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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	5287/24 +ADD1
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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 - Mandate for negotiations with the European Parliament

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 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[2] on 27 January 2023.

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 Samira RAFAELA (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 consultation 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 once adopted.

8. The Working Party on Competitiveness and Growth examined the proposal at its subsequent meetings, which were held during the Czech, Swedish and Spanish Presidencies.

[2] Doc. 5856/23.
[3] Doc. 16174/22.

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, 29 and 30 November 2023.

10. Further guidance from Ministers was needed on the role of the Commission throughout the whole investigation, decision and cooperation process leading to the withdrawal of products made using forced labour from the Union market. The Competitiveness Council held a policy debate on the proposed Regulation at its meeting on 7 December 2023.

11. Based on the outcome of this debate, the Spanish and Belgian Presidencies prepared a second compromise text[5], which was presented to the Working Party on 20 December 2022 under the Spanish Presidency and on 9 and 10 January 2024 under the Belgian Presidency.

12. At the Coreper meeting on 19 January 2024, the Belgian Presidency sought a mandate for negotiations with the European Parliament, based on its third compromise text[6] and relating room document[7]. Several Member States expressed their views that work on the final compromise text is going in a right direction. At the same time, taking into account the significant implications of the proposed Regulation, they highlighted the need to further clarify a few remaining political issues, mainly the concept of the Union interest and the role of the Commission both in handling information submissions and carrying out field inspections in third countries. Some Member States also raised the issue of the most appropriate form in which Commission decisions on violation of Article 3 should be taken.

13. In order to address these remaining political issues, the Belgian Presidency drafted a fourth compromise proposal, attached to this note.

[4] Doc. 15455/23.
[5] Doc. 15455/1/23.
[6] Doc. 5287/24.
[7] Doc. 5287/24 + ADD 1.

III. REMAINING POLITICAL ISSUES

a) Role of the Commission in handling information submissions

14. The compromise text introduces a single point for the submissions of information on alleged violations of Article 3. In order to ensure a uniform approach and simplify the allocation of submitted information, the new compromise establishes that the Commission will be tasked with assessing whether the products concerned are of Union interest. If so, the Commission will proceed with the preliminary phase of investigations pursuant to Article 15. Otherwise, the submissions will be directed to the competent authorities, based on fair and objective criteria, such as the location of the registered office, the central administration or principal place of business of economic operators and the territory where the product concerned is manufactured, placed or made available on the market, or from where it is exported.

b) Clarification of the Union interest

15. The previous compromise text introduced the notion of Union interest as an allocation threshold between Member States' competent authorities and the Commission. The new compromise text further clarifies the Union interest for the assessment purposes in Article 14. The Union interest is to be determined by the scale and severity of the suspected forced labour, whether risks of the suspected forced labour are located outside the territory of the Union, and/or whether the products concerned have a significant impact on the internal market. A significant impact is assumed in cases where the products concerned are present in at least three Member States.

16. These criteria are assumed to be in compliance with the WTO rules, on two grounds: a) a product can be of Union interest even in cases where it was made within the territory of the Union, and thus the notion of Union interest does not specifically target imports, but it applies equally; b) although the determination of the Union interest indicates which authority can act as the competent authority, the procedural steps and evidentiary thresholds to be followed remain the same for products made within the Union or imported.

c) Obligation for the Commission to take over a preliminary investigation

17. To ensure legal certainty, the new compromise text clarifies that the Commission may not object to the request from competent authorities made pursuant to Article 14(2). It must conduct the preliminary phase of investigation if the products concerned are of Union interest.

d) Role of the Commission in carrying out field inspections in third countries

18. The new compromise text further elaborates on the field inspection procedure in cases where risks of forced labour are located outside the territory of the Union, by providing a clear framework consistent with the EU's international obligations, fully grounded in international law and protecting Member States' rights and interests. If Member States find it necessary to conduct inspections outside the Union, they may request the Commission to establish contacts with third countries. Also, in cases where the Commission was already the lead competent authority, it must establish contacts with third countries. The Commission cannot conduct inspections by itself. Instead, it must request the government of the third country to do so, thus respecting the territorial sovereignty of the third country concerned. If the Commission's request is rejected by the government of the third country, this may constitute a case of non-cooperation pursuant to Article 20(2).

e) Ownership of the Commission's decisions by Member States

19. Where the Commission concludes that a product has been placed or made available on the market or is being exported in violation of Article 3, it will adopt an implementing act in the form of a decision. In order to ensure political ownership by Member States and foster a genuine Union approach, the new compromise text foresees comitology, by applying the examination procedure to the adoption of this implementing act in accordance with Article 5 of Regulation (EU) No 182/2011. Where the committee composed of Member States' representatives delivers no opinion, the Commission will not adopt the implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 will apply.

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IV. CONCLUSION

20. The Presidency considers that the overview above presents a balanced summary of the main political issues raised at the Coreper meeting on 19 January 2024 and laid down in the final compromise text.

21. The Presidency understands that the Member States are not in favour of the inclusion of a remediation mechanism within this proposal. The Presidency will defend this position during negotiations with the European Parliament.

22. The Presidency acknowledges the sensitivity of addressing state-imposed forced labour. The Member States oppose an increased administrative burden and reversal of the burden of proof on economic operators. Therefore, the proposal foresees a strengthened role of the European Commission in the process of investigating and proving the use of forced labour.

23. The Permanent Representatives Committee is therefore invited to confirm agreement on the text of the mandate for negotiations with the European Parliament, as set out in the annex to this note, to enable the Presidency to conduct those negotiations.

24. In accordance with the approach to legislative transparency endorsed by Coreper on 14 July 2020[8], and in full consistency with Regulation (EC) 1049/2001 and the Council's Rules of Procedure, the text of the mandate thus agreed will be made public unless the Permanent Representatives Committee objects.

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[8] 9493/20.

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ANNEX

2022/0269 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 and Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[9],

Acting in accordance with the ordinary legislative procedure,

Whereas:

[9] OJ C , , p. .

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(1) As recognised in the Preamble to the 2014 Protocol to Convention No. 29 on forced labour ('ILO Convention No. 29') of the International Labour Organization ('ILO'), forced labour constitutes a serious violation of human dignity and fundamental human rights. The ILO declared the elimination of all forms of forced or compulsory labour as a principle concerning the fundamental rights. The ILO classifies ILO Convention No. 29 with its 2014 Protocol and the ILO Convention No.105 on the abolition of forced labour ('ILO Convention No.105') as fundamental ILO Conventions[10]. 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.[11]

(2) The use of forced labour is widespread in the world. It is estimated that about 27.6 million people were in forced labour in 2021.[12] Vulnerable and marginalised groups in a society are particularly susceptible to be pressured into performing forced labour. Even when it is not state imposed, forced labour is often a consequence of a lack of good governance of certain economic operators.

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10 https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm.

11 The ILO definition of forced labour according to the ILO Forced Labour Convention, 1920 (No. 29), What is forced labour, modern slavery and human trafficking (Forced labour, modern slavery and human trafficking) (ilo.org).

12 The 2021 Global Estimates of Modern Slavery, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf.

(3) The eradication of forced labour is a priority for the Union. Respect for human dignity and the universality and indivisibility of human rights are firmly enshrined in Article 21 of the Treaty on European Union. Article 5(2) of the Charter of Fundamental Rights of the European Union and Article 4(2) of the European Convention on Human Rights provide that no one is to be required to perform forced or compulsory labour. The European Court of Human Rights has repeatedly interpreted Article 4 of the European Convention on Human Rights as requiring Member States to penalise and effectively prosecute any act maintaining a person in the situations described set out in Article 4 of the European Convention on Human Rights.[13]

(4) All Member States have ratified the ILO Convention No. 29 and ILO Convention No. 182 on worst forms of child labour. They therefore have the obligations to prevent and eliminate the use of forced labour and to report regularly to the ILO.

(5) Through its policies and legislative initiatives the Union seeks to eradicate the use of forced labour. The Union promotes due diligence in line with international guidelines and principles established by international organisations, including the ILO, the Organisation for Economic Co-operation and Development (hereinafter "OECD") and the United Nations (hereinafter "UN"), to ensure that forced labour does not find a place in the value chains of undertakings established in the Union.

PUBLIC

13 For instance, Judgment of the European Court of Human Rights of XX, Siliadin v. France, paras. 89 and 102 or Judgement of the European Court of Human Rights of XX, Chowdury and Others v. Greece, para. 105.

(6) Union trade policy supports the fight against forced labour in both unilateral and bilateral trade relationships. The trade and sustainable development chapters of Union trade agreements contain a commitment to ratify and effectively implement the fundamental ILO Conventions, which include ILO Convention No. 29 and ILO Convention No. 105. Moreover, unilateral tariff preferences under the Union's General Scheme of Preferences[14] could be withdrawn for serious and systematic violations of ILO Convention No. 29 and ILO Convention No. 105.

(7) The Anti-trafficking Directive (Directive 2011/36/EU) of the European Parliament and of the Council[15] harmonises the definition of trafficking in human beings, including forced labour or services, and establishes rules on minimum penalties. Any rules laid down concerning the prohibition of placing and making available on the Union market domestic or imported products made with forced labour, or exporting such products, and the obligation to ensure that such products are withdrawn from the Union market ('the prohibition'), should be without prejudice to that Directive, and in particular to the competence of law enforcement and judicial authorities to investigate and prosecute offences on trafficking in human beings, including labour exploitation.

PUBLIC

14 Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008, OJ L 303, 31.10.2012, p. 1-82.

15 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.

