprises, and the OECD Due Diligence Guidance on Responsible Business conduct, as well as the UN 'Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework'. They often noted that they adhered to those guidelines and guiding principles and asked for the proposal to be in line with the OECD and UN guidance.

## 5. PRESENTATION OF THE INITIATIVE

### 5.1. Justification of the measure

#### 5.1.1. Need for an additional measure

The phenomenon of forced labour requires targeted measures to address it effectively. The EU has adopted or is in the process of adopting legislation that requires companies to appropriately address human rights impacts, including forced labour, in their business operations (see Section 3.2). However, current legislation does not prevent products made with forced labour from entering or being made available on the single market, except for specific sectors and commodities, such as conflict minerals or from being exported from the single market. While the Commission's proposal for a directive on corporate sustainability due diligence addresses corporate behaviour and due diligence processes for the companies falling in its scope, it does not provide for measures specifically intended to prevent the placing and making available on the EU market of products made with forced labour. Without a general ban on products made by forced labour, with a clear enforcement responsibility, the single market risks to be the destination of such products.

The continued existence of forced labour (see section 2) illustrates the need for additional measures, also aimed at products, to prevent the placing and making available of products made with use of forced labour. A new tool is therefore needed to address the risk of forced labour products in the single market, in line with the commitment of the Commission President in the State of the Union address.

Action at EU level is required in order to provide a common EU framework for tackling forced labour, rather than having national measures, which would result in different requirements and provisions in the Member States. These would, in turn, create barriers in the single market and a greater administrative burden for economic operators, going fundamentally against the principles and the spirit of the single market. Furthermore, the lack of a common framework would undermine the enforcement efforts carried out by Member States at national level.

#### 5.1.2. Options considered

In developing an instrument at EU level several options were considered. They are presented below, along with the arguments in favour or against them.

- **Option 1:** *An instrument building on a risk matrix of goods and regions directly included in the legal instrument, combined with upfront import prohibition for the respective products.*

Whereas this option would have the advantage of providing a clear identification of goods and regions subject to the prohibition upfront, it has a number of disadvantages.

First of all, the instrument would not capture all forced labour products, as only those included in the risk matrix would be restricted. This, in turn, would perpetuate the risk of accepting certain products made with forced labour on the EU market, as long as they were not included in the risk matrix.

Such a tool would also entail a reversed burden of proof for those who wished to make available on the EU market products covered by the risk matrix, as they would need to prove the absence of forced labour in order for their products to be allowed on the market. This would mean considerable costs for the economic operators concerned and may raise questions about due process.

Furthermore, for such a tool to be functional, all economic operators importing into the EU would need to provide detailed information on the product, producer and supplier to customs authorities from the application of the legal act, a requirement that is not currently covered under the Union Customs Code.

An additional disadvantage for this option is that such an approach would only target products coming from outside the EU and therefore it would not cover products made with forced labour within the EU. This would fall short of meeting the objective to ban forced labour products from the EU market.

Based on these elements, this option was discarded.

- **Option 2:** *An instrument where due diligence carried out under EU and national legislation would be the only tool to alleviate the concerns about forced labour; investigations would be launched only on products made available by companies covered by those rules where due diligence had not been carried out appropriately.*

Since the scope of the proposed due diligence legislation does not cover SMEs and certain large companies, these companies would be exempted from the obligations under the forced labour legislation<sup>104</sup>.

This option would have the advantage of taking into consideration the situation of SMEs by exempting them from investigations and of significantly reducing compliance costs for companies subject to CSDDD requirements as their compliance would be ensured by carrying out due diligence.

However, this option has two major inconveniences.

First, exempting SMEs would undermine the effectiveness of the proposal and could create loopholes in enforcement, as it cannot be excluded beforehand that products made with forced labour are placed on the market by SMEs. Addressing these loopholes by imposing an obligation to carry out due diligence in line with the CSDDD requirements for all companies placing and making available products on the EU market or exporting products and that are not covered by the CSDDD proposal was not considered a viable option. If this option had been considered viable, it would have been already taken up in the CSDDD proposal.

Second, restricting investigations only to cases in which due diligence has not been carried out would not guarantee that the objective of the proposed regulation is achieved either. While due diligence can be enough to identify and address forced labour in the supply chain, it is not sufficient to stop products made with forced labour from entering the market in cases where due diligence is not carried out correctly or sufficiently.

For these reasons, this option was also discarded.

- **Option 3:** *Introducing a threshold for the volume and/or value of products, below which authorities would not launch forced labour investigations under the proposed regulation.*

As SMEs are likely to make smaller quantities available on the market, this kind of *de minimis* clause could have the advantage of serving to take their situation in consideration and largely exempting them from investigations.

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<sup>104</sup> The proposed corporate sustainability due diligence directive covers only companies above 500 employees and those above 250 employees if at least 50% of their net turnover was generated in one or more high-risk sectors. Therefore, only a limited number of companies are already required to carry out due diligence or will have to do so in the future under the CSDDD.

However, establishing *de minimis* thresholds relevant for all product sectors would be a complicated process likely to involve considerable administrative difficulties.

It would also not be a guarantee that SMEs would always fall outside the scope of the proposed regulation, since smaller economic operators could also make considerable volumes of products available on the market, depending on the sector.

Therefore, this option was also discarded.

- **Option 4:** *An instrument covering all products made in part or in whole with forced labour, and all economic operators placing products on the EU market or making them available, with no pre-eminent role for due diligence.*

Covering all products made in part or in whole with forced labour and all economic operators making products available on the EU market or exporting from it is necessary to effectively preventing products made with forced labour from entering the EU market. Any other approach (e.g. covering only some products, sectors, regions or operators or introducing thresholds for volumes of products) would either defeat the purpose of the regulation or be impractical, for the reasons explained for each of the previous options.

First, it is necessary to consider all products, sectors and regions and all economic operators within the scope of the instrument as the supply chain of any product originating from any sector or region can be potentially tainted by forced labour. Although the ILO statistics clearly show that the bulk of the problem lies outside the EU, it was decided that the proposed regulation will also cover products produced inside the EU. This is to send a strong signal that the EU treats forced labour seriously no matter where it occurs. To be fully consistent in its approach, the proposal also prohibits the export of products made with forced labour from the EU.

Furthermore, all products must be covered irrespective of the size of the economic operators that make them available because it cannot be excluded that products from forced labour are made available by SMEs. The choice of this option is also supported by the fact that policies addressing large enterprises inevitably impact SMEs in their supply chains, as they would also likely need to carry out due diligence procedures to gain access to financing and meet demands from their larger business partners that exercise due diligence. This is why many SMEs have voluntarily put or are putting in place measures and some due diligence processes in their supply chain. However, SMEs need support in complying with the proposed regulation and several measures to this end are included in the proposed act (see Section 5.2.2).

Finally, it is not possible to consider only products made available by companies required to carry out due diligence as due diligence alone is not sufficient guarantee that products made with forced labour do not enter the EU market. However, the due diligence process can be very useful to companies in identifying the risks of forced labour and addressing those risks effectively. Therefore, the due diligence efforts carried out by economic operators to address forced labour impacts should be taken into account in the design of the measure.

For the reasons above, this is the option selected for the proposed regulation.

### **5.1.3. Choice of legal instrument**

In the targeted consultations, economic operators and other stakeholders signalled the importance of harmonised and uniform rules across Member States. A regulation would be the best means to achieve that and ensure that a common framework is put in place quickly and efficiently. Based on these arguments, a regulation was chosen.

## 5.2. Description of the proposed regulation

### 5.2.1. Scope and enforcement

The Commission proposal for a regulation on prohibiting products made with forced labour on the EU market, adopted on 14 September 2022,<sup>105</sup> is the result of the choices explained under point 5.1.

The objective of the proposal is to effectively prohibit the placing and making available on the EU market and the export from the EU of products made with forced labour, including forced child labour. The prohibition covers domestically produced and imported products. Building on international standards and complementing existing horizontal and sectoral EU initiatives, in particular the corporate sustainability due diligence and reporting obligations, the proposal lays down a prohibition supported by a robust, risk-based enforcement framework. The enforcement would have to be compliant with international law, including WTO law.

In order to comply with the proposed regulation, economic operators need to refrain from placing or making available on the market products made with forced labour. That would mean not using forced labour in their own production sites and ensuring that their suppliers are not using forced labour either. Due diligence measures are one way of addressing the risk of forced labour. The guidelines set out in the proposed regulation will provide more details on the measures and possibilities available to companies to address this issue. The starting point for these guidelines will be the ‘EU Guidance on due diligence for EU businesses to address the risk of forced labour in their operations and supply chains’<sup>106</sup>.

However, it is important to clarify that the proposed regulation does not impose due diligence obligations on companies, nor does it extend the requirements included in the proposed CSDDD to companies that are not covered by it. Thus, the proposed regulation does not introduce any specific requirements for economic operators to carry out due diligence on forced labour or any other human rights aspects. The economic operators are free to choose how they monitor the risk of forced labour in their supply chain.

