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NOTE

From:	Presidency/General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	15455/23
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on prohibiting products made with forced labour on the Union market - Progress report

I. INTRODUCTION

1. On 14 September 2022, the Commission submitted to the Council and the European Parliament a proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market[1].

[1] Doc. 12711/22 + COR 1.

2. The proposal aims at prohibiting products made using forced labour, including forced child labour, on the market of the European Union (EU) as well as their export from the EU. The prohibition covers all products made, whether in whole or in part, using forced labour and it applies to all sectors and companies.

3. The proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).

4. The European Economic and Social Committee delivered its opinion on 27 January 2023.[2]

5. In the European Parliament, the Committee on Internal Market and Consumer Protection (IMCO) and the Committee on International Trade (INTA) have the lead responsibility. Ms Maria Manuel LEITÃO-MARQUES (S&D, PT) and Ms Rafaela SAMIRA (Renew, NL) were appointed rapporteurs. The IMCO and INTA Committees adopted their joint report on 16 October 2023. The European Parliament adopted its negotiating mandate at the plenary session of 8 November 2023.

II. WORK CONDUCTED IN COUNCIL PREPARATORY BODIES

6. The examination of the proposal by the Working Party on Competitiveness and Growth started on 18 November 2022 under the Czech Presidency.

7. There was no impact assessment to accompany this proposal. Instead, the European Commission published a staff working document[3] summarising, among other things, the Commission consulation strategy on the proposal and its results. The lack of an impact assessment for the proposed Regulation was the subject of severe criticism by many delegations, since the Regulation is expected to have significant economic, financial and social implications.

[2] EESC D/67/2023 - 27/01/2023.
[3] Doc. 16174/22.

8. At its subsequent eight meetings, which were held during the Czech (2 meetings), Swedish (2 meetings) and Spanish (5 meetings) Presidencies, the Working Party focused its discussions on the objective, scope and provisions related to the overall enforcement of the proposed Regulation.

9. Taking into account the outcome of these meetings and delegations' written comments, the Spanish Presidency drafted its first compromise text[4], which was presented to the Working Party on 21 November 2023.

10. The discussions at Working Party level have reached a stage where it seems appropriate to present to the Permanent Representatives Committee (Coreper), with a view to the forthcoming Competitiveness Council on 7 December 2023, an overview of the progress made so far.

III. MAIN POLITICAL ISSUES

a) Objective of the proposed Regulation and its consistency with other EU legislation

11. The overall objective of the proposed Regulation to combat forced labour was broadly supported by all Member States. On a global scale, the use of forced labour remains widespread, affecting some 27.6 million people worldwide. In this context, Member States highlighted the need to streamline the EU's efforts in the area of forced labour and modern slavery by aligning the proposed Regulation with both international standards and the EU legislation already in place, in particular with the Corporate Sustainability Due Dilligence Directive and the Deforestation Regulation.

[4] Doc. 15455/23.

b) Scope and definitions

12. The proposed Regulation prohibits the placing and making available on and the export from the EU market of any product made using forced labour. It defines forced labour by referring to an International Labour Organization (ILO) Convention without further elaborating on its modern application. A number of Member States rejected the definition as being vague, outdated and too broad for an efficient and effective enforcement of the proposed Regulation. Some other Member States supported the use of an internationally agreed definition to ensure the compliance of the proposed Regulation with international rules (such as WTO rules). This topic will be further discussed and elaborated at forthcoming Working Party meetings.

13. The prohibition of products as proposed by the Commission applies regardless of whether products made using forced labour are made within the EU, intended for import in or export from the EU. It does not cover the withdrawal of products which have reached end-users in the Union market. Some Member States expressed concerns that without a definition of the term 'end-users', the scope of the proposed Regulation could be interpreted as covering wider range of products. To reflect these concerns, the scope of the Regulation under the new Presidency compromise text was limited by adding a definition of 'end-users' to Article 2.