(8) [In particular, Directive 20XX/XX/EU on Corporate Sustainability Due Diligence sets out horizontal due diligence obligations to identify, prevent and mitigate as well as bring to an end and minimise the extend of potential and actual adverse impacts in the company's own operations, its subsidiaries and in its chain of activities on human rights, including forced labour, and on the environment, interpreted in line with international human and labour rights standards and environmental conventions. Those obligations apply to large companies over a certain threshold in terms of number of employees and net turnover, and to smaller companies in high-impact sectors over a certain threshold in terms of number of employees and net turnover.[16]]

(9) In addition, Regulation (EU) 2017/821 of the European Parliament and of the Council[17] requires Union importers of minerals or metals falling under the scope of that Regulation to carry out due diligence obligations consistent with Annex II to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, and the due diligence recommendations set out therein. [Regulation (EU) No 2023/1542 of the European Parliament and of the Council[18] contains obligations for economic operators to carry out due diligence in their supply chains, including with respect to labour rights.] [Regulation (EU) 2023/1115 of the European Parliament and of the Council[19] requires due diligence regarding the legal and deforestation free character of products and commodities within its scope, including with respect to human rights.]

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16 Directive 20XX/XX/EU of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, OJ XX, XX.XX.20XX, p. XX.

17 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.

18 Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC, OJ L 191, 28.7.2023, p. 1-117.

19 Regulation (EU) 2023/1115 of the European Parliament and of the Council on 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, OJ L 150, 9.6.2023, p. 206-247.

(10) Article 19a of Directive 2013/34/EU of the European Parliament and of the Council in its version of 21 November 2021 requires Member States to ensure that certain economic operators annually publish non-financial statements in which they report on the impact of their activity on environmental, social and employee matters, respect for human rights, including regarding forced labour, anti-corruption and bribery matters.[20] Furthermore, Directive (EU) 2022/2464 of the European Parliament and of the Council on Corporate Sustainability Reporting amended that requirement by introducing detailed reporting requirements for covered companies regarding the respect of human rights, including in global supply chains. The information that undertakings disclose about human rights should include, where relevant, information about forced labour in their value chains.[21]

(11) In July 2021, the Commission and the European External Action Service published guidance to assist Union businesses in taking appropriate measures to address the risk of forced labour in their operations and supply chains.[22]

(12) As recognised in the Commission's Communication on decent work worldwide[23], notwithstanding the current policies and legislative framework, further action is needed to achieve the objectives of eliminating forced-labour products from the Union market and, hence, further contributing to the fight against forced labour worldwide.

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20 Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ

21 Directive 20XX/XX/EU of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation 2014/537/EU(EU) No 537/2014, as regards corporate sustainability reporting, OJ XX, XX.XX.20XX, p. XX L 322, 16.12.2022, p. 15.

22 Guidance on due diligence for EU businesses to address the risk of forced labour in their operations and supply chains.

23 Communication 23 March 2022 from the Commission to the European Parliament, the Council and the European Economic and Social Committee on decent work worldwide for a global just transition and a sustainable recovery (COM(2022) 66 final).

(13) The European Parliament in its resolutions strongly condemned forced labour and called for a ban on products made with forced labour.[24] It is therefore a matter of public moral concern that products made with forced labour could be available on the Union market or exported to third countries without an effective mechanism to ban or withdraw such products.

(14) To complete the Union legislative and policy framework on forced labour, the placing and making available on the Union market products made with forced labour or exporting domestically produced or imported products made with forced labour should be prohibited and it should be ensured that those products are withdrawn from the Union market.

(15) Currently there is no Union legislation that empowers Member States' authorities to directly detain, seize, or order the withdrawal of a product on the basis of a finding that it was made, whether in whole or in part, with forced labour.

(16) In order to ensure the effectiveness of the prohibition, such prohibition should apply to products for which forced labour has been used at any stage of their production, manufacture, harvest and extraction, including working or processing related to the products. The prohibition should apply to all products, of any type, including their components, and should apply to products regardless of the sector, the origin, whether they are domestic or imported, or placed or made available on the Union market or exported. This Regulation should not apply to the activities of a natural or legal person or association of persons domiciled in the European Union that provides transport services unless that person or association can be qualified as an economic operator as defined pursuant to this Regulation.

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24 See Resolutions: MOTION FOR A RESOLUTION on a new trade instrument to ban products made by forced labour (europa.eu), Texts adopted - Forced labour and the situation of the Uyghurs in the Xinjiang Uyghur Autonomous Region - Thursday, 17 December 2020 (europa.eu), Texts adopted - Forced labour in the Linglong factory and environmental protests in Serbia - Thursday, 16 December 2021 (europa.eu).

(17) The prohibition should contribute to the international efforts to abolish forced labour. The definition of 'forced labour' should therefore be aligned with the definition laid down in ILO Convention No. 29 stating that forced or compulsory labour means 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 voluntarily, with the exclusion of (a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character; (b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country; (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations; (d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; (e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

PUBLIC

(17a) In the same line, the definition of 'forced labour applied by state authorities' should be aligned with the notion as found in ILO Convention No. 105, which prohibits specifically the use of forced labour or compulsory labour as a means of political coercion or education or as punishment for the expression of political views or views ideologically opposed to the established political, social or economic system, as a method of mobilising and using it for the purposes of economic development, as a means of labour discipline, as a punishment for having participated in strikes, or as a means of racial, social, national or religious discrimination.[25]

(17b) Distance selling, including online selling, should also fall within the scope of this Regulation. In the case of a product offered for sale online or through other means of distance sales, the product should be considered to have been made available on the market if the offer for sale is targeted at [end-users] in the Union. In line with the applicable Union rules on private international law, a case-by-case analysis should be carried out in order to establish whether an offer is targeted at [end-users] in the Union. An offer for sale should be considered to be targeted at [end-users] in the Union if the relevant economic operator directs, by any means, its activities to a Member State. For the case-by-case analyses, relevant factors, such as the geographical areas to which dispatch is possible, the languages available, used for the offer or for ordering, means of payment, the use of currency of the Member State or a domain name registered in one of the Member States should be taken into consideration. In the case of online sales, the mere fact that the economic operators' or the providers of online marketplaces' interface is accessible in the Member State in which the [end-user] is established or domiciled is insufficient. The fact that the product offered for sale online or through other means of distance sales is considered to have been made available on the market if the offer for sale is targeted at end-users in the Union should be without prejudice to rules regarding products entering or leaving the Union market.

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25 What is forced labour, modern slavery and human trafficking (Forced labour, modern slavery and human trafficking) (ilo.org) and the ILO Conventions No. 29 and No. 105 referred therein.

(17c) Intermediary services, in particular online platforms have become increasingly used for the sale of products. In this regards, information related to the advertising, promotion and sale of products contravening the prohibition established in this Regulation should be considered illegal content within the meaning of article 3(h) of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) and should be subject to the obligations and measures under that Regulation.

(17d) The application of the rules in this Regulation regarding distance sales is without prejudice to the rules on products entering or leaving the Union.

(18) The competent authorities of the Member States should monitor the market to identify violations of the prohibition. In appointing those competent authorities, Member States should ensure that those authorities have sufficient resources and that their staff has the necessary competences and knowledge, especially with regard to human rights, supply chain management and due diligence processes. Competent authorities should closely coordinate with national labour inspections and judicial and law enforcement authorities, including those responsible for the fight against trafficking in human beings in such a way as to avoid jeopardising investigations by such authorities.

(19) To ensure effective enforcement of the prohibition, it is necessary to establish a network aimed at structured coordination and cooperation between the competent authorities of the Member States and, where appropriate, experts from customs authorities, and the Commission. That network should also aim at streamlining the practices of the competent authorities within the Union on cross-border investigations and enforcement activities. That administrative support structure should allow the pooling of resources and maintain a communication and information system between Member States and the Commission, thereby helping to strengthen the enforcement of the prohibition. Where the tasks of the network relate to customs, they shall be carried out in accordance with the Union Customs Code.

PUBLIC

(20) In order to ensure cooperation among competent authorities designated under this and other relevant legislation and in order to ensure consistency in their actions and decisions, competent authorities designated under this Regulation should request information from other relevant authorities, where necessary, on whether economic operators under assessment are subject to and carry out due diligence in relation to forced labour in accordance with applicable Union legislation or Member States legislation setting out due diligence and transparency requirements with respect to forced labour. For the same purposes, and where appropriate, competent authorities designated under this Regulation should inform other relevant authorities, such as market surveillance authorities, of their actions and decisions.

(21) A uniform enforcement of the prohibition as regards products entering or leaving the Union market can only be achieved through systematic exchange of information and cooperation amongst competent authorities, customs authorities and the Commission.

(22) For the collection, processing and storage of information, in a structured form, on issues relating to the investigations, decision-making process, and enforcement of the prohibition, the competent authorities should use ICSMS. The Commission, competent authorities and customs authorities should have access to that system to carry out their respective duties under this Regulation.

PUBLIC

(23) In order to optimise and unburden the control process of products entering or leaving the Union market, it is necessary to allow for an automated data transfer between the ICSMS and customs systems. Three different data transfers should be distinguished in view of their respective purposes. Firstly, decisions establishing a violation of the prohibition should be communicated from the ICSMS to the Electronic Customs Risk Management System (CRMS) referred to in Article 36 of Commission Implementing Regulation (EU) 2015/2447[26], without prejudice to any future evolution of the customs risk management environment, for use by customs authorities to identify products that may correspond to such a decision. The available interfaces of the customs environment should be used for those first data transfers. Secondly, where customs authorities identify such a product, case management will be necessary to, among others, transfer the notification of the suspension, the conclusion of competent authorities and the outcome of the actions taken by customs. The EU Single Window Environment for customs should support those second data transfers between ICSMS and national customs systems. Thirdly, customs systems contain information on products entering and leaving the Union market that would be relevant for competent authorities to carry out their duties but that is not accessible to them. The relevant information should therefore be extracted and transmitted to the ICSMS. The three interconnections should be highly automated and easy-to-use, so as to limit any additional burden for customs authorities. The Commission should be empowered to adopt, in cooperation with customs authorities and competent authorities, the implementing acts necessary to determine the procedural rules, practical arrangements and data elements to be transferred between the ICSMS and customs systems and any other ancillary requirement.

[26] Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, OJ L 343, 29.12.2015, p. 558.