Companies that fall within the scope of the proposed CSDDD will need to address the risks of forced labour in their supply chain in line with the obligations from the future due diligence legislation, which may be sufficient to ensure the absence of forced labour from their supply chain. For these companies, no additional compliance costs are envisaged under the current proposal on prohibiting products made with forced labour.

Companies outside the scope of the proposed CSDDD mentioned above, may want to use at least parts of due diligence processes established by international organisations or by EU or national legislation to help them comply with their obligations under this proposal. These companies will incur costs related to the due diligence process chosen, but they should be significantly less than those necessary to comply with the CSDDD proposal. Not only does the current proposal cover only one aspect of the human rights spectrum, unlike the proposed CSDDD which covers both human rights and environmental aspects, but also not all obligations for due diligence included in the proposal for the directive be necessary to address forced labour risks. Moreover, companies in the supply chains of companies within the scope of the due diligence legislation are likely to be requested by

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<sup>105</sup> Proposal for a regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market (COM/2022/453 final).

<sup>106</sup> [Guidance on due diligence for EU businesses to address the risk of forced labour in their operations and supply chains \(europa.eu\)](https://europa.eu/guidance-on-due-diligence-for-eu-businesses-to-address-the-risk-of-forced-labour-in-their-operations-and-supply-chains)

the latter to adopt due diligence measures in order to eliminate or mitigate forced labour risks and impacts in their supply chain.

The regulation will be enforced by Member States' competent authorities. The system proposed a decentralised approach that combines a strong role for Member States in ensuring the effective surveillance of their respective national markets, while providing flexibility on the designation of the concrete responsible authority in order to better adapt to their national circumstances and structures. This central role of Member States will be complemented with the necessary tools facilitated by the Commission to ensure coordinated implementation at EU level, as described below. The combination of decentralised enforcement and strong coordination at EU level will ensure that a robust risk-based enforcement approach is effectively applied to products made with forced labour.

In order to identify products made with forced labour and to prohibit their placement on the EU market, a two-stage approach is proposed: a preliminary phase of investigation and an investigation phase.

- (1) In the **preliminary investigation phase**, the competent authorities will aim to establish whether a forced labour concern is or not substantiated. This phase could be triggered by the submission of information to the competent authorities, for example by a legal or natural person. At this stage, the competent authorities may invite the economic operator to provide any relevant information, in line with the identified risks. When presented with information on due diligence efforts, the competent authorities need to take it into account for determining whether there are substantiated concerns (or not) that certain products have been made with forced labour. This includes information on any action taken by the operator to identify and address risks of forced labour in its supply chain, which can include information about due diligence measures based on EU legislation or international standards or other relevant information. The economic operator will need to respond within 15 working days, presenting competent authorities with due diligence or other measures that it may have already carried out. The economic operator will not be expected to start due diligence processes in this period of time. At the same time, the fact that companies have carried out due diligence does not automatically preclude investigations when the competent authority has substantiated concerns about a certain product made available by the relevant companies. In this phase, the competent authorities will focus on the economic operators involved in the steps of the supply chain that are closest to where the likely risk of forced labour occurs (such as manufacturers, importers and distributors) and take into account the resources of the economic operators, the quantity of products concerned, as well as the scale of the suspected forced labour, in line with the risk-based approach. This would allow the competent authorities to use their limited resources to investigate the cases which are most significant. SMEs can be subject to investigations, especially when they are involved in the steps of the supply chain close to the place where forced labour occurred. However, their size and resources must be taken into account in the prioritisation of the actions taken in the preliminary investigation made by the competent authorities. In case of a decision establishing the violation of the prohibition, all companies, irrespective of their size will need to withdraw the products subject to the competent authorities' decision if they are marketing them.
- (2) The **investigation phase** is launched if in the pre-investigation phase the competent authority determines that there is a substantiated concern of a violation of the prohibition. In this phase, the economic operator will have the opportunity to submit additional documents and more detailed information to the competent

authorities. This will include information identifying the products under investigation, the manufacturer or producer of those products and the product supplier. In engaging with the economic operator, the competent authority will consider the size and resources of the economic operators concerned, for example, in setting the deadlines to provide information. Their requests should be proportionate, limited to what is necessary for their assessment during the investigation, and should focus on economic operators as close as possible to where forced labour is likely to occur in the supply chain.

All economic operators placing or making available products on the EU market can be included in the investigation. At the same time, based on the above-mentioned considerations, there are certain categories of economic operators that are less likely to be investigated, such as microenterprises, although this does not mean there is a blanket exclusion on their being investigated. Therefore, microenterprises are not included in the overall cost calculation for this measure.

In this phase, the competent authorities may conduct spot checks, including at the premises of the economic operators. If the investigation concludes that the products placed on the market are made with forced labour, the economic operator making them available will be ordered to withdraw them from the market. If this is not done within the time period set by the competent authority, the competent authority will need to ensure the withdrawal of the products. The competent authority's final decisions confirming the use of forced labour for a given product will be communicated to customs authorities, who should then identify the product concerned amongst products declared for release for free circulation or export. The customs authorities would prohibit the release for circulation or export of those products for which the competent authorities conclude that they correspond to a decision establishing a violation of the Regulation.

Should the economic operators disagree with a decision, they can request a review procedure, within 5 working days for perishable goods and 15 working days for the other products, with new information demonstrating that the respective product was not made with forced labour. The economic operators shall also have access to court for review, both for substantive or procedural legality of the decision.

Supply chains are complex, stretched across many different countries, and there is often a lack of transparency. Not all geographic regions, supply chains and product sectors carry the same risk of forced labour. Furthermore, forced labour is widespread through many sectors but is only estimated to concern a small share of world trade. Therefore, it will be difficult to prove or disprove whether forced labour has been used in products by the company producing them or its suppliers' operations. For effective implementation, the competent authorities will need to adopt a risk-based approach. It follows that enforcement should focus on circumstances in which there is an increased risk of forced labour.

The Commission will provide the competent authorities with guidance on how to apply this approach. Furthermore, a database will be set up of forced labour risks in specific geographical areas or with respect to specific products. The database will include risks relating to forced labour imposed by state authorities. Several risk indicators will be considered, including products, suppliers, history of forced labour, regions, etc. Concretely, the Commission will issue guidelines and collaborate with external experts to build an indicative, non-exhaustive, regularly updated database of forced labour risks in specific geographic areas or products, including risks of forced labour imposed by state authorities. Risk indicators will be based on information that is verifiable and from independent sources, including reports from international organisations, in particular the International Labour Organization, civil society, business organisations and experience from implementing EU legislation setting out due diligence requirements with respect to

forced labour. This work will be supported by the EU Network Against Forced Labour Products (see below).

In addition, Member States will have at their disposal the information and communication system (ICSMS) module, which is to be set up for the current proposal as part of the information and communication system referred to in Article 34 of the Market Surveillance Regulation<sup>107</sup>. The module will contain different types of decisions, for example on whether or not to launch an investigation at the end of the preliminary phase and it will also allow the competent authorities to exchange information and collaborate on investigations. Thus, when faced with a potential case, the competent authorities will have several tools and information sources available, along with possible information from third parties, with which to assess, right from the start of the preliminary investigation phase, the level of risk of forced labour in a certain product.

To facilitate enforcement across the EU and feedback to the Commission on support needs, the Commission will set up the EU Network Against Forced Labour Products. This network will be composed of representatives from Member States' competent authorities, representatives from the Commission and, where appropriate, experts from customs authorities. The cooperation of the competent authorities in the network will ensure a coherent approach among Member States regarding the application of the future legislation.

To keep stakeholders and consumers informed about the results of investigations, the Commission will publish the competent authorities' decisions on products made with forced labour on a dedicated website. This will include: decisions to prohibit making products available on the market and exporting them; decisions to order the withdrawal of the products already made available on the market and their disposal; notification of withdrawal of a decision, and decisions following the review.

To optimise and facilitate checks on products entering or leaving the EU market, three automated data transfers systems will be put in place to transfer data automatically between the competent authorities' information systems and customs systems. These will include (1) the communication from the ICSMS to the Electronic Customs Risk Management System (CRMS) of decisions by competent authorities, for use by customs authorities to identify products that may correspond to such a decision, thereby enabling customs to act immediately after a decision is made by competent authorities; (2) case management, i.e. the transfer of a notification of a suspension of suspicious product by customs, the conclusion of competent authorities and the outcome of the actions taken by customs through the EU Single Window Environment for customs; and (3) the extraction of relevant customs risk information and its transmission to the ICSMS.

### **5.2.2. SMEs**

SMEs have limited resources and expertise to implement effective due diligence systems covering the entire supply chain. Withdrawing goods from the market could impose a heavier burden and increased risks of financial difficulty for SMEs compared to a large company with more resources.

However, as explained in Section 5.1, it was decided to include them in the scope of the regulation to ensure its effectiveness and avoid implementation loopholes, while catering

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<sup>107</sup> Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019, p. 1–44).

for their situation through the design of the measure, risk-based enforcement and supportive tools.