14. Further discussion is needed as to whether the scope of the proposed Regulation should be broadened by including some services.

c) Burden of proof

15. According to the draft proposal, Member States' competent authorities will be tasked with investigations to assess whether an economic operator has violated the law by placing on the market products made using forced labour. Thus, the burden of proof would lie with the competent authorities. This was one of the main issues of concern to many Member States. In their discussions, they also addressed the option of shifting the burden of proof onto economic operators. However, reversing the burden of proof in this way could lead to the disengagement of companies from regions at risk of forced labour. It would have a limited impact on the eradication of forced labour and could contribute to further marginalisation of SMEs with no options or reduced possibilities to move sourcing away from high-risk areas. A clear majority of Member States argued that a reasonable way out would be to strengthen the role of the European Commission in the process of investigating and proving the use of forced labour.

d) Stronger role of the European Commission in the implementation and enforcement of the proposed Regulation

16. In the draft proposal, only a supporting role is foreseen for the European Commission in the implementation and enforcement of the proposed Regulation, such as issuing guidelines on due diligence in relation to forced labour, the establishment of and active participation in the Union Network Against Forced Labour Products, performing tasks related to a database of forced labour risk areas and products. In order to ensure consistent enforcement of the future Regulation, the Member States called for a stronger role for the Commission throughout the whole investigation, decision and cooperation process leading to the withdrawal of products made using forced labour from the Union market and, on a global scale, to the eradication of forced labour. They also discussed the role of the Commission as a lead authority in this process as well as the option of delegating enforcement powers to a dedicated agency. This topic is of central importance to all Member States and requires further consideration.

e) Remediation for victims of forced labour

17. By its nature, the draft proposal is a product ban and does not involve remediation for victims of forced labour. The Member States are divided on whether remediation for victims should be included in the future Regulation, since other proposals, such as the Corporate Sustainability Due Diligence Directive, might be better suited to providing financial compensation. In their discussions, they also addressed the issue of pecuniary penalties and the use of money recovered by the competent authorities to remediate forced labour. Discussions on these topics will continue at forthcoming Working Party meetings.

f) Clear implementation guidelines

18. All Member States expressed serious doubts about the enforceability of the draft proposal on grounds such as the ambiguous delineation of tasks between the competent authorities, market surveillance authorities and customs authorities, the unclear framework for cooperation with third countries, and legal liabilities or applicable penalties for non-compliance with the envisaged rules. They stressed the need for further clarification and clear guidance from the Commission in order to ensure uniform enforcement of the proposed Regulation and to create a level playing field for all Member States and across the industry. On this point, they also emphasised the importance of limiting the administrative burden and alleviating negative impacts on economic operators.

g) Disposal of products made with forced labour

19. The draft proposal provides for the disposal of products made using forced labour that have been refused for free circulation or export by the competent authorities. It simply states that such products should be disposed of in accordance with national law consistent with Union law. The Member States agreed that all possible disposal options should be clearly set out in the future Regulation and comply with the EU's objective of a circular economy. They advocated for donation as a preferred option and for recycling as a second option. Destruction of products made using forced labour might be used as a last resort. The Member States also emphasised that donating should include all types of products made using forced labour.

20. Forced labour, human trafficking and slavery are among the worst forms of human exploitation found in today's labour markets. Although particularly pervasive in the informal economy, they are increasingly penetrating global supply chains. In the light of these trends and their negative impact on human rights, Ministers are invited to express their views on the following question to further stimulate the discussions above:

> *In order to tackle the issue of forced labour products being sold on the internal market of the European Union and on the basis of the first Presidency compromise text, do you call for more or less involvement of the Commission in all or some of the phases (gathering of information submissions, pre-investigation, investigation, decision, implementation and sanctions) of the Forced Labour Ban Regulation?*

21. The Presidency considers that this progress report presents a balanced summary of the main issues discussed during the examination of both the proposal and the first Presidency compromise text, and could therefore be forwarded to the ministerial level, after being presented to Coreper.

IV. CONCLUSION

22. COREPER I is invited to take note of the progress report in the Annex to this note, with a view to submitting it to the Competitiveness Council at its meeting on 7 December 2023.