(23a) The Commission should set up a database, calling on external expertise if needed to provide a publicly available database with indicative, non-exhaustive, verifiable and regularly updated information about forced labour risks in specific geographic areas or with respect to specific products. The database shall prioritise the identification of widespread and severe forced labour risks. The database will support the work of competent authorities in assessing possible violations of the prohibition and will facilitate that economic operators identify possible forced labour risks in their supply chains.

(24) Micro, small and medium-sized enterprises ('SMEs') can have limited resources and ability to ensure that the products they place or make available on the Union market are free from forced labour. The Commission should therefore issue guidelines on due diligence in relation to forced labour, which should take into account also the size and economic resources of economic operators. In addition, the Commission should issue guidelines on forced-labour risk indicators and on publicly available information in order to help SMEs, as well as other economic operators, to comply with the requirements of the prohibition.

(25) The Commission should issue guidelines in order to facilitate the implementation of the prohibition by economic operators and competent authorities. Such guidelines should include guidance on due diligence in relation to forced labour and complementary information for the competent authorities to implement the prohibition. The Commission should publish different sets of guidelines specifically targeted to economic operators and to competent authorities, as well as any other general guidelines that might be relevant for all parties. The guidance on due diligence in relation to forced labour should build on the Guidance on due diligence for Union businesses to address the risk of forced labour in their operations and supply chains published by the Commission and the European External Action Service in July 2021. The guidelines should be consistent with other Commission guidelines in this regard and relevant international organisations' guidelines. The guidelines should also rely on experience and best practices from relevant Member State authorities, such as helpdesks on business and human rights. The reports from international organisations, in particular the ILO, as well as other independent and verifiable sources of information should be considered for the identification of risk indicators.

PUBLIC

(26) Since forced labour is a global problem and given the interlinkages of the global value chains, it is necessary to promote international cooperation against forced labour, which would also improve the efficiency of applying and enforcing the prohibition. The Commission 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.

(26a) The Commission should take into due consideration the risk of disengagement by economic operators who are related to products or regions either in database or to risk indicators in the guidelines, or who have had their product removed from the Union market.

(27) Any person, whether it is a natural or legal person, or any association not having legal personality, should be allowed to submit information to the competent authorities when it considers that products made with forced labour are placed and made available on the Union market and to be informed of the outcome of the assessment of their submission. This submission of information should be facilitated by the creation of a single online portal by the Commission.

(27a) Whistleblowers can bring new information to the attention of competent authorities to help them to detect infringements of this Regulation and enable them to take action. It should be ensured that adequate arrangements are in place to enable whistleblowers to alert the competent authorities to actual or potential infringements of this Regulation and to protect the whistleblowers from retaliation. For that purpose, it should be provided in this Regulation that Directive (EU) 2019/1937 of the European Parliament and of the Council[27] is applicable to the reporting of breaches of this Regulation and to the protection of persons reporting such breaches.

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[27] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17-56.

(27b) To enhance legal certainty, the applicability, pursuant to this Regulation, of Directive (EU) 2019/1937 to reports of breaches of this Regulation and to the protection of persons reporting such breaches should be reflected in that Directive. The Annex to Directive (EU) 2019/1937 should therefore be amended accordingly. It is for the Member States to ensure that this amendment is reflected in their transposition measures adopted in accordance with Directive (EU) 2019/1937, although the adoption of national transposition measures is not a condition for the applicability of that Directive to the reporting of breaches of this Regulation and to the protection of reporting persons from the date of application of this Regulation.

(27c) To ensure ease of access to relevant information on this Regulation, the Commission should set up a single web portal at the Union level, available to the public in all official languages. The links to the websites, portals or platforms dedicated to [Directive 20XX/XX/EU on Corporate Sustainability Due Diligence], and particularly human rights due diligence, should also be available.

(28) When identifying potential violations of the prohibition, the competent authorities should follow a risk-based approach and assess all information available to them. Competent authorities should initiate an investigation where, based on their assessment of all available information, they establish that there is a substantiated concern of a violation of the prohibition.

PUBLIC

(28a) To ensure a balanced approach between the Member States and the Commission, the notion of 'Union interest' should serve as an allocation key in the preliminary and investigation phases. In determining the Union interest, competent authorities and the Commission should assess any of the following criteria: the scale and severity of suspected forced labour, whether the risks of suspected forced labour are located outside the territory of the Union, and whether the products suspected to have been made with forced labour have a significant impact on the internal market. Products suspected to have been made with forced labour are presumed to have a significant impact on the internal market where the products concerned are present in at least three Member States. A product shall be presumed to be present in three Member States in any of the following situations: (i) the product is manufactured in these Member States, (ii) the product is placed or made available or is to be placed or made available in order to reach the end-users of these Member States, (iii) the product is exported from these Member States, (iv) any combination of the situations under (i), (ii) and (iii) thereof. In addition, the significant impact on the internal market may be presumed where the products concerned are of critical importance to the Union [as defined by European legislation, such as Regulation on the screening of Foreign Direct Investment regulation, the CRM Act or the NZIA].

(28b) To ensure a uniform approach regarding submitted information, the Commission should assess whether the products concerned are of Union interest. If so, the Commission should proceed with the preliminary phase of investigations. Otherwise, the submissions should be directed to competent authorities, based on fair and objective criteria.

(29) During the preliminary phase of investigation, competent authorities should focus on the economic operators involved in the steps of the supply chain where there is a higher risk of forced labour with respect to the products under investigation, also taking into account their size and economic resources, the quantity of products concerned and the scale of the suspected forced labour. To ensure subsidiarity, competent authorities may, at any time, request the Commission to proceed with the preliminary phase of investigation where the products concerned are of Union interest.

PUBLIC

(30) In order to increase the effectiveness of the prohibition, competent authorities should grant reasonable time to economic operators to identify, mitigate, prevent and bring to an end the risk of forced labour, taking into account, among others, the complexity of the proceeding and the number of stakeholders involved.

(31) Before initiating an investigation, competent authorities should request from the economic operators under assessment information on actions taken to mitigate, prevent or bring to an end risks of forced labour in their operations and supply chains with respect to the products under assessment. Carrying out such due diligence in relation to forced labour should help the economic operator to be at a lower risk of having forced labour in its operations and supply chains. Appropriate due diligence means that forced labour issues in the supply chain have been identified and addressed in accordance with relevant Union legislation or in line with international standards. That implies that where the competent authority considers that there is no substantiated concern of a violation of the prohibition, for instance due to, but not limited to the applicable legislation, guidelines, recommendations or any other due diligence in relation to forced labour being applied in a way that mitigates, prevents and brings to an end the risk of forced labour, no investigation should be initiated.

(32) Competent authorities, when requesting information during the investigation, should prioritise to the extent possible and consistent with the effective conduct of the investigation the economic operators under investigation that are involved in the steps of the supply chain as close as possible to where the likely risk of forced labour occurs and take into account the size and economic resources of the economic operators, the quantity of products concerned, as well as the scale of suspected forced labour.

(32a) Mutual assistance shall include, in particular, exchange of information and the duty of the competent authorities to inform other competent authorities, the network and the Commission about their intention to initiate an investigation.

PUBLIC

(33) Competent authorities should bear the burden of establishing that forced labour has been used at any stage of production, manufacture, harvest or extraction of a product, including working or processing related to the product on the basis of all information and evidence gathered during the investigation, including its preliminary phase. To ensure their right to due process, economic operators should have the opportunity to provide information in their defence to the competent authorities throughout the investigation.

(34) Where the Commission establishes that economic operators violated the prohibition, it should without delay prohibit the placing and making available of such products on the Union market and their export from the Union, and require the economic operators that have been investigated to withdraw the products concerned already made available from the Union market and have them destroyed, rendered inoperable, or otherwise disposed of in accordance with national law consistent with Union law, including Union legislation on waste management.

(35) In that decision, the Commission should state the findings of the investigation, and the information underpinning the findings, and set a reasonable time within which the economic operators should comply with the decision, as well as information allowing for the identification of the product to which the decision applies. The Commission should be empowered to adopt the implementing acts necessary to specify the details about the information to be contained in such decisions.

(36) In setting a reasonable time to comply with the order, the Commission should take into account the size and economic resources of the economic operators concerned.

PUBLIC

(37) ▌

(38) Economic operators should have the possibility to request a review of the decisions by the Commission, after having provided new information showing that it cannot be concluded that the products concerned have been made with forced labour. The Commission should withdraw its decision where it establishes on the basis of that new information, that it cannot be established that the products have been made with forced labour.

(39) If the economic operators fail to comply with the decision of the Commission by the end of the established timeframe, the competent authorities should ensure that the products concerned are prohibited from being placed or made available on the Union market, exported or withdrawn from the Union market and that any such products remaining with the relevant economic operators are destroyed, rendered inoperable, or otherwise disposed of in accordance with national law consistent with Union law, including Union legislation on waste management and on ecodesign for sustainable products at the expense of the economic operators. Products deemed valuable for charitable or public interest, such as medical products, should in priority be donated. Where possible, competent authorities should ensure that the disposal or destruction method chosen has the smallest environmental impact possible of all the available options.

(39a) The effect on animal welfare should be considered when enforcing the prohibition of the placing and making available of products made using forced labour in order to spare the animals concerned any avoidable pain, distress or suffering. In addition, this Regulation should be without prejudice to the legislation regarding animal welfare, such as Council Regulations (EC) No 1/2005[28] and (EC) No 1099/2009[29].

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[28] Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97, OJ L 3, 5.1.2005, p. 1–44.

[29] Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, OJ L 303, 18.11.2009, p. 1–30.

(39b) Enforcement of the decisions, adopted by the Commission, lies within the Member States. After the decisions are communicated to the Member States, all competent authorities concerned with the specific decision shall proceed with enforcement actions, foreseen in the Regulation.