- **Design of the measure.** The competent authorities will take a company’s size and resources into account when requesting information and setting deadlines during the investigation phase, knowing that smaller companies will have fewer resources for supply chain overview and mapping than larger companies.
- **Risk-based enforcement.** Although no economic operator is excluded from the scope of the regulation, under this approach, the authorities should focus their enforcement efforts where they are likely to have the greatest impact. Products marketed by SMEs are not excluded from the scope of the proposal, however, enforcement efforts will take into account the size and resources of the economic operator. For the purposes of the proposed regulation, this would mean that, once a product has raised concerns relating to forced labour use, the investigation would concentrate on economic operators near the point of concern, i.e. at an early stage of the supply chain (normally the importer or manufacturer).
- **Supportive tools.** SMEs willing to comply with this type of legislation may have limited resources and expertise. It would be helpful for them to receive guidelines or templates and supportive tools to help keep down the cost of compliance. This will be addressed through the issuance of guidelines/templates and other documents to support compliance.

In this context, the proposed regulation takes inspiration from measures provided for in the CSDDD, which indicates the need for accessible and practical support for companies, in particular SMEs in the supply chain, in fulfilling their obligations (or demands that may be passed on to them indirectly). This could include practical guidance and support tools such as hotlines, databases or training, or the setting up of an observatory to assist companies with implementation.

Concrete help for SMEs could also be considered in the form of joint stakeholder initiatives. These could be arranged, for example through any cooperation network linking Member States’ competent authorities.

Finally, SMEs will be indirectly covered by the need for due diligence to the extent that they are part of large companies’ supply chains. In such situations, it would be in the interest of the larger company (whose products may be the subject of forced labour investigations) to make investments or take other measures aimed at eliminating or minimising the risk of forced labour in all parts of its supply chain. This would include the supply chain upstream and downstream from the SME, which could in this way be ‘protected’ by the measures taken by the larger companies, without incurring high compliance costs for the due diligence.

### 5.3. Expected outcome

Based on the analysis in this document, including the implications of the different options under Section 5.1, the positive and negative, direct and indirect, and short and long-term impacts have been considered. The proposed action is expected to have substantial economic and social impacts. These are summarised in Table 2, including the main affected stakeholders.

**Table 2: Overview of impacts**

Impact type	Specific impact	Affected stakeholders					Assessment	
		Society,	Workers,	Busi-	Public	Third	Qualita-	Quanti-

		public, con- sumers	including in supply chain	nesses	admin- istration in the EU	coun- tries	tive	tative
Economic impacts	Business compliance costs			*		*	*	*
	Local and international competitiveness			*		*	*	
	Functioning of the single market and competition	*	*	*			*	
	International trade and trade flows					*	*	
	Impact on SMEs			*		*	*	
	Impact on economic operators in non-EU countries					*	*	
	Enforcement costs for public authorities					*	*	*
	Consumers prices and choices	*					*	
Social impacts	Fundamental rights and human rights, including in non-EU countries	*	*	*		*	*	
	Working conditions and employment		*	*		*	*	
	Social protection of vulnerable groups and local communities, including in non-EU countries		*	*		*	*	
Environmental impacts	No significant impact							

The **economic impacts**, both in terms of benefits and costs, are expected to be substantial and concern a wide range of stakeholders both inside and outside the EU. The stakeholders which are expected to be most impacted economically are the economic operator. As for the economic benefits, the European Commission’s study on due diligence<sup>108</sup>, which included a review of the literature and other impact assessments, indicates benefits of due diligence that could be extrapolated to this initiative. These benefits would range from enhanced reputation to better perception by stakeholders, enhanced risk management, as well as easier access to capital. Costs are mostly expected to consist of a compliance cost, to ensure the absence of forced labour in the supply chain. The actual interaction with national authorities will also imply an additional cost for the economic operators under different phases of investigation.

<sup>108</sup> European Commission, Directorate-General for Justice and Consumers, Torres-Cortés, F., Salinier, C., Deringer, H., et al., *Study on due diligence requirements through the supply chain : final report*, Publications Office, 2020.

The **social impacts** of the proposed measure are expected to be substantial benefits. First and foremost, the measure will have a positive impact on workers subjected to forced labour, their families, and communities, who will benefit from improved working conditions. More generally, the measure will contribute to promoting respect for human rights and better social protection of vulnerable groups and local communities, including in non-EU countries.

No significant **environmental impacts** are expected due to the exclusive focus on forced labour.

#### **5.4. Costs and benefits**

The victims of forced labour will benefit from the proposed regulation. Companies will also benefit from increased legal certainty and incentives to monitor the supply chains. The consumers will be reassured that the products they buy are not made with forced labour.

Implementation of the proposed regulation will at the same time imply costs for businesses, the implementing authorities in the Member States and the European Commission.

Due to the urgency of the measure, the Commission has not had the opportunity to conduct an in-depth impact assessment.

The costs and benefits presented below have been extrapolated from estimates in analyses done for other Commission proposals with some similarities to the current proposal. Taken together, these analyses can provide an indication of the magnitude of the costs. These include the 2014 impact assessment on the responsible sourcing of minerals and metals<sup>109</sup>; the 2021 assessment on timber and deforestation<sup>110</sup>; the 2021 assessment for the Corporate Sustainability Reporting Directive (CSRD)<sup>111</sup>, and the 2022 assessment for the corporate sustainability due diligence directive (CSDDD)<sup>112</sup>. Because the CSDDD impact assessment is the most recent and comprehensive analysis, cost estimates in this document draw more on it, with adjustments applied to take into account the differences between the CSDDD requirements and those of the proposed regulation.

The proposed regulation envisages that, in the risk-based preliminary investigation, before competent authorities initiate an investigation, companies will be requested to provide evidence of what action they have taken to identify, prevent or mitigate the risk of forced labour for the relevant products.

Human rights violations such as forced labour typically take place at the early stages of a supply chain, requiring an effort to map and understand risks of the various steps in a supply chain. In order to minimise such risks, many companies in the EU and elsewhere

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<sup>109</sup> Impact assessment (SWD 2014/53) accompanying the proposal for a regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict affected and high-risk areas (Regulation (EU) 2017/821).

<sup>110</sup> Impact assessment (SWD (2021)326) accompanying the proposal for a regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010.

<sup>111</sup> Impact assessment (SWD(2021)150) accompanying the proposal for a directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting.

<sup>112</sup> Impact assessment (SWD(2022) 42 final) accompanying the proposal for a directive of the European Parliament and of the on corporate sustainability due diligence and amending Directive (EU) 2019/1937.

have put in place due diligence systems. The practice of supply chain due diligence has become far more widespread, based on existing international standards for responsible business conduct<sup>113</sup> and on legal requirements in the EU and other countries<sup>114</sup>. As a result, an increasing number of EU companies and many of their third-country suppliers are already using supply chain due diligence as a tool to identify sustainability risks and build resilience to sudden changes in their supply chain.

Indeed, as reported by stakeholders in the Commission's call for evidence (see section 4.2), numerous company or sector-specific initiatives, including third-party certification schemes, have been put in place to address sustainability and human rights issues, such as forced labour, in their supply chains. As they have invested significant resources in implementing these initiatives, stakeholders expressed the desire for them to be taken into consideration by the competent authorities. Section 3.5 provides an overview of several private-sector-led initiatives, verification and traceability schemes, which suggest that a substantial number of companies<sup>115</sup> are already conducting voluntary due diligence, in a variety of sectors such as minerals and metals, garments as well as timber. These are companies of all sizes, including joint undertakings. NGOs and other civil society organisations can be involved too.

This trend is not restricted to large companies who have increasingly deployed due diligence processes as it can provide them with a competitive advantage and help them to avoid unwanted reputational risks vis-à-vis consumers and investors. It also affects SMEs which are an essential part of their supply chain; they must comply with the larger companies' standards, and, in so doing, can benefit from similar competitive advantages. In the responses to the call for evidence, over 84% of private-sector respondents said they were interested in eradicating forced labour, which suggests that industry also sees the benefits of making efforts in this direction (see section 4.2). At 91%, the figure was even higher among business associations representing numerous SMEs.

Finally, also previous studies and other surveys by the Commission suggest that supply chain due diligence is increasingly common practice. For instance, the study commissioned by DG TRADE<sup>116</sup> as part of the impact assessment for Regulation (EU) 2017/821 on the responsible sourcing of minerals suggested that nearly three quarters of the 330 respondents already carried out due diligence in some form, even before the Commission's proposal for the Regulation. Moreover, the impact assessment for the CSDDD proposal found that 30% of very large companies and 18% of medium-sized companies participating in the survey were already undertaking human rights due diligence. Overall, only 4% of respondents stated that their companies did not yet undertake any form of due diligence activities.

To sum up, a significant proportion of companies operating on the EU market already carry out due diligence on their supply chains, as a result of mandatory requirements

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<sup>113</sup> See section 3.1.

<sup>114</sup> See section 3.2.

<sup>115</sup> See Section 3.5. RBA includes 500 member companies with a combined annual revenue of USD \$7.7 trillion; Amfori includes 2400 members; EIT members have a combined annual revenue of GBP 166 billion; GGF includes 400 members; FSC includes 1 500 1500 companies; FWF includes 149 brands.

<sup>116</sup> European Commission, Directorate-General for Trade, Böhme, K., Dos Santos, M., Bugajski-Hochriegl, P., *Assessment of due diligence compliance costs, benefits and related effects on the competitiveness of selected operators in relation to the responsible sourcing of selected minerals from conflicts-affected areas: final report*, Publications Office, 2014.

(sectoral or general) and contractual obligations, or on a voluntary basis, to comply with international standards and guidance (e.g. OECD). Other stakeholders such as civil society organisation and multi-stakeholders initiatives have also contributed to the monitoring supply chain risks and awareness raising. EU legislation in the pipeline, notably the CSDDD, is likely to intensify these efforts, and boost the proportion of companies that carry out sustainability due diligence. Providing an accurate estimation of the costs generated by the forced labour regulation is therefore very difficult, as those costs cannot be extricated from the broader costs that companies have borne to comply with other EU requirements, or on a voluntary basis.

The following section therefore outlines the overall expected cost for companies, which, in addition to supply chain due diligence, includes administrative costs for engaging with authorities, potential costs for storage of products whose entering or leaving the EU have been suspended by customs, and the cost of withdrawing the products from the market and disposing of them. The resulting figures are based on the figures outlined in the impact assessment for the CSDDD, which is the most recent and comprehensive analysis available. These figures have been adjusted downwards, to reflect the narrower scope of the obligations in the current proposal, and also the fact that due diligence is, or would be, already carried out by many of the companies, thus lowering the additional cost of complying with the forced labour regulation.

The estimates presented for costs are likely to be overestimates as there are several factors that warrant a downward adjustment, including the leveraging of existing due diligence infrastructure.

#### **5.4.1. Business compliance costs**

The costs for companies under the proposed regulation have several main components, set out below.

- Cost of identifying and addressing the forced labour risks and impacts (including costs of establishing procedures to monitor the supply chains and of potential divesting and finding new suppliers).
- Administrative costs of engaging with competent authorities and customs authorities<sup>117</sup>. These would include:
  - providing the competent authorities with documents on due diligence or other measures to when requested in the preliminary phase of investigation;
  - any additional documents and information, if appropriate, in the investigation phase;
  - providing customs authorities with relevant information for products or product categories identified in future delegated acts to enable them to identify products entering or leaving the EU market covered by a decision by competent authorities establishing a violation of the regulation.
- Potential costs of storage of products whose entering or leaving the EU have been suspended by customs (maximum 4 working days between the suspension of the

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<sup>117</sup> As in the framework of the EU better regulation process, these costs are similar to those for audits and inspections, they are not taken into account for offsetting under ‘one in, one out’ exercise.

goods and the conclusion from competent authorities whether the product corresponds to an issued decision).

- Costs of withdrawing products from the market and of destroying, rendering inoperable, donating or otherwise disposing of them, following a decision that the products contain forced labour or where products suspended by the customs authorities are subsequently refused for release for free circulation or export by the competent authorities.

The costs will vary depending on the size of the company, the sector and the complexity of the supply chain for a given company. Although the risk of forced labour can appear in any sector, some sectors carry a higher risk. This would increase the need for measures and procedures to monitor the supply chain, which would mean higher costs for the economic operators. Factors such as the number of suppliers, the number of products an economic operator makes available on the EU market, and the availability of existing supplier information systems might also have an impact on total costs.

The table below summarises the additional costs companies will face under this regulation, according to the type of costs and the potential scope of companies that would bear them.

**Table 3: Overview of categories of costs**

<b>Costs categories</b>	<b>Scope</b>	<b>Costs and financial consequences for the implementation of this proposal</b>
Identifying and addressing the forced labour risks and impacts	Companies in the scope of existing legislation or legislative initiatives such as the CSDDD and companies that already implement due diligence measures (covering also forced labour) on a voluntary basis.	No additional costs.
	Companies not covered by existing legislation or legislative initiatives such as the CSDDD but which are in the supply chain of companies within the scope of such legislation/ initiatives (including large companies outside high-impact sectors and SMEs).	Negligible costs, as they would already undertake such practices required by those with whom they are covered by the initiatives.
	Companies that are neither covered by existing legislation or legislative initiatives such as the CSDDD nor in the supply chain of companies within the scope of such legislation / initiatives (including large companies outside high-impact sectors and SMEs).	The costs will depend on factors such as the sector, the complexity of the supply chain, and the actions taken voluntarily by the companies themselves, and whether they are already conducting due diligence on human rights issues voluntarily.
Administrative costs for engaging with competent	Companies in the scope of existing legislation or legislative initiatives such as the CSDDD, where the competent authorities identified high risks or serious	Limited costs as these companies should have the documents and resources to engage with competent authorities, based on their obligations from the legislation.

authorities	concern.	
	Companies not covered by existing legislation or legislative initiatives such as the CSDDD but which are in the supply chain of companies within the scope of such legislation/ initiatives (including large companies outside high-impact sectors and SMEs), where the competent authorities identified high risks or serious concerns.	Limited costs as these companies should have the documents and resources to engage with competent authorities, based on their contractual obligations with the companies covered by the legislation.
	Companies that are neither covered by existing legislation or legislative initiatives such as the CSDDD nor in the supply chain of companies within the scope of such legislation / initiatives (including large companies outside high-impact sectors and SMEs), where the competent authorities identified high risks or serious concerns.	While the individual costs for a company in this process could be significant, the proposed regulation contains a number of provisions to mitigate the impact on such companies (e.g. SMEs.).
Administrative costs for engaging with customs authorities	Companies importing or exporting products covered by a future delegated act.	Limited additional costs as the economic operators should already have the information required in their possession.
Storage costs during suspension at the border	Companies importing or exporting products that customs authorities suspended from release or export as a result of a decision by competent authorities.	Costs proportional to the volume stored.
Withdrawal and disposal costs	Companies that placed products on the market that were identified as containing forced labour.	Loss of the economic value of those products plus the costs to destroy them or carrying out the other possibilities for disposal provided in the regulation.

***Costs for establishing procedures to monitor the supply chain and identify the risks of forced labour (supply chain due diligence systems)***

The costs incurred by companies can be classified as either one-off adjustment costs (for instance to put the supply chain due diligence system in place) or recurring adjustment costs for the actual application of the procedures to monitor and identify the risks.

For larger companies falling under the scope of existing legislation and other existing EU legislative initiatives such as the CSDDD, the targeted due diligence obligation (i.e. for forced labour risk) would not lead to additional costs, since those companies would already be required to carry out due diligence, which would include forced-labour-related due diligence.

Furthermore, several Member States have adopted mandatory or voluntary due diligence and director duties legislation, so companies covered by that legislation are already conducting due diligence.

Finally, as quite a wide range of companies are already covered by existing legislation and legislative initiatives at either EU or Member State level<sup>118</sup>, it is likely that many of the remaining companies would be indirectly complying with due diligence requirements either voluntarily or because they are part of the supply chain of larger companies.

In terms of company coverage, as the central point of the proposed regulation is to prohibit products made with forced labour from being placed or made available on the market, not all the companies operating within the EU will be equally affected by it. Although the services sector is not free from forced labour, addressing it requires different tools from those included in the current proposal and it is subject to other EU legislation, such as the Anti-trafficking Directive. Therefore, the economic operators operating in the following activities will not be included for the calculation of the overall costs: electricity, gas, steam and air conditioning supply; water supply; sewerage, waste management and remediation activities; construction; transportation and storage; accommodation and food service activities; information and communication; real estate activities; professional, scientific and technical activities.

The wholesale and retail trade sector requires special attention. Many forced labour products could be sold through retail businesses and the large retailers would be covered by the CSDDD proposal. However, for the smaller retailers a differentiated approach would be needed. It is not realistic to expect a retailer to do due diligence for all the products they sell. Due diligence efforts are mostly needed higher up in the supply chain, by the manufacturer, importers or wholesalers. In view of this, while retailers would still need to consider the provenance of the products they sell, they will not be included in the calculations for the compliance costs with the proposed regulation. SMEs purchasing from very large EU or non-EU companies, covered by EU and national due diligence rules, which act as wholesalers, can benefit from the due diligence carried out upstream.

### ***Cost calculation***

For the companies identified above, the calculation of costs can be done in two steps.

First, it is expected that the costs to be considered for the current proposal are similar to those to be incurred under the CSDDD with a further reduction warranted by fact that the due diligence in this case would not cover the entire spectrum of human rights and environmental issues, but only the forced labour issue and other factors explained in the sub-section below.