(40) Decisions of the Commission establishing a violation of the prohibition should be communicated to customs authorities, who should aim at identifying the product concerned amongst products declared for release for free circulation or export. The competent authorities should be responsible for the overall enforcement of the prohibition with regard to the internal market as well as products entering or leaving the Union market. Since forced labour is part of the manufacturing process and does not leave any trace on the product, and Regulation (EU) 2019/1020 covers only the manufactured products covered by the Union legislations listed in that Regulation and its scope is limited to release for free circulation, the customs authorities would be unable to act autonomously under Regulation (EU) 2019/1020 for the application and enforcement of the prohibition. The specific organisation of controls of each Member State should be without prejudice to Regulation (EU) No 952/2013 of the European Parliament and of the Council[30] and its general provisions on the control and supervisory powers of customs authorities.

[30] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) (OJ L 269, 10.10.2013, p. 1).

(41) The information currently provided or made available to customs authorities by economic operators includes only general information on the products but lacks information on the manufacturer or producer and product suppliers as well as specific information on products. In order for customs authorities to be able to identify products entering or leaving the Union market that may violate the Regulation and should accordingly be stopped at the EU external borders, economic operators should submit to customs authorities information allowing matching a decision of the competent authorities with the product concerned. This should include information on the manufacturer or producer and the product suppliers as well as any other information on the product itself. To this end, the Commission should be empowered to adopt delegated acts identifying the products for which such information should be provided using, amongst others, the database established under this Regulation as well as the information and decisions of the Commission encoded in the information and communication system set out in Article 34 of Regulation (EU) 2019/1020 ('ICSMS'). Moreover, the Commission should be empowered to adopt implementing acts necessary to specify the details of the information to be provided or made available to customs by the economic operators. This information should include the description, name or brand of the product, specific requirements under Union legislation for the identification of the product (such as a type, reference, model, batch or serial number affixed on the product, or provided on the packaging or in a document accompanying the product, or unique identifier of the digital product passport) as well as details on the manufacturer or producer and the product suppliers, including for each of them their name, trade name or registered trademark, their contact details, their unique identification number in the country they are established and, where available, their Economic Operators Registration and Identification (EORI) number. The review of the Union Customs Code will consider introducing in the customs legislation the information required to be provided or made available to customs by the economic operators for the enforcement of this Regulation and more broadly to strengthen the transparency of the supply chain.

PUBLIC

(42) Customs authorities that identify a product that may be covered by a Commission decision communicated to competent authorities establishing a violation of the prohibition should suspend the release of that product and notify the competent authorities immediately. Competent authorities should reach a conclusion within a reasonable timeframe on the case notified to them by the customs authorities, either by confirming or by denying that the product concerned is covered by a Commission decision. Where necessary the competent authorities should be authorised to require maintaining the suspension of its release. In the absence of a conclusion by competent authorities within the specified time limit, customs authorities should release the products if all other applicable requirements and formalities are fulfilled. Generally, the release for free circulation or export should also not be deemed to be proof of compliance with Union law, since such a release does not necessarily include a complete control of such compliance.

(43) Where the competent authorities conclude that a product corresponds to a Commission decision establishing a violation of the prohibition, they should immediately inform customs authorities which should refuse its release for free circulation or export. The product should be destroyed, rendered inoperable, or otherwise disposed of in accordance with national law consistent with Union law, including legislation on waste management and on ecodesign, which excludes re-export in case of non-Union goods.

(44) The conditions applicable to products during the suspension of their release for free circulation or export, including their storage or destruction and disposal of in case of a refusal of release for circulation, should be determined by customs authorities, where applicable pursuant to Regulation (EU) No 952/2013. Should products entering the Union market require further processing, they are to be placed under the appropriate customs procedure allowing such processing in accordance with Articles 220, 254, 256, 257 and 258 of Regulation (EU) No 952/2013.

PUBLIC

(45) Where, for the prohibition, it is necessary to process personal data, such processing should be carried out in accordance with Union law on the protection of personal data. Any processing of personal data under the prohibition should be subject to Regulation (EU) 2016/679 of the European Parliament and of the Council[31] and Regulation (EU) 2018/1725 of the European Parliament and of the Council[32].

(46) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[33].

(47) ▌

(48) In order to ensure that the customs authorities are able to act effectively the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of further specifying the additional information identifying the product concerned (information about the manufacturer or the producer and information about the product suppliers as regards products entering or leaving the Union market) that economic operators should make available or provide to the customs authorities. Customs authorities need to be enabled to obtain information rapidly on specific products, identified in the decisions of the competent authorities in order to take actions and measures effectively and swiftly. In such cases, delegated acts should be adopted in an urgent procedure.

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31 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.

32 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

33 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13.

(49) Since the objective of this Regulation, namely, the prohibition, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(50) ▌

HAVE ADOPTED THIS REGULATION:

Chapter I
General provisions

Article 1

Subject matter and scope

1. The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying down harmonised rules prohibiting economic operators from placing and making available on the Union market or exporting from the Union market products made with forced labour.

2. This Regulation shall not cover the withdrawal of products which have reached the end-users in the Union market.

3. This Regulation shall not create additional due diligence obligations for economic operators besides those already provided by mandatory national or Union requirements, in particular national measures transposing [Directive 20XX/XX/EU of the European Parliament and of the Council on Corporate Sustainability Due Diligence].

PUBLIC

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

(a) 'forced labour' means forced or compulsory labour, including forced child labour, as defined in Article 2 of the Convention on Forced Labour, 1930 (No. 29) of the International Labour Organization;

(b) 'forced labour imposed by state authorities' means the use of forced labour as described in Article 1 of the Convention on the Abolition of Forced Labour, 1957 (No. 105) of the International Labour Organization;

(c) 'due diligence in relation to forced labour' means the efforts by economic operator to implement mandatory national or EU requirements, in particular national measures transposing [Directive 20XX/XX/EU of the European Parliament and of the Council on Corporate Sustainability Due Diligence], voluntary guidelines, recommendations or practices to identify, prevent, mitigate or bring to an end the use of forced labour with respect to products that are to be placed or to be made available on the Union market or to be exported;

(d) 'making available on the market' means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;

(e) 'placing on the market' means the first making available of a product on the Union market;

PUBLIC

(f) ‘product’ means any product that can be valued in money and is capable, as such, of forming the subject of commercial transactions, whether it is extracted, harvested, produced or manufactured, including working or processing related to a product at any stage of its supply chain;

(g) ‘product made with forced labour’ means a product for which forced labour has been used in whole or in part at any stage of its extraction, harvest, production or manufacture, including working or processing related to a product at any stage of its supply chain;

(ga) ‘supply chain’ means the entire network of operators involved at all stages, upstream of the product being made available on the market, related to the extraction, harvesting, production, manufacturing and supply of a product or parts of the products to be incorporated in the final products to be made available;

(h) ‘economic operator’ means the manufacturer, producer, product supplier, importer, exporter or any natural or legal person or association of persons who is placing or making available products on the Union market or exporting products;

(i) ‘manufacturer’ means any natural or legal person who manufactures a product or has a product designed or manufactured, and markets that products under its name or trademark;

(j) ‘producer’ means the producer of agricultural products as referred to in Article 38(1) TFEU or of raw materials;

(k) ‘product supplier’ means any natural or legal person or association of persons in the supply chain who extracts, harvests, produces or manufactures a product in whole or in part, or intervenes in the working or processing related to a product at any stage of its supply chain, whether as manufacturer or in any other circumstances;

PUBLIC

(ka) ‘end user’ means any natural or legal person residing or established in the Union, to whom a product has been made available either as a consumer outside of any trade, business, craft or profession or as a professional end user in the course of its industrial or professional activities;

(l) ‘importer’ means any natural or legal person or association of persons established within the Union who places a product from a third country on the Union market;

(m) ‘exporter’ means the exporter as defined in Article 1, point (19) of Commission Delegated Regulation (EU) 2015/2446[34];

(n) ‘substantiated concern’ means a reasonable indication based on objective and verifiable information, for the competent authorities to suspect that products were likely made with forced labour;

(na) 'Competent authority’ means competent authority as designated pursuant to Article 5 of this Regulation;

(o) ‘customs authorities’ means customs authorities as defined in Article 5, point (1), of Regulation (EU) No 952/2013;

(p) ‘products entering the Union market’ means products from third countries intended to be placed on the Union market or intended for private use or consumption within the customs territory of the Union and to be placed under the customs procedure ‘release for free circulation’;

(q) ‘products leaving the Union market’ means products to be placed under the customs procedure ‘export’;

34 Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code, OJ L 343, 29.12.2015, p. 1.

(r) ‘release for free circulation’ means the procedure laid down in Article 201 of Regulation (EU) No 952/2013;

(s) ‘export’ means the procedure laid down in Article 269 of Regulation (EU) No 952/2013;

(t) ‘EU Customs Single Window Certificates Exchange System’ or (EU CSW-CERTEX) means the system established by Article 4 of the Regulation (EU) 2022/2399 establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013;

(u) “National single window environments for customs” means the national single window environments for customs as defined in point 9 of Article 2 of Regulation (EU) 2022/2399 of the European Parliament and of the Council[35].

Article 3

Prohibition of products made with forced labour

Economic operators shall not place or make available on the Union market products that are made with forced labour, nor shall they export such products.

Article 4 (ex-Articles 2a and 8d(1))

Cases where the product is offered for distance sales

Products offered for sale online or through other means of distance sales shall be deemed to be made available on the market if the offer is targeted at end-users in the Union. An offer for sale shall be considered to be targeted at end-users in the Union if the relevant economic operator directs, by any means, its activities to one or more Member States.

35 Regulation (EU) XX/20XX 2022/2399 of the European Parliament and of the Council of 23 November 2022 establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013,OJ L 317, 9.12.2022, p.1.

Chapter II

Governance

Article 5 (ex-Article 12, 13(4))

Competent authorities

1. Member States shall designate one or more competent authorities responsible for carrying out the obligations set out in this Regulation. These competent authorities shall work in close cooperation with the Commission to ensure an effective and uniform implementation of this Regulation.