For the own assessment of aggregated direct compliance costs for companies arising from the due diligence obligations, several options were considered. Option 1b of the CSDDD impact assessment<sup>119</sup> took a thematic approach focusing on a single type of risk. For this scenario, the CSDDD impact assessment assumed that this would account for 40% of the costs for the simplified due diligence rules<sup>120</sup>. According to the rough estimations for due diligence focusing on one type of impact covering all sectors, the

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<sup>118</sup> For instance, the CSDDD covers large companies of over 500 employees and over EUR 150 million net global turnover, as well as companies of 250 to 500 employees and over EUR 40 million net global turnover, for which more than 50% of their turnover is generated in certain risk sectors.

<sup>119</sup> Impact assessment (SWD(2022) 42 final) accompanying the proposal for a directive of the European Parliament and of the on corporate sustainability due diligence and amending Directive (EU) 2019/1937, Part 2, page 80.

<sup>120</sup> See footnote 119. The simplified due diligence duty refers only to compliance with certain targeted due diligence rules, focusing on those adverse impacts that are most relevant in the respective sectors (page 68 of the same document).

average cost for a non-listed medium-sized company in high-impact sectors would be EUR 8 450 for recurring costs and EUR 2 540 for one-off costs (i.e. 40% of the cost for simplified due diligence)<sup>121</sup>.

These amounts are for medium-sized companies; the costs for microenterprises are expected to be significantly lower. As it is not possible to reliably assess the costs for microenterprises and considering the approach of the proposed regulation, they were left out from the overall computation in order not to artificially increase the overall costs<sup>122</sup>. Table 4 presents the estimates for the due diligence costs based on the elements mentioned above.

**Table 4: Costs estimated based on the thematic approach in combination with simplified due diligence (rounded amounts)**

Type of economic operator active in mining and quarrying, manufacturing and wholesale trade <sup>123</sup>	Number of businesses concerned	Overall cost for the first year of operation based on the recurrent cost estimated for the CSDDD proposal	One-off costs
Small (10-19 employees)	272 800	EUR 2 304 792 000	EUR 691 874 000
Small (20-49 employees)	162 900	EUR 1 376 737 000	EUR 413 282 000
Medium-sized (50-249 employees)	89 100	EUR 752 835 000	EUR 225 993 000
Total	524 900 (representing approximately 2.3% of the total business economy; except financial and insurance activities)	EUR 4 434 364 000 (Representing 0.09% of the turnover or gross premiums written and 0.45% of the value added at factor cost for the respective sectors)	EUR 1 331 149 000 (Representing 0.03% of the turnover or gross premiums written and 0.14% of the value added at factor cost for the respective sectors)

*Note: All large companies above 500 employees on average and had a net worldwide turnover of more than EUR 150 million and large companies above 250 employees having a net worldwide turnover of more than EUR 40 million in the last financial year, provided that at least 50% of this net turnover was generated in one of the high impact sectors will be covered by the CSDDD proposal. The respective subsectors include the manufacture of textiles, leather and related products (including footwear), and the wholesale trade of textiles, clothing and footwear, the manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (except machinery and equipment), and the*

<sup>121</sup> Impact assessment, Annex 4. Section 3.2.4.1 point (5) indicates that the cost for a non-listed medium sized company with the targeted due diligence was EUR 21 120 for recurrent costs and EUR 6 340 for one-off, Part 2, page 69.

<sup>122</sup> Study on due diligence attempts to calculate costs for this category of enterprises, but it is based on very few observations, not statistically reliable.

<sup>123</sup> Although the agriculture sector is relevant for forced labour, it was not included in the calculation as it is not covered by the Eurostat aggregate used to calculate these costs.

*wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products). Due to the important overlap between these sectors and those used in the calculations above, the fact that many large companies are covered by CSDDD as referred above and the difficulty to identify the companies not covered based on the Eurostat data, the large companies where not included in these estimates.*

*Source: own calculations based on the annual enterprise statistics by size class for special aggregates of activities (NACE Rev. 2) [SBS\_SC\_SCA\_R2], for the year 2019 to have a more complete set of data.*

### **Cost-reducing factors**

The estimates presented above are likely to be overestimates as there are several factors that warrant a downward adjustment, including the leveraging of existing due diligence infrastructure.

Firstly, existing EU legislation and legislative initiatives such as the CSDDD make significant demands of companies that would not be necessary for the current proposal. The focus of the proposed regulation is on the upstream supply chain, therefore companies do not need procedures for identifying and addressing adverse impacts on their customers or impacts linked to the use of products or the end-of-life phase, etc. The thematic approach option in the CSDDD impact assessment involves making an average estimation for many different impact types, some of which more commonly found upstream, while others are spread across the entire value chain or may even affect the downstream part more. It is expected that the costs for only the upstream impacts of forced labour would be significantly lower.

Secondly, a significant proportion of the companies would be indirectly impacted, at least partially, by the due diligence processes of larger companies with whom they have business dealings. According to Annex 5 to the CSDDD impact assessment, ‘SMEs that do not fall under the scope of any of the options considered for this initiative will likely incur costs resulting indirectly from this initiative. The French experience shows that 80% of French SMEs and midcaps (which are out the French law’s scope) are asked by their contractors about Corporate Social Responsibility issues, either to sign a charter or a code of conduct, to declare themselves in conformity with the main social and environmental standards (health/safety, waste management, business ethics or human rights), to sign clauses in their contracts or to undergo an extra-financial evaluation<sup>124 125</sup>. Also, in the CSDDD Impact Assessment it is estimated that about 30% of medium-sized and midcap companies in high-impact sectors<sup>126</sup> could be indirectly affected by the full due diligence obligation applicable to their parent companies as they are subsidiaries of such larger companies.

Thirdly, costs can be further reduced if companies take part in private and industry initiatives of the sort mentioned in Section 3.5 of this document, as costs are shared between companies operating in the same sector or having the same supplier. As the overview of these aspects in the CSDDD impact assessment points out, ‘According to the study of the University of Sussex (2016) on cost and benefits of implementing due diligence policies, a quarter of the 29 companies surveyed estimated that sectoral collaboration could reduce the costs by 25 to 50% and a further quarter by 50 to 75% of recurrent costs. The more companies participate in industry initiatives, the higher the potential of cutting their costs. The Dutch evaluation of its national Responsible Business Conduct agreements finds an average cost per signatory of those agreements of

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<sup>124</sup> [AD Enquête BPI France ORSE 2019 \(novethic.fr\)](#)

<sup>125</sup> Impact assessment (SWD(2022) 42 final) accompanying the proposal for a directive of the European Parliament and of the on corporate sustainability due diligence and amending Directive (EU) 2019/1937, Part 2, page 114.

<sup>126</sup> See footnote 125, Part 2, page 83.

EUR 85 000, which is due, on one hand, to high fixed implementation costs and, on the other hand, to the number of signatories of specific agreements: the agreement with the highest number of signatories registers the lowest cost per signatory, EUR 6 000. It also points to the need for a targeted approach by these responsible business conduct agreements to support SMEs<sup>127</sup>.

Other cost-reducing factors may include technological advances and cost-sharing cooperation. Technology can make tracking the supply chain simpler and, as it evolves, it becomes more affordable even for small companies<sup>128 129</sup>. According to WBCSD: ‘Digital technologies are opening up numerous new possibilities to identify, analyse and remedy human rights risks. New technology is allowing improved verification of data, making findings more reliable for business decision-making, reporting and external scrutiny. Beyond this, emerging technology is being adapted to provide tools for companies to develop better solutions to predict, prevent and respond to human rights abuses in their supply chains and ultimately enable the people upon whom business success relies on to enjoy increased dignity, security, freedom and opportunity in their private and professional lives’<sup>130</sup>. Based on the literature, the CSDDD impact assessment estimates that for certain impacts and product types, half of companies would see a cost reduction of between 25% and 75%<sup>131</sup>.

The importance of the private and industry initiatives and of the technological developments were already taken into account for a ‘single, average cost mitigating factor to the overall substantive compliance costs without the reporting costs’<sup>132</sup>. However, the approach taken into the CSDDD was a cautious one, as the authors applied the lower-end estimate mentioned in the study referred above, namely a 25% reduction<sup>133</sup>.

Furthermore, there are other tools that, while not providing hard evidence for the absence of forced labour, can be informative for diminishing forced labour risks. Some examples include:

- traceability systems at national level;
- verification schemes<sup>134</sup>;
- voluntary sustainability standards by companies or business associations;
- supply chain mapping.

The CSDDD proposal requires companies to adjust their due diligence policy annually. While it may be desirable for economic operators falling under the scope of the proposed regulation to put in place an annually adjusted due diligence policy for forced labour, this may not be strictly necessary for the current proposal.

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<sup>127</sup> Impact assessment (SWD(2022) 42 final) accompanying the proposal for a directive of the European Parliament and of the on corporate sustainability due diligence and amending Directive (EU) 2019/1937, Part 2, page 115.

<sup>128</sup> See footnote 125, Part 2 page 65.

<sup>129</sup> Traceability across the Value Chain, Advanced tracking systems, Case study 40, Business Innovation Observatory, European Union, 2015.