2. Where Member States have designated more than one competent authority, they shall clearly demarcate the respective duties and establish communication and coordination mechanisms that enable those authorities to collaborate closely and exercise their duties effectively.

3. No later than [OP enter DATE = 12 months after the date of entry into force of this Regulation**]**, Member States shall, through the information and communication system referred to in Article 8(1), provide the Commission and the other Member States with the following information:

   (a) the names, addresses and contact details of the designated competent authority or authorities;

   (b) the areas of competence of the designated competent authority or authorities.

   Member States shall regularly update the information set out in points (a) and (b) of the first sub-paragraph of this paragraph.

PUBLIC

4. The Commission shall make the list of the designated competent authorities publicly available on the Forced Labour Single Portal referred to in Article 12 and shall regularly update that list, based on the updates received from Member States.

5. Member States shall ensure that the designated competent authority or authorities exercise its or their powers impartially, transparently and with due respect for obligations of professional secrecy. Member States shall ensure that their competent authorities have the necessary powers and resources to carry out the investigations, including sufficient budgetary and other resources and coordinate closely and exchange information with the relevant national authorities such as the labour inspections and judicial and law enforcement authorities, including those responsible for the fight against trafficking in human beings.

6. Competent authorities may cooperate with other national authorities relevant for the implementation of this regulation, such as the authorities designated by the Member State under Directive (EU) [XXX/XXX] on Corporate Sustainability Due Diligence and Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

7. Member States shall confer on their competent authorities the power to impose, either directly, in cooperation with other authorities or by application to the competent judicial authorities, penalties in accordance with Article 34.

PUBLIC

Article 6 (ex-Articles 24 and 13 (1, 3))

Union Network Against Forced Labour Products

1. A Union Network Against Forced Labour Products ('the Network') is established. The Network shall serve as a platform for structured coordination and cooperation between the competent authorities of the Member States and the Commission, and to streamline the practices of enforcement of this Regulation within the Union, thereby making enforcement more effective and coherent.

2. The Network shall be composed of a representative from each Member State and representatives from the Commission. On an ad hoc basis, Member State representatives may invite experts from the customs authorities or other relevant Member State authorities. Where appropriate, external experts and stakeholders may be invited to participate in the meetings.

3. The Commission shall chair the Network and provide technical and logistical support to its members through an executive secretariat.

4. Members of the Network shall actively participate to ensure efficient coordination and cooperation, and contribute to uniform risk-based approaches and administrative practices for the implementation of this Regulation.

5. The Network shall have the following tasks:

   (a) facilitate the identification of common priorities to achieve the objective of prohibiting products made with forced labour on the Union market, providing guidance with a view to supporting the identification [by the Commission] of enforcement at Union level, thereby further contributing to the fight against forced labour;

PUBLIC

(b) facilitate and coordinate the exchange and collection of information and best practices with regard to the application of this Regulation;

(c) ▌

(d) facilitate the coordination of investigations pursuant to Article 17, including the designation of the lead competent authority pursuant to Article 16;

(e) ensure the exchange of information and coordination between competent authorities and the Commission pursuant to Article 7;

(f) ▌

(g) facilitate the coordination between competent authorities for them to provide operational and technical assistance regarding the monitoring of information and communication systems referred to in Article 8;

(h) facilitate the organisation of training and capacity building activities for the competent authorities and customs authorities of the Member States;

(i) follow-up on the enforcement of decisions taken pursuant to Article 20;

(j) promote and facilitate collaboration to explore possibilities for using new technologies for the enforcement of this Regulation and the traceability of products;

(k) ▌

(l) promote best practices in the application of penalties provided by Article 34;

(m) cooperate, as appropriate, with other Union agencies or national authorities relevant for the implementation of this regulation, such as the authorities designated by the Member State under Directive (EU) [XXX/XXX] on Corporate Sustainability Due Diligence and Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

PUBLIC

6. Upon request of the Commission, the Network may provide assistance in the following tasks:

(a) ▌

(b) be consulted and contribute to the development of guidance referred to in Article 11;

(c) develop a coordinated approach to engage and cooperate with third countries pursuant to Article 13;

7. The Network shall establish its rules of procedure.

Article 7 (ex-Article 9)

Information obligations of the competent authorities and the Commission

1. The competent authority shall without delay inform the Commission and the competent authorities of other Member States, and where relevant, other relevant Member State authorities, using the information and communication system referred to in Article 8(1) about the following:

(aa) any request for information made in accordance with Article 15(2)

(a) any decision not to initiate an investigation following a preliminary phase of investigation, referred to in Article 15(6);

(ba) any result of the preliminary phase of investigation referred to in Article 15(7);

(bb) any intention to initiate an investigation made in accordance with Article 16(3);

(b) any decision to initiate an investigation referred to in Article 18(1);

(c) any result of an investigation referred to in Article 18(6);

PUBLIC

2. The Commission shall without delay inform the competent authorities, and where relevant, other relevant Member State authorities, using the information and communication system referred to in Article 8(1) about the following:(aa)any request for information made in accordance with Article 15(2);

(ab) any decision not to initiate an investigation following a preliminary phase of investigation, referred to in Article 15(6);

(a) any result of the preliminary phase of investigation referred to in Article 15(7);

(b) any decision to initiate an investigation referred to in Article 18(1);

(c) any decision referred to in Article 20(4);

(d) any information referred to in Article 20(3);

(e) any withdrawal of the decision referred to in Article 20(8);

(g) any result of the review referred to in Article 20(7);

(h) any result of the judicial review referred to in Article 21(1e).

Article 8 (ex-Article 22)

Information and communication systems

1. For the purposes of Chapters III, IV, and V, competent authorities and the Commission shall use the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020. The Commission, competent authorities and customs authorities shall have access to that system for the purposes of this Regulation.

1a. Notwithstanding paragraph 1, competent authorities may use other existing communication systems with other authorities within their own Member State.

2. The decisions communicated pursuant to Article 25(3) shall be entered in the relevant customs risk management environment.

PUBLIC

3. The Commission shall develop an interconnection to enable the automated communication of decisions referred to in Article 25(3) from the information and communication system referred to in paragraph 1 to the environment referred to in paragraph 2. That interconnection shall start operating no later than two years from the date of the adoption of the implementing act referred to in paragraph 7, point (b), in respect of that interconnection.

4. Requests and notifications exchanged between competent authorities and customs authorities pursuant to Chapter V Title II of this Regulation as well as the ensuing messages shall take place by means of the information and communication system referred to in paragraph 1.

5. An interconnection between the information and communication system referred to in paragraph 1 and the EU Single Window Environment for Customs shall be regulated by Regulation (EU) 2022/2399[36] for the purposes of exchanging the requests and notifications between customs and competent authorities pursuant to Chapter IV Title II of this Regulation. That interconnection shall be established at the latest within four years from the date of adoption of the implementing act referred to in paragraph 7(a). The exchanges referred to in paragraph 4 shall take place through that interconnection as soon as it is operational.

6. The Commission may extract from the surveillance system referred to in Article 56(1) of Commission Implementing Regulation (EU) 2015/2447 information on products entering or leaving the Union market related to the implementation of this Regulation and transmit it to the information and communication system referred to in paragraph 1.

[36] Regulation (EU) 2022/2399 of the European Parliament and of the Council of 23 November 2022 establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013, OJ L 317, 9.12.2022, p. 1.

7. The Commission is empowered to adopt implementing acts in accordance with the examination procedure pursuant to Article 33(2) to specify the procedural rules and the details of the implementation arrangements for this Article, including:

(a) the functionalities, data elements and data processing, as well as the rules on the processing of personal data, confidentiality and controllership, of the information and communication system referred to in paragraphs 1 and 4;

(b) the functionalities, data elements and data processing, as well as the rules on the processing of personal data, confidentiality and controllership for the interconnection referred to in paragraph 3;

(c) ▌

(d) the data to be transmitted, as well as the rules on its confidentiality and controllership, in accordance with paragraph 6.

Article 9 (ex-Article 11)

Database of forced labour risk areas or products

1. The Commission shall establish a database, with the assistance of external expertise if needed. This database shall provide an indicative, non-exhaustive, verifiable and regularly updated information of forced labour risks in specific geographic areas or with respect to specific products including with regard to forced labour imposed by state authorities. The database shall prioritise the identification of widespread and severe forced labour risks. The database shall be based on the guidelines referred to in Article 11, points (a), (b) and (c), and relevant external sources of information from, amongst others, international organisations and third country authorities. It shall not publicly disclose information that directly names economic operators. The database shall be made available in all official languages of the Union.

PUBLIC

2. The Commission shall ensure that the database is made publicly available no later than [OP office: 18 months after the entry into force of this Regulation].

Article 10 (ex-Article 10)

Single information submission point

1. The Commission shall set up a single information submission point, available on the forced labour single window referred to in Article 12. Information submission shall be possible in all official languages of the Union.

2. Submissions of information by any natural or legal person or any association not having legal personality, to competent authorities on alleged violations of Article 3 shall contain information on the economic operators or products concerned and provide the reasons substantiating the allegation, and where applicable, supporting documents.

3. The Commission shall assess whether the products concerned by the submission referred to in paragraph 2 are of Union interest pursuant to Article 14(3). Where the products concerned are of Union interest, the Commission shall proceed with the preliminary phase of investigation pursuant to Article 15.

4. Where the products concerned are not of Union interest, the submission referred to in paragraph 2 shall be directed to a competent authority in a way to ensure a fair and balanced distribution of submissions. Such distributions among competent authorities shall be based on objective criteria, including the location of the registered office, the central administration or principal place of business of the economic operator concerned, and the territory in which the product concerned is placed or made available, exported or manufactured.

The Commission shall adopt implementing acts setting out the process to designate the competent authority to which the submission shall be directed. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2). The first such implementing act shall be adopted by [OP enter date = 35 months after the entry into force].

PUBLIC

5. The competent authority or the Commission shall, within a reasonable period of time, inform the person or association referred to in paragraph 2 of the outcome of the assessment of their submission.