<sup>130</sup> *Is Technology a Game-Changer for Human Rights in Corporate Value Chains?*, Davide Fiedler, World Business Council for Sustainable Development (WBCSD); accessible at: [www.businessfightspoverty.org/is-technology-a-game-changer-for-human-rights-in-corporate-value-chains/](http://www.businessfightspoverty.org/is-technology-a-game-changer-for-human-rights-in-corporate-value-chains/)

<sup>131</sup> See footnote 125, Part 2, page 65.

<sup>132</sup> See footnote 125, Part 2, page 65.

<sup>133</sup> See footnote 125, Part 2, page 65.

<sup>134</sup> [2019 IDH / EPOA European monitoring report for sustainable palm oil - Efeca](#). According to the report, 86% of European palm oil imports are certified sustainable.

Furthermore, not all requirements of the CSDDD would be necessary for facilitating compliance with the proposed regulation, such as the establishment of a complaints mechanism. Also, the CSDDD proposal requires companies to adjust their due diligence policy annually. While it may be desirable for economic operators falling under the proposed regulation to put in place an annually adjusted due diligence policy for forced labour, this may not be strictly necessary for the current proposal.

Due diligence costs will also depend on the size of the company, the number of suppliers concerned and the exposure to forced labour risks. Even in the same category of business and the same sector, the costs can differ significantly. This is corroborated by the costs estimated in the impact assessment for the Conflict Minerals Regulation<sup>135</sup>. The main finding of the survey carried out for that purpose was that most participants reported relatively low costs for due diligence and reporting, with expenditure predominantly estimated at EUR 13 500 for initial efforts (74%), and EUR 2 700 for subsequent ongoing efforts (63.8%)<sup>136</sup>. Similarly, the EU Timber Regulation (EUTR) evaluation estimates that the one-off cost of setting up the due diligence system (DDS) will range between EUR 5 000 and EUR 90 000<sup>137</sup> per operator, with recurring costs estimated at 0.29% to 4.3% of the value of imports. The EUTR evaluation also looked at how SMEs fare in the process of due diligence implementation. It concluded, that, while SMEs are likely to be at disadvantage due to smaller economies of scale, ‘there are no clear indications that being a smaller business is a barrier to apply an effective DDS. At the same time, it could be observed that SMEs have the advantage of more organisational flexibility, higher level of specialisation and more direct contacts with a generally more limited number of suppliers’<sup>138</sup>. However, a note of caution is needed due to the very small number of SMEs replying to the evaluation survey.

The garment sector is a high-risk sector. According to the ILO, cotton is one of the commodities most commonly produced with child labour and forced labour in at least 18 countries<sup>139</sup>. There are many efforts to address the issue, from projects ran by international organisations, such as ‘Clear Cotton’<sup>140</sup> covering Burkina Faso, Mali, Pakistan and Peru, implemented by the ILO and the Food and Agriculture Organisation, and co-funded by the EU, to EU institutions’ efforts<sup>141</sup>, to private initiatives addressing forced labour and other sustainability impacts. Amfori and Better Cotton Initiative (BCI) are two examples of such private initiatives addressing forced labour in cotton and textile. In Amfori, whose members have a combined turnover of EUR 1.6 trillion, the garment sector is very well represented, accounting for almost 22% of the overall membership, the second largest grouping; two thirds of all members are importers and 89% of the members are European<sup>142</sup>. Similarly, BCI and other private initiatives have some major participants from this sector, committed to fighting against forced labour and other human rights violations.

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<sup>135</sup> Impact assessment (SWD 2014/53) accompanying the proposal for a regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict affected and high-risk areas (Regulation (EU) 2017/821).

<sup>136</sup> See footnote 135.

<sup>137</sup> Commission SWD Evaluation of Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation) accompanying the document SWD/2016/034 final.

<sup>138</sup> See footnote 125, Part 2, page 65.

<sup>139</sup> [www.ilo.org/clearcotton](http://www.ilo.org/clearcotton)

<sup>140</sup> [CLEAR Cotton project ‘Eliminating child labour and forced labour in the cotton, textile and garment value chains: an integrated approach’](http://www.ilo.org/clearcotton), accessible at: [www.ilo.org/clearcotton](http://www.ilo.org/clearcotton)

<sup>141</sup> The European Union institutions have made significant efforts and will continue to do so to support the garment sector, such as the work on the textiles ecosystem transition pathways.

<sup>142</sup> [www.amfori.org](http://www.amfori.org)

Even from this limited snapshot, it is possible to see how much work is being done by different organisations to address human rights in general and forced labour in particular in the supply chain, and how this work can lower the cost of due diligence.

All the factors mentioned above, taken together, make for a **significant reduction in the costs** calculated in the previous section. In addition, it is worth noting that, for the Conflict Minerals Regulation, ‘subsequent efforts’ were estimated to cost only 20% of initial work. On this basis, we assume that the recurrent costs will be significantly lower than the costs assessed at step 1 (Table 4). However, in order to avoid a too drastic reduction, an interval between 25 to 75% is considered. Table 5 presents these reduced figures

**Table 5: Estimated costs based on the thematic approach in combination with simplified due diligence with lower costs due to application of cost-reducing factors<sup>143</sup> (rounded amounts)**

Type of economic operator active in mining and quarrying, manufacturing and wholesale trade	Number of businesses concerned	Overall cost for the first year of operation based on the recurrent cost estimated for the CSDDD proposal with a reduction of 25%	Overall cost for the first year of operation based on the recurrent cost estimated for the CSDDD proposal with a reduction of 75%	One-off costs
Small (10-19 employees)	272 800	EUR 1 728 594 000	EUR 576 198 000	EUR 691 874 000
Small (20-49 employees)	162 900	EUR 1 032 553 000	EUR 344 184 000	EUR 413 282 000
Medium-sized (50-249 employees)	89 100	EUR 564 626 000	EUR 188 209 000	EUR 225 993 000
Total	524 900 (representing approximately 2.3% of the total business economy; except financial and insurance activities)	EUR 3 325 773 000 (Representing 0.07% of the turnover or gross premiums written and 0.34% of the value added at factor cost for the respective sectors)	EUR 1 108 591 000 (Representing 0.02% of the turnover or gross premiums written and 0.11% of the value added at factor cost for the respective sectors)	EUR 1 331 149 000 (Representing 0.03% of the turnover or gross premiums written and 0.14% of the value added at factor cost for the respective sectors)

Source: own calculations based on the annual enterprise statistics by size class for special aggregates of activities (NACE Rev. 2) [SBS\_SC\_SCA\_R2], for the year 2019 to have a more complete set of data.

### **Other types of non-administrative costs**

Other types of non-administrative costs include the costs linked to addressing forced labour risks, withdrawal of products from the market and the costs relating to the suspension period at the customs. All these costs vary greatly based on the specificities of

<sup>143</sup> These factors, presented in the *Cost-reduction factors* subsection include: fewer actions than those required by CSDDD, technological advancements, private sector initiatives, etc.

the forced labour risks in the first case and on the type of product, its availability on the single market and the volume of products for the other types of non-administrative costs. Therefore, they cannot be reliably estimated here.

### ***Administrative costs for engaging with the competent authorities***

As presented in Table 3, there are two categories of administrative costs for economic operators: one for dealing with the competent authorities and one for dealing with the customs authorities.

Regarding the administrative costs of providing information on the product, manufacturer and product supplier in the customs declaration, these will not be incurred from the moment the proposed regulation comes into force. The information will only be required from economic operators importing or exporting those products or product categories that are subsequently identified as at risk of forced labour in a delegated act. The specific costs will be calculated for each delegated act when proposed for adoption, provided that the specific information will not be made mandatory by the upcoming revision of the Union Customs Code.

It is anticipated that the cost for economic operators of providing customs with the required information in line with a delegated act would be limited, as the information in question is either already required under EU legislation or should be in the possession of the economic operators following a due diligence process. EU harmonised product legislation<sup>144</sup> requires economic operators in the supply chain to be able to identify any economic operator who has supplied them with a product and any economic operator to whom they have supplied a product. Even when products are not subject to EU harmonised requirements, they will still be covered by the general product safety framework for non-food products, which is under revision by Council and Parliament and would include the same requirements as described above if the co-legislators confirm the approach proposed by the Commission.

In the agri-food sector, for products subject to official checks, information on the supply chain is already provided in the common health entry document (CHED) that is referenced in the customs declaration.

As a result, such products cannot be imported into the EU without this information. The economic operator will always be in a position to provide it to the declarant as it is part of its traceability and compliance obligations.

However, if they are required to provide customs authorities with this additional information, economic operators (particularly declarants) may need to adjust their IT systems and their interconnection with customs systems. This would take place after the adoption of the delegated acts.

The administrative costs for dealing with the competent authorities would only concern a relatively small number of economic operators where certain risks of forced labour have been identified, be it in the pre-investigation or the investigation phase.