6. Directive (EU) 2019/1937 of the European Parliament and of the Council[37] shall apply to the reporting of all breaches of this Regulation and the protection of persons reporting such breaches.

6a. The identity of the natural or legal person or any association not having legal personality making a submission pursuant to paragraph 2 shall not be made available to the public.

Article 11 (ex-Article 23)

Guidelines

1. The Commission, in consultation with relevant stakeholders, shall make available and regularly update guidelines, no later than [OP enter DATE = 18 months after the entry into force of this Regulation], for competent authorities, customs authorities, economic operators, with a specific focus on SMEs, and relevant stakeholders. These guidelines shall include the following elements, adapted as necessary to the relevant addressees:

(a) guidance on due diligence in relation to forced labour, which shall take into account applicable Union legislation setting out due diligence requirements with respect to forced labour, guidelines and recommendations from international organisations, as well as the size and economic resources of economic operators, such guidance should include information and best practices on how to bring to an end and remediate forced labour;

(aa) information on how this Regulation relates to other due diligence legislation, in particular [Directive 20XX/XX/EU of the European Parliament and of the Council on Corporate Sustainability Due Diligence];

[37] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17.

(ab) guidance for the practical implementation of Article 26 and, where appropriate, any other provision laid down in Title II of Chapter V of this Regulation;

(b) information on risk indicators of forced labour, which shall be based on independent and verifiable information, including reports from international organisations, in particular the International Labour Organization, civil society, business organisations, trade unions and experience from implementing Union legislation setting out due diligence requirements with respect to forced labour;

(c) guidance on the use of the database referred to in Article 9 and a list of publicly available information sources of relevance for the implementation of this Regulation;

(d) guidance as to submission of information or evidence pursuant to articles 16(4), 18(2);

(e) guidance on how to submit information pursuant to Article 10(2)**;**

(f) further information to facilitate the competent authorities' implementation of and the economic operator's compliance this Regulation.

Article 12 (new article)

Forced Labour Single Portal

The Commission shall set up and regularly update a single website making available to the public, in the same place and in all the official languages of the Union, the following items:

(a) the list of the designated competent authorities referred to in Article 5;

(aa) the guidelines referred to in Article 11;

(b) the database referred to in Article 9;

PUBLIC

(c) the single information submission point referred to in Article10;

(d) a non-confidential summary of any information referred to in Article 20(3);

(e) a non-confidential summary of any decision referred to in Article 20(4).

Article 13 (ex-Article 26)

International Cooperation

1. In order to facilitate effective implementation and enforcement of this Regulation, the Commission shall as appropriate cooperate, engage and exchange information with, amongst others, authorities of third countries, international organisations, civil society representatives, trade unions and business organisations.

(a) International cooperation with authorities of third countries shall take place in a structured way as part of the existing dialogue structures with third countries or, if necessary, specific ones that will be created on an ad hoc basis.

(b) The Commission shall have regular contact and cooperation in particular with countries that have similar legislation in place, to share information of forced labour risk areas or products as well as best practices for bringing to an end forced labour.

2. For the purposes of paragraph 1, cooperation with, amongst others, international organisations, civil society representatives, business organisations and competent authorities of third countries may result in the Union developing accompanying measures to support the efforts of companies to comply with this regulation and of partner countries to tackle forced labour, as well as supporting locally available capacities for that purpose.

PUBLIC

Chapter III

Investigations

Article 14 (ex-Articles 4(1))

Information on the likelihood of a violation of Article 3

1. The Commission and competent authorities shall follow a risk-based approach in assessing the likelihood that economic operators violated Article 3. That assessment shall be confidential, based on all relevant, verifiable, and credible information available to them, including, but not limited to, the following information:

(a) information and decisions encoded in the information and communication system referred to in Article 8(1), including any past cases of compliance or non-compliance of an economic operator with Article 3;

(b) the database referred to in Article 9;

(c) the risk indicators and other information pursuant to Article 11, point (b);

(d) submissions made pursuant to Article 10;

(e) information received by the competent authority from other authorities relevant for the implementation of this regulation, such as national due diligence, labour, health or fiscal authorities, on the products and economic operators under assessment unless the sharing of such information is not in accordance with Union law or national law in compliance with Union law substantially impairs the execution of the activities of such authorities;

(ea) consultations with civil society organisations and trade unions.

PUBLIC

2. In their assessment of the likelihood that economic operators violated Article 3, competent authorities may, at any time, request the Commission to conduct the preliminary phase of investigations pursuant to Article 15, where the products concerned are of Union interest. The Commission shall proceed with the preliminary phase of investigation pursuant to Article 15 accordingly.

3. The determination of the Union interest shall be based on all relevant, verifiable and credible information available to competent authorities or to the Commission for the purposes of Article 10(3), and consist of an assessment of any of the following criteria:

(a) the scale and severity of suspected forced labour;

(b) whether the risks of suspected forced labour are located outside the territory of the Union;

(c) whether the products suspected to have been made with forced labour have a significant impact on the internal market.

Products suspected to have been made with forced labour are presumed to have a significant impact on the internal market where the products concerned are present in at least three Member States.

Article 15 (ex-Article 4(2)-(8))

Preliminary phase of investigations

1. In their assessment of the likelihood that economic operators violated Article 3, competent authorities, or where applicable the Commission acting pursuant to Article 10(3) or acting upon a request pursuant to Article 14(2), shall focus on the economic operators involved in the steps of the supply chain as close as possible to where the risk of forced labour is likely to occur. They shall also take into account the size and economic resources of the economic operators concerned, the quantity of products concerned that is made available on the Union Market, and the scale of suspected forced labour.

PUBLIC

2. Before initiating an investigation in accordance with Article 18(1), competent authorities, or where applicable the Commission acting pursuant to Article 10(3) or acting upon a request pursuant to Article 14(2), shall request from the economic operators under assessment information on its current actions taken to identify, prevent, mitigate or bring to an end risks of forced labour in their operations and supply chains with respect to the products under assessment, including on the basis of any of the following:

(a) applicable Union legislation or Member States legislation setting out due diligence and transparency requirements in relation to forced labour;

(b) the guidelines issued by the Commission pursuant to Article 11;

(c) due diligence guidelines or recommendations of the UN, ILO, OECD or other relevant international organisations;

(d) any other due diligence or information in relation to forced labour in their supply chain.

3. Economic operators shall respond to the request referred to in paragraph 2 within 30 working days from the day they received such request. Economic operators may provide any other information they may deem useful for the purposes of this Article.

PUBLIC

4. If the competent authority, or where applicable the Commission acting pursuant to Article 10(3) or acting upon a request pursuant to Article 14(2), determines that further information is needed to carry out its assessment, the competent authority, or where applicable the Commission acting pursuant to Article 10(3) or acting upon a request pursuant to Article 14(2), shall invite the economic operator under assessment for consultations. These consultations shall take place within 60 working days from the day the request referred to in paragraph 2 is notified to the economic operators under assessment.

5. Within 60 working days from the day of the notification of the request referred to in paragraph 2, the competent authorities, or where applicable the Commission acting pursuant to Article 10(3) or acting upon a request pursuant to Article 14(2), shall close the preliminary phase of their investigation as to whether there is a substantiated concern of violation of Article 3, on the basis of the assessment referred to in paragraph 1 and, if any, the information submitted by economic operators pursuant to paragraph 3, as well as the consultation in paragraph 4.

PUBLIC

6. Where the competent authority, or where applicable the Commission acting pursuant to Article 10(3) or acting upon a request pursuant to Article 14(2), considers that there is no substantiated concern of violation of Article 3, or that the reasons that motivated the existence of the substantiated concern have been eliminated, for instance due to, but not limited to the applicable legislation, guidelines, recommendations or any other due diligence in relation to forced labour referred to in paragraph 2 being applied in a way that mitigates, prevents and brings to an end the risk of forced labour, it shall not initiate an investigation in accordance with Article 18(1) and inform the economic operators under assessment accordingly.

7. The competent authority, or where applicable the Commission acting pursuant to Article 10(3) or acting upon a request pursuant to Article 14(2), shall communicate through the information and communication system referred to in Article 8(1) the outcome of its assessment pursuant to paragraph 5 Article 8(1).

Article 16 (ex-Articles 5(1), 13(2) and 13a(5)-(7))

Designation of the lead competent authority

1. ▌

2. Where the Commission acting pursuant to Article 10(3) or acting upon a request pursuant to Article 14(2), determines that there is a substantiated concern of a violation of Article 3, pursuant to Article 15(5), or where the Commission acts upon a request pursuant to Article 16(4)(b), it shall lead the investigation in accordance with Article 18(1) ('lead competent authority').

3. Where competent authorities, pursuant to Article 15(5), determine that there is a substantiated concern of a violation of Article 3, they shall communicate through the information and communication system referred to in Article 8(1) their intention of initiating an investigation on the products and economic operators concerned.

PUBLIC

4. Other competent authorities may, within 10 working days from the date of the communication of the intention of initiating an investigation, object to such intention through the information and communication system referred to in Article 8(1), only in one of the following situations:

(a) they have reasonable grounds to believe that they are better placed to lead the investigation;

(b) they demonstrate that the products concerned are of Union interest, and request the Commission to act as lead competent authority.

5. Where competent authorities do not agree on the designation of the lead competent authority pursuant to paragraph 4, they may consult the Network for an opinion on the designation.

6. Where no objection is raised on the designation of the lead competent authority pursuant to paragraph 4, the competent authority that communicated its intention of initiating the investigation pursuant to paragraph 3 shall act as lead competent authority.

Article 17

Coordination of investigations and mutual assistance

1. The Commission and competent authorities shall cooperate closely between them and provide each other with mutual assistance in order to implement this Regulation in a consistent and efficient manner.

2. The lead competent authority may, where appropriate, request the support of other relevant competent authorities. Other competent authorities, that have an interest in the investigation, may request to be closely involved in the investigation.

PUBLIC

3. A competent authority that has received, through the information and communication system referred to in Article 8(1), a request from a competent authority of another Member State for information or to verify any evidence provided by an economic operator shall provide an answer within 30 working days from the date of receipt of the request.

4. The requested authority may ask the requesting authority to complement the information contained in the request if it concludes that the information provided initially not sufficient.

5. A requested competent authority may refuse to comply with a request only in one of the following situations:

   (a) the requested information cannot be gathered on the territory of the Member State of the requested competent authority;

   (b) the requested authority demonstrates reasonable grounds showing that complying with the request would substantially impair the execution of its own activities.

6. Before initiating an investigation in accordance with Article 18, a competent authority shall verify in the information and communication system referred to in Article 8(1) whether there is a lead competent authority investigating the product with the same identification and from the same supply chain or same economic operator. Where there is a lead competent authority, other competent authorities shall share all the relevant evidence and information they may have with that lead competent authority to facilitate the investigation, in compliance with Union law or national law in compliance with Union law, and shall not start a separate investigation.

PUBLIC

Article 18 (ex-Articles 5(2)-(5))

Investigations

1. Lead competent authorities that initiate an investigation shall communicate it through the information and communication system referred to in Article 8(1) and inform the economic operators subject to the investigation, within 5 working days from the date of the decision to initiate such investigation, unless it would jeopardise the outcome of the investigation, about the following:

   (a) the initiation of the investigation and the possible consequences thereof;

   (b) the products subject to the investigation;

   (c) the reasons for the initiation of the investigation;

   (d) the possibility for the economic operators to submit any other document or information to the competent authority, and the date by which such information has to be submitted.

2. Where requested to do so by competent authorities, economic operators under investigation shall have at least 30 working days to submit any information that is relevant and necessary for the investigation. It shall include information identifying the products under investigation, the manufacturer or producer of those products and the product suppliers.

3. In requesting such information, and defining the time limit to submit it, competent authorities shall to the extent possible:

   (a) prioritise the economic operators under investigation involved in the steps of the supply chain as close as possible to where the likely risk of forced labour occurs and

   (b) take into account the size and economic resources of the economic operators, the quantity of products concerned put on the market, as well as the scale of suspected forced labour.

PUBLIC

4. Economic operators may request a justified extension of that time limit, which shall not exceed 15 working days.

5. Competent authorities may decide, where needed, to conduct field inspections, in accordance with Article 19.

6. Once the lead competent authority has finalised its investigation, it shall communicate its complete findings, including all information and evidence gathered pursuant to Article 15, 18 and 19, and a proposition as to the conclusion to be drawn through the information and communication system referred to in Article 8(1).

Article 19 (new article)

Field inspections

1. In exceptional situations where the lead competent authority may deem it necessary to conduct field inspections, it shall undertake this with consideration to where the risk of forced labour is located.

2. In cases where the risk of forced labour is located in the territory of a Member State of which the competent authority is the lead competent authority, it may conduct its own inspections. If needed, the lead competent authority may ask the cooperation of other national authorities relevant for the implementation of this regulation, such as labour, health or fiscal authorities.

3. In cases where the risk of forced labour is located in the territory of a Member State of which the competent authority is not the lead competent authority, the lead competent authority may request that competent authority to conduct an inspection or to provide information or verify evidence provided by economic operators in accordance with Article 17(3) and (4).

PUBLIC

4. In cases where the risk of forced labour is located outside the territory of the Union and the Commission is not acting pursuant to Article 10(3) or upon a request pursuant to Article 14(2) or pursuant to Article 16(4)(b), the lead competent authority may ask the Commission to request the government of the third country where the risk of forced labour is located to conduct an inspection, to provide relevant information or verify evidence provided by economic operators.

4a. In cases where the risk of forced labour is located outside the territory of the Union and the Commission is acting pursuant to Article 10(3) or upon a request pursuant to Article 14(2) or pursuant to Article 16(4)(b), it may request the government of the third country where the risk of forced labour is located to conduct an inspection, to provide relevant information or verify evidence provided by economic operators.

4b. The Commission may request assistance from the European External Action Service, as appropriate, to facilitate such contacts.

5. The findings of the inspections carried out pursuant to paragraphs 3, 4 and 4a shall be communicated through the information and communication system referred to in Article 8(1).

Chapter IV

Decisions

Article 20 (ex-article 6, including the formerly deleted 6(6) of COM proposal)

Decisions of the Commission

1. Once competent authorities acting as lead competent authority have finalised their investigations pursuant to Article 18(6), the Commission shall establish on that basis whether the products concerned have been placed or made available on the market or are being exported in violation of Article 3, within a reasonable period of time from the date they received the information from the competent authorities according to Article 18(6).

PUBLIC

1a. Notwithstanding paragraph 1, once the Commission acting pursuant to Article 10(3) or acting upon a request pursuant to Article 14(2) or pursuant to Article 16(4)(b) has finalised its investigation, it shall establish on that basis whether the products concerned have been placed or made available on the market or are being exported in violation of Article 3, within a reasonable period of time from the date it received the request pursuant to Article 14(2) or pursuant to Article 16(4)(b).

2. Notwithstanding paragraphs 1 and 1a, where it was not possible to gather information and evidence pursuant to Article 15, 18(2) or 19, the Commission may establish that the products concerned have been placed or made available on the market or are being exported in violation of Article 3 on the basis of any other relevant and verifiable information.

3. Where the Commission cannot establish that the products concerned have been placed or made available on the market or are being exported in violation of Article 3 it shall inform the economic operators that have been subject to the investigation and the relevant competent authorities. The Commission shall inform all competent authorities through the information and communication system referred to in Article 8(1) . Such information shall not preclude competent authorities to launch a new investigation into the same product and economic operator in case new relevant information arises.

3a. Before adopting the decision referred to in paragraph 4, the Commission shall communicate its preliminary findings to the economic operators concerned by the decision and relevant competent authorities. The concerned economic operators may submit their observations to the Commission on their preliminary finding, within a time limit set by the Commission, which shall not be less than 30 working days or, in case of perishable goods, animals and plants, not less than 5 working days. The Commission may request the support of the relevant competent authorities. The Commission shall base its decisions referred to in paragraph 4 only on preliminary findings on which economic operators have been able to comment.

PUBLIC

4. Where the Commission establishes that the products concerned have been placed or made available on the market or are being exported in violation of Article 3, it shall without delay adopt an implementing act in the form of a decision containing:

(a) a prohibition to place or make the products concerned available on the Union market and to export them;

(b) an order for the economic operators that have been subject to the investigation to withdraw from the Union market the products concerned that have already been placed or made available on the market and/or to remove content from an online interface referring to the products or listings of the products concerned;

(c) an order for the economic operators that have been subject to the investigation to dispose of the products concerned in accordance with Article 24.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

5. The Commission shall endeavour to adopt its decision referred to in paragraph 4 within 6 months from the transmission of all information and evidence referred to in paragraph 1.

5a. The Commission shall notify the final decision to all economic operators to which it is addressed and communicate it to all competent authorities, through the information and communication system referred to in Article 8(1).

6. ▌

PUBLIC

7. The Commission may, on its own initiative or upon request by an economic operator concerned by a decision and who is able to submit new information that was not brought to the attention of the competent authority during the investigation and included in the file referred to in paragraph 1, reconsider, amend or repeal at any moment a decision adopted pursuant to Article 20(4) for one of the following reasons:

(a) there has been a substantial change in any of the facts on which the decision was based;

(b) the decision was based on incomplete, incorrect or misleading information.

Article 21 (ex-Article 7)

Content of the decision

1. The decision referred to in Article 20(4) shall also contain all of the following:

(a) the findings of the investigation and the information underpinning the findings;

(b) reasonable time limits for the economic operators to comply with the order, which shall not be less than 30 working days from the date of notification of the decision referred to in Article 20(4). When setting such a time limit, the Commission shall take into account the economic operator's size and economic resources and the availability of alternative sources of supply. In case of perishable goods, animals and plants, the time limit shall be no less than 10 working days and no longer than necessary to withdraw the products concerned and to dispose of them;

(c) all relevant information and in particular the details allowing the identification of the product, to which the decision applies, including details about the manufacturer or producer and the product suppliers;

(d) where available and applicable, information required under customs legislation as defined in Article 5(2) of Regulation (EU) No 952/2013;

(e) information on the possibilities for a judicial review against a decision.

PUBLIC

2. The Commission shall adopt implementing acts further specifying the details of the information to be included in the decisions. Those details shall as a minimum include details of information to be provided or made available to customs authorities in accordance with Article 26(3) to enable the identification of products requested by Article 25(4). Those implementing acts shall be adopted in accordance with the examination procedure pursuant to Article 33(2).

PUBLIC

CHAPTER V

Enforcement

Title I: Competent authorities

Article 22 (ex-Article 8a)

Enforcement of the decisions by competent authorities

1. Where within the reasonable time limit referred to in Article 21(1)(b) an economic operator has failed to comply with the decision referred to in Article 20(4), the competent authorities shall be responsible of the enforcement of the decision and shall ensure all of the following:

   (a) that it is prohibited to place or make available the products concerned on the Union market [and to export them];

   (b) that the products concerned already placed or made available on the market are withdrawn from the Union market by relevant authorities, in accordance with Union and national laws;

   (c) that the products concerned remaining with the economic operator are disposed of in accordance with Article 24, at the expense of the economic operator;

   (d) that access to the online interface displaying the content referring to the products concerned is restricted by requesting the relevant third party to implement such measures.

2. If the economic operator has failed to comply with the decision, the competent authority shall impose either directly, in cooperation with other authorities or by application to the competent judicial authorities, penalties on the economic operator pursuant to Article 34.

Article 23 (ex-Article 8b)

Withdrawal of products made with forced labour

1. Any decision to order the withdrawal of the products already placed or made available on the Union market and their disposal referred to in Article 20(4) shall be communicated, through the information and communication system referred to in Article 8(1), to the Market surveillance authorities as referred to in Article 10 of Regulation (EU) 2019/1020 or the other authorities relevant for the product concerned.