The table below presents an estimation of these costs, by phase of investigation, mirroring the number of such procedures included in Table 7 for the costs for the Member States' competent authorities. Similarly to that table, the calculation is done at EU level and not broken down per country.

### ***Table 6: Administrative and adjustment costs for economic operators in connection with the competent authorities***

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<sup>144</sup> [New legislative framework \(europa.eu\)](https://european-council.europa.eu/media/e300042c-327d-47e3-9961-5f90212c1e08/en/image.asset?imageId=327D47E3-9961-5F90-212C-1E08E300042C)

Step of enforcement process	Number of cases (min-max interval)	Number of economic operators	Minimum	Maximum
1. Preliminary phase of investigations		Duration in days per case in the preliminary investigation phase		
		3	15	
Number of cases	25	1	75	
	100	5		7 500
Investigation		Duration in days per case in the investigation phase		
		15	60	
Number of cases	5	1	75	
	30	3		5 400
Decisions to withdraw and prohibit placing and making available on the market		Duration in days to withdraw products <sup>145</sup>		
		10	30	
Number of decisions	3	1	30	
	15	3		1350
Total days for the different phases mentioned above for economic operators			180	14 250
Total costs for the different phases mentioned above for economic operators			EUR 41 904 <sup>146</sup>	EUR 3 317 400 <sup>147</sup>

Source: Own calculations<sup>148</sup>

These costs are related to the category of inspections and investigations, and therefore off-setting them is not necessary under the one-in-one-out principle.

#### 5.4.2. Enforcement costs for public authorities

The Member States' competent authorities will have a major role in implementing the regulation. Member States will have to establish or appoint competent authorities and ensure they have the requisite resources and competences.

The costs for Member States would include both the setting up of the authorities and the cost of them discharging their responsibilities.

Some Member States will have authorities with similar tasks (e.g. those Member States that already have general forced labour policies in place, see Section 3.4). However, since the task of investigating products is new, it is likely that most Member States would need to devote resources to recruitment and training of staff.

The authorities would need to monitor the forced labour risk areas or products and carry out the preliminary investigation phase to check if there are substantiated concerns of violation of the proposed regulation. Where there are substantiated concerns, the authorities would need to launch an investigation and, where they conclude that the

<sup>145</sup> These costs do not cover the costs for transportation, storage and disposal of the products. These costs can vary greatly with the type and quantity of product.

<sup>146</sup> 29.1 x 8 x 180. For the calculations, the EU average of the hourly labour costs of 29.1 Euro was used: Hourly labour costs - Statistics Explained (europa.eu).

<sup>147</sup> 29.1 x 8 x 14250. For the calculations, the EU average of the hourly labour costs of 29.1 Euro was used: Hourly labour costs - Statistics Explained (europa.eu).

<sup>148</sup> For the calculations, the EU average of the hourly labour costs of 29.1 euro was used: [Hourly labour costs - Statistics Explained \(europa.eu\)](#).

products contain forced labour, they would have to ensure that the economic operators withdraw the products from the market.

Therefore, in addition to the potential preparatory cost of setting up the authorities, the enforcement costs of the competent authorities could be the following:

- training costs: Member State officials will need to be informed about the content of the Regulation and the guidelines. Specific training is also likely to be necessary on what information will be needed from relevant economic operators;
- costs for conducting the preliminary phase of the investigation and the investigation, where the authorities have substantiated concerns;
- costs for participation in network meetings, though direct costs for such participation would partly be borne by the Commission;
- other enforcement costs (e.g. contributions to risk database, etc.).

The instrument will be risk-based, which means that the workload may differ between Member States and between time periods. As this is a new area of work for the Member States, the exact costs are difficult to estimate. The first element to consider is the number of investigations and preliminary phase investigations.

Although the system put in place in the United States to fight forced labour differs significantly from the system presented in the proposal (see Section 5.2.1) it can still serve as a guide to the possible number of cases the Member States' authorities may face.<sup>149</sup> From 2016 to 2021, US Customs and Border Protection (CBP) issued between 2 and 16 withhold release orders and findings per year, amounting to a total of 37<sup>150</sup>. Currently in the US there are 9 findings active, out of which 2 were issued in 2022<sup>151</sup>.

Another consideration is that a similar or identical request for information could be submitted in more than one Member State. In view of that, and allowing for a larger margin, the number of preliminary investigation phases could range between 50 and 150 and, with 5-30 full-scale investigations at EU level.

Regarding the duration of the two phases for one product:

- the preliminary phase could be as short as 5 working days, which would include assessing the potential submission, checking the database of risk indicators, the Commission guidelines, the ICSMS and other publicly available documents and as long as 60 working days, which would also include the assessment of information submitted by the economic operator with regards to due diligence carried out or similar measures;
- the investigation phase could range from 30 to 90 working days, including the review procedure. Table 7 below summarizes some of the cost to be incurred by the Member States competent authorities per year. The calculation is done for the 27 Member States together and not broken down per country.

**Table 7: Costs for competent and customs authorities**

1. Competent authorities		
Preliminary phase of investigations	Duration in days per case in the preliminary investigation phase	
	5	60

<sup>149</sup> Although it is not known in advance how many investigations would result in withhold release orders or what the ultimate findings would be, the number of these two procedures can still provide an indication of the number of cases the EU might expect.

<sup>150</sup> [Section 307 and Imports Produced by Forced Labor \(congress.gov\)](#)

<sup>151</sup> [Withhold release orders and findings list | U.S. Customs and Border Protection \(cbp.gov\)](#)

Number of cases	50	250	
	150		9 000
Investigations		Duration in days per case in the investigation phase	
		30	90
Number of cases	5	150	
	30		2 700
Decisions to withdraw and prohibit placing and making available on the market		Duration enforcement per product	
		1	5
Number	3	3	
	15		75
Total days		403 (min.)	11 775 (max.)
2. Customs authorities			
Identified products in potential violation of the regulation		Effort in days	
		0.5	2
Number	150	75	
	750		1 500
Total days		75 (min.)	1 500 (max.)
3. Other costs for authorities			
		Duration in days	
Training/Member State		3	5
Participation in the network /Member State		4	5
Total days		189	270
Total days for all activities (under sections 1-3)		667	13 545
Total costs		EUR 155 278 <sup>152</sup>	EUR 3 153 276 <sup>153</sup>

Source: Own calculations<sup>154</sup>

Additional costs will be incurred for administrative support, participation in network meetings, on-spot checks, the actual costs of the trainings, etc.

The costs for several scenarios were estimated for the CSDDD proposal. Under that proposal, the costs covered training, reviews and plausibility checks, reviewing companies as part of risk-based supervision, and initiation of administrative offence

<sup>152</sup> 29.1 x 8 x 667. For the calculations, the EU average of the hourly labour costs of 29.1 euro was used: Hourly labour costs - Statistics Explained (europa.eu).

<sup>153</sup> 29.1 x 8 x 13545. For the calculations, the EU average of the hourly labour costs of 29.1 euro was used: Hourly labour costs - Statistics Explained (europa.eu).

<sup>154</sup> For the calculations, the EU average of the hourly labour costs of 29.1 euro was used: [Hourly labour costs - Statistics Explained \(europa.eu\)](#).

proceedings and dispatch of administrative fines. Though different from the actions of the competent authorities under the proposed regulation, the costs estimated under option 1b (thematic approach on one risk across all sectors) may be relevant for the proposed regulation as well. In this case, the one-off costs for the 27 Member States were estimated at EUR 127 000, while the annual recurrent costs amounted to EUR 7 995 300<sup>155</sup>.

The cost for national authorities for the enforcement of the proposed regulation on deforestation and forest degradation was estimated at EUR 18 million per year<sup>156</sup>.

In addition to the elements mentioned above, there will be additional costs for the national customs authorities for identifying products subject to a decision from the competent authorities and to verifications with the latter. This would require additional human resources as well as IT development costs. National interfaces for IT systems may also require changes in order to enable collection of the additional information to be provided by economic operators. National customs risk analysis systems might also have to be upgraded to analyse the information contained in the decisions from competent authorities. Besides, the interconnection of the national single window environment for customs with EU Customs Single Window Certificates Exchange System (EU CSW-CERTEX) will need to be enhanced to accommodate information exchanges with ICSMS to digitalise the exchange of information between customs and competent authorities for the purposes of the proposed regulation.

#### **5.4.3. Costs for the European Commission**

The European Commission would also incur costs for the following elements, necessary for implementation of the proposed regulation.

- Development and maintenance of a module under the current ICSMS system to allow for exchanges between competent authorities and as a repository for the different decisions adopted under the regulation.
- Adaption of customs IT systems to allow interoperability with the new ICSMS module. This entails 3 types of data transfers under respectively:
  - Art. 22(3): connecting the ICSMS with the customs risk management environment (CRMS), to enable the automated communication of decisions of the competent authorities from ICSMS to the customs risk management environment;
  - Art. 22(5): an electronic interface between the national single window environments for customs and ICSMS through the EU CSW-CERTEX to enable the exchange of requests and notifications of suspensions between customs and competent authorities for the case management;
  - Art. 22(6): the extraction and transmission to ICSMS of customs risk information from the surveillance system.
- Integration of new customs-related information: the additional information provided by economic operators for products or product categories identified in future

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<sup>155</sup> Impact assessment (SWD(2022) 42 final) accompanying the proposal for a directive of the European Parliament and of the on corporate sustainability due diligence and amending Directive (EU) 2019/1937, Part 2, page 93.