2. The enforcement of the withdrawal of products shall be of the responsibility of the competent authority, in coordination with any other relevant authorities for the product concerned.

Article 24 (ex-Article 8c)

Disposal of products made with forced labour

1. In line with the waste hierarchy set out in Directive 2008/98/EC, economic operators and competent authorities responsible for the disposal of products, pursuant to Article 20(4)c shall include at least one of the following measures that have to be considered in that order:

(a) donation of the products concerned for charitable or public interest purposes;

(aa) recycling of the products;

(b) ▌

(c) rendering the products concerned inoperable.

PUBLIC

Title II: Customs authorities

Article 25 (ex-Article 15)

Controls by customs authorities

1. Products entering or leaving the Union market shall be subject to the controls and measures laid down in this Title.

2. The application of this Title is without prejudice to any other Union legal acts governing customs risk management, customs controls and the release for free circulation of goods and export, under Regulation (EU) No 952/2013.

3. The Commission shall without delay, communicate to the customs authorities of Member States, decisions to prohibit the placing or making available of the products on the Union market and their export, pursuant to Article 20(4).

4. Customs authorities shall rely on the decisions communicated pursuant to paragraph 3 to identify products that may not comply with the prohibition laid down in Article 3. For that purpose, they shall carry out controls on products entering or leaving the Union market based on risk management as laid down in Regulation (EU) No 952/2013.

5. The Commission shall without delay communicate to the customs authorities of Member States any withdrawal of the decision referred to in Article 20(4) pursuant to Article 20(8).

PUBLIC

Article 26 (ex-Article 16)

Additional information to be provided or made available to customs authorities

1. The Commission is empowered to adopt delegated acts in accordance with Article 31 to supplement this Regulation by identifying the products or product groups for which the information referred to in paragraph 2 shall be provided to customs authorities. The products or product group concerned shall be chosen on a risk-based approach, building amongst others, on the information available in the database referred to in Article 9, on the decisions taken on the basis of Article 20(4), on information exchanged in the Union Network Against Forced Labour Products and on decisions encoded in the information and communication system referred to in Article 8(1).

2. The person intending to place a product covered by a delegated act adopted pursuant to paragraph 1 of this Article under the customs procedures 'release for free circulation' or 'export' shall provide or make available to customs authorities information identifying the product, information about the manufacturer or the producer and information about the product suppliers, unless the provision of such information is already required pursuant to customs legislation referred to in Article 5(2) of Regulation (EU) No 952/2013.

3. The Commission may adopt implementing acts specifying the detailed arrangements for implementing paragraphs 1 and 2 of this Article, and defining the details of the information to be provided or made available to customs pursuant to paragraph 1.

4. Those implementing acts shall be adopted in accordance with the examination procedure pursuant to Article 33(2).

5. Where a specific product has been identified in a decision referred to in Article 20(4), in order for the customs authorities to be able to act immediately on that specific product, the procedure provided for in Article 32 shall apply to delegated acts adopted pursuant to paragraph 1.

PUBLIC

Article 27 (ex-Article 17)

Suspension

Where customs authorities identify, through their relevant risk management system, a product entering or leaving the Union market that may, according to a decision communicated pursuant to Article 25(3), be in violation of Article 3, they shall suspend the release for free circulation or the export of that product. Customs authorities shall immediately notify the relevant competent authorities of the suspension and transmit all relevant information to enable them to establish whether the product is covered by a decision communicated pursuant to Article 25(3).

Article 28 (ex-Article 18)

Release for free circulation or export

1. Where the release for free circulation or the export of a product has been suspended in accordance with Article 27, the product shall be released for free circulation or exported where all the other requirements and formalities relating to such a release or export have been fulfilled and where either of the following conditions is satisfied:

   (a) within 4 working days of the suspension, if the competent authorities have not requested the customs authorities to maintain the suspension. In case of perishable products, animals and plants that time limit shall be 2 working days;

   (b) the competent authorities informed the customs authorities of their approval for release for free circulation or export pursuant to this Regulation.

2. The release for free circulation or export shall not be deemed proof of compliance with Union law and, in particular, with this Regulation.

PUBLIC

Article 29 (ex-Article 19)

Refusal to release for free circulation or export

1. Where the competent authorities conclude that a product that has been notified to them in accordance with Article 27 is a product made with forced labour pursuant to a decision referred to in Article 20(4), they shall require customs authorities not to release it for free circulation nor to allow its export.

2. Competent authorities shall immediately enter that information in the information and communication system referred to in Article 8(1) and notify the customs authorities accordingly. Upon such notification, customs authorities shall not allow the release for free circulation or export of that product and shall also include the following notice in the customs data-processing system and, where possible, on the commercial invoice accompanying the product and on any other relevant accompanying document:

   'Product made with forced labour - release for free circulation/export not authorised - Regulation (EU) XX/20XX' [OP to indicate reference of this Regulation].

3. Where the release for free circulation or export of a product has been refused in accordance with paragraph 1, customs authorities shall dispose of the product concerned in accordance with national law in compliance with Union law.

4. Upon request of a competent authority and on behalf and under the responsibility of that competent authority, customs authorities may alternatively seize that product and put it at the disposal of and under the authority of that competent authority. In such cases, that competent authority shall take the necessary measures to ensure that the product concerned is disposed of in accordance with Article 24.

PUBLIC

Article 29a (ex-Article 21)

Exchange of information and cooperation

1. To enable a risk-based analysis for products entering or leaving the Union market and to ensure that controls are effective and performed in accordance with the requirements of this Regulation, competent authorities and customs authorities shall cooperate closely and exchange risk-related information.

2. Cooperation among authorities and exchange of risk-related information necessary for the fulfilment of their respective functions under this Regulation, including through electronic means, shall take place in accordance with Regulation (EU) No 952/2013:

   (a) between customs authorities;

   (b) between competent authorities and customs authorities.

CHAPTER VI

Final provisions

Article 30 (ex-Article 25)

Confidentiality

1. The competent authorities shall only use information received pursuant to this Regulation for the purpose of applying this Regulation, unless otherwise required by EU or national law in compliance with Union law.

PUBLIC

2. Member States and the Commission, their officials and other persons working under their supervision shall ensure the protection of confidential information acquired in application of this Regulation in accordance with the relevant applicable rules. To that end, they shall not disclose information covered by the obligation of professional secrecy that they have acquired pursuant to this Regulation.

3. Where requested, the Commission, Member States and competent authorities shall treat the identity of those who provide information, or the information provided, as confidential, in accordance with EU or national law in compliance with Union law. A request for confidentiality shall be accompanied by a non-confidential summary of the information supplied or by a statement of the reasons why the information cannot be summarised in a non-confidential manner.

4. Paragraph 2 shall not preclude the Commission from disclosing general information in a summary form, provided such general information does not contain any information which allows the identification of the provider of the information. Such disclosure of general information in a summary form shall take into account the legitimate interest of the parties concerned in preventing the disclosure of confidential information.

Article 31 (ex-article 27)

Exercise of the Delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 26(1) shall be conferred on the Commission for five years from [OP ENTRY DATE = date of entry force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

PUBLIC

3. The delegation of power referred to in Article 26(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016[38].

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 26(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 32 (ex-Article 28)

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

[38] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1)

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 31(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

Article 33 (ex-article 29)

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 33a

Amendment to Directive (EU) No 2019/1937

In Point C.1 of Part I of the Annex to Directive (EU) No 2019/1937, the following point is added:

‘(iv) [Regulation XXX…and amending Directive (EU) 2019/1937]’.

Article 34 (ex-article 30)

Penalties

1. Member States shall lay down the rules on penalties applicable to non-compliance with a decision referred to in Article 20(4) and shall take all measures necessary to ensure that they are implemented in accordance with national law.

PUBLIC

2. The penalties provided for shall be effective, proportionate and dissuasive. Competent authorities shall ensure that the penalties referred to in paragraph 1 give due regard to the following, as applicable:

(a) the gravity and duration of the infringement;

(b) any relevant previous infringements by the economic operator;

(c) the degree of cooperation with the competent authorities;

(d) any other mitigating or aggravating factor applicable to the circumstances of the case, such as financial benefits gains, or losses avoided, directly or indirectly, from the infringement.

2a. The pecuniary penalties provided by this article shall amount to not more than [5%] of the economic operator's total annual Union-wide turnover in the financial year preceding the fining decision, calculated in accordance with the calculation of aggregate turnover for undertakings laid down in Article 5(1) of Council Regulation (EC) No 139/2004 [39].

3. Member States shall, by [OP enter DATE = 24 months from entry into force of this Regulation], notify the Commission of those rules and of those measures, and shall notify it, without delay, of any subsequent amendment affecting them.

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[39] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 024 , 29.01.2004, p. 1.

Article 35 (ex-article 30a)

Review

By 5 years after the start of the application of this Regulation and every 5 years thereafter, the Commission shall carry out an evaluation of the enforcement and the implementation of the Regulation. The Commission shall present a report on the main findings to the European Parliament and the Council. The evaluation shall in particular include an assessment of:

(a) whether the mechanism in place effectively contributes to the objectives of the Regulation, as set out in Article 1;

(b) the effectiveness of international cooperation to contribute to the elimination of forced labour from global supply chains;

(c) the impact on businesses, and in particular on SMEs, of the procedures related to the investigations and decisions;

(d) the cooperation between competent authorities, including within the Network, as well as all other relevant authorities in applying the Regulation;

(e) the overall cost-benefit and effectiveness of the prohibition.

Where the Commission finds it appropriate, the report shall be accompanied by a legislative proposal for amendment of the relevant provisions of this Regulation or an update of the guidelines referred to Article 11.

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Article 36 (ex-article 31)

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [OP enter DATE = 36 months from its entry into force].

However, Articles 5(3), 9, 10(4), 11, 33 and 34(3) shall apply from [OP enter DATE = entry into force].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

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