<sup>156</sup> Impact assessment (SWD (2021/326) accompanying the proposal for a regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, Part 2, page 20.

delegated acts will be included in the structure of the customs declarations. This will be done by integrating this information into the central database containing all measures relating to EU customs tariff, commercial and agricultural legislation (the TARIC database) through the use of TARIC document codes.

- Development of risk indicators and creation and maintenance of the database, which are required for the sound implementation of the proposed regulation as mentioned in the legal text.
- Development of the various guidance documents necessary for implementation of the regulation.
- Coverage of part of the Network costs.
- Additional personnel to follow up on the implementation of the proposed regulation.

In the financial statement, it was estimated that the operational costs for the Commission are EUR 4.302 million while the administrative expenditure would amount to a maximum of EUR 4.672 million for the first 4 years after entry into force.

However, this is a preliminary estimate based on the information collected and the extrapolation of costs for other decentralised systems currently under development.

#### 5.4.4. Benefits

There are numerous benefits that could arise from this initiative.

The increased due diligence by companies and ultimately the risk of disengagement if risks cannot be addressed could provide the necessary incentives for many suppliers to take all measures to prevent or halt any instance of forced labour, freeing **workers** from the illegal conditions they were previously subjected to. This is expected to encourage employers to provide decent work conditions. In addition to helping current victims, the proposed regulation will result in less forced labour in the future, as companies disengage from recruiting new victims due to the fear of negative consequences.

Due to its illegal nature, most forced labour is undeclared, meaning that state revenues are not collected. The additional government revenues generated by companies shifting from forced labour to formal contracts, would add to public budgets, which can in turn be used for social protection, education, etc.

An important aspect of this initiative is the fact that it will be uniformly implemented across the EU. This will significantly increase the impact of the ban as the market share of businesses could be greatly affected if a given product did not comply with the required forced labour standards. This could then generate pressure on countries with cases of forced labour to review their enforcement of workers' rights<sup>157</sup>. The proposal is thus expected to make a significant contribution to the eradication of forced labour, as well as to the prevention of forced labour in the future. Outside the EU, it could lead to increased compliance with international labour standards and improved living conditions. Human trafficking for the purposes of forced labour would be curtailed.

The regulation will also help **companies** improve their knowledge about forced labour risks in their supply chain, and enable them to identify dependencies, alternatives and better processes, and to monitor externalities in a more transparent manner. Forced

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<sup>157</sup> Policy Brief: Effectiveness of forced labour import bans, Modern Slavery and Human Rights Policy and Evidence Centre c/o British Institute of International and Comparative Law, accessible at: [PEC-Policy-Brief-Effectiveness-Forced-Labour-Import-Bans.pdf \(modernslaverypec.org\)](https://www.modernslaverypec.org/PEC-Policy-Brief-Effectiveness-Forced-Labour-Import-Bans.pdf)

labour risks and impacts in companies' supply chains would be more easily identified and addressed. The economic advantage gained by using victims of forced labour would be lost, as companies would not be able to sell their products to other businesses active in the EU market or to end consumers in the EU. This would also help prevent unfair competition through the undercutting of international conventions against forced labour.

Furthermore, a harmonised legal framework will provide legal certainty for companies across Member States and set out clear rules to be followed in this area. The voluntary mechanisms in place up until now proved to be insufficient to end forced labour, as the problem has been increasing in recent years. As the issue of forced labour is being regulated, it creates a higher incentive for companies to improve the monitoring of their supply chains<sup>158</sup>. This may in turn result in a better brand image and reputation that will help to attract customers, increase attractiveness for talent and investors, and provide better access to finance.

**EU consumers** will be reassured that proper precautions have been taken to ensure the products they buy and consume are not produced with forced labour and they are not therefore (indirectly) contributing to harmful labour practices through their purchases. Trust in business and governments might also increase. While certain companies might decide to pass on increased costs caused by the proposed regulation to consumers, more than half of consumers would be willing to pay a premium for products from companies committed to positive social and environmental impact<sup>159</sup>. Moreover, there will be greater awareness of the issue of forced labour, which not everyone is yet aware of. The public will also have ways of bringing possible instances of forced labour to the attention of authorities.

<b>Summary of Benefits</b>	
<b>Workers subject to forced labour</b>	<ul style="list-style-type: none"> <li>● Contribute to the eradication of forced labour</li> <li>● Prevention of future forced labour</li> <li>● Can lead to higher labour standards in non-EU countries</li> <li>● Potential increase in social protection</li> </ul>
<b>Companies</b>	<ul style="list-style-type: none"> <li>● Better knowledge of forced labour risks in company's supply chains</li> <li>● Harmonised legal framework</li> <li>● Improvement in risk management</li> <li>● Improved image / attractiveness as regards consumers, investors and talent</li> <li>● Better competitive position for companies that do not use forced labour</li> <li>● Higher focus on human rights aspects in given industries</li> <li>● Incentive to deliver better quality of reporting</li> <li>● Improving labour standards and conditions in the supply chain</li> <li>● Levelling of companies' awareness of human rights across all Member States</li> </ul>
<b>EU consumers</b>	<ul style="list-style-type: none"> <li>● Greater confidence that the goods they consume are not made with forced labour</li> <li>● Greater public awareness of the issue of modern slavery</li> <li>● Possibility of taking action in response to cases of forced labour</li> </ul>

<sup>158</sup> European Commission, Directorate-General for Justice and Consumers, Torres-Cortés, F., Salnier, C., Deringer, H., et al., *Study on due diligence requirements through the supply chain: final report*, Publications Office, 2020.

<sup>159</sup> Nielsen Global Survey of Corporate Social Responsibility (2014), accessible at [Nielsen Global Corporate Social Responsibility Report - June 2014 - \[PDF Document\] \(vdocument.in\)](#)

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|---|
| <ul style="list-style-type: none"><li>• Increased trust in businesses and governments</li></ul> |
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## **5.5. International cooperation**

Since forced labour is a global problem and given the interlinkages of the global supply chains, it is necessary to promote international cooperation against forced labour, which would also improve the efficiency of applying and enforcing the prohibition. The EU should as appropriately cooperate with and exchange information with authorities of third countries and international organisations to enhance the effective implementation of the prohibition. International cooperation with authorities of non-EU countries should take place in a structured way as part of the existing dialogue structures, for example Human Rights Dialogues with third countries, or, if necessary, specific ones that will be created on an ad hoc basis.

In addition to third-countries competent authorities, the EU should also continue to cooperate with stakeholders involved in the global fight against forced labour such as international organisations, civil society representatives, trade unions and business organisations. Such cooperation may result in the development of accompanying measures to support the efforts of governments and companies to tackle forced labour.

The EU is already engaged in dialogues and other forms of cooperation including technical assistance on forced labour in bilateral, plurilateral and multilateral fora. This includes for instance bilateral human rights dialogues and dialogues under trade instruments, cooperation in the G7 and actions in the ILO context. In addition, the EU provides technical assistance by supporting several projects promoting compliance with international labour standards, which are implemented jointly with international partners. Such projects include the Better Work programme (with the ILO and the International Finance Corporation), aiming at improving working conditions and compliance with international labour standards in the garment sector; the CLEAR Cotton project (with the ILO and FAO), aimed at eliminating child labour and forced labour in the cotton, textile and garment supply chains; the REFRAME project (with the ILO), aimed at preventing and reducing abusive recruitment practices against migrant workers; and the Trade for Decent Work project (with the ILO), to promote the application of ILO fundamental conventions under the framework of EU GSP+.

## **5.6. Monitoring of implementation**

The Commission will monitor implementation of the regulation based on the information and decisions entered in the information and communication systems established, and through the EU Network Against Forced Labour Products.

The Commission will develop a new module in the existing ICSMS system under the Market Surveillance Regulation, to facilitate communication and cooperation between the competent authorities. This system will also operate as a repository of all the decisions taken by the competent authorities. Based on these decisions, it will be easy for competent authorities and the Commission to have a precise overview of the decisions taken by the competent authorities with respect to the products investigated and the economic operators concerned.

From the surveillance system referred to in Article 56(1) of Commission Implementing Regulation (EU) 2015/2447, the Commission may extract the information on products

entering or leaving the EU market related to the implementation of the proposed regulation and transmit it to ICSMS, as mentioned in Article 22 thereof.

Furthermore, through the EU Network Against Forced Labour Products, the Commission will have an overview of the difficulties in implementation and of the aspects that work well. This will enable it to adjust the support offered to the Member States' authorities and improve the implementation process.