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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Forced Labour Ban: Comments from MS

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General Secretariat
Directorate Competitiveness and Trade
Directorate 1- Competitiveness
Brussels

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Austria has the honor of submitting a first statement on the present regulation in the form of questions and comments:

Austrian Comments and Questions on the Proposal for a Regulation of the European Parliament and the Council on prohibiting products made with forced labour on the Union market
(COM [2022] 453)
Deadline for comments: 9/1/2023

Austria believes that this proposal is an essential step towards building a smart mix of tools to help to eliminate forced labour across the world. We welcome in particular the wide scope of the proposal, especially that all products from all regions and all companies may be sized. Responsible business conduct, in particular effective human rights due diligence can lead to more resilient and competitive companies. Furthermore, initiatives for a more sustainable economy are supported. The elimination of all forced labour by 2030 is one of the United Nations Sustainable Development Goals (SDGs), and the EU nad its Member States should undertake all efforts to achieve this goal. Against this background, we support the approach of the European Commission to propose an EU ban on products derived from forced labour. However, the details of the proposal have to be further examined. At this stage of the discussion we have the following questions and comments:

General Questions/Remarks:

The present proposal is to be seen in close connection with the Proposal for a Directive on corporate sustainability due diligence ("CSDDD").

Since SMEs are explicitly excluded from the CSDDD and the UN, ILO and OECD Standards are voluntary recommendations, would the cited provisions mean that SMEs are subject to some kind of mandatory due diligence? The fact that there are no specific due diligence requirements or no detailed references to existing legislation/guidelines could be difficult for companies to know what is expected from them.

- According to the EC compliance with corporate due diligence will be taken into account, but will not constitute a carte blanche. What is correctly understood by this? How should this be enforced?
- Overall, how will consistency between the CSDDD and the current draft regulation be ensured? If it can be reasonably expected that due diligence efforts will lead to the elimination of forced labour with regard to certain products, is there not the danger that a product ban could lead to a disengagement instead of continuing the positive development?
- What could the facilitations for SMEs look like under this regulation?
- How is the exemption under the CSDDD and the inclusion of SMEs in the regulation at issue justified?

A detailed justification for the compatibility of the proposed regulation with the obligations of the Union and the MS under international law would be of particular importance:

- How to justify possible prohibitions based on the WTO Agreement, in particular GATT 1994?
- What is the relationship of the proposal to the sustainable development (TSD) chapters in EU FTAs with third countries, which include an obligation to eliminate all forms of forced or compulsory labour?
- How will imports from countries that are GSP+ beneficiaries be treated?

Security of supply for critical raw materials:

- According to current projections, global demand for some critical raw materials, such as rare earths and lithium, which are of great importance for environmental and digital transformation, will soon exceed global supply.

- Many of these critical raw materials can only be sourced from countries suspected of forced labour, as they can only be found there.
- What measures does the EC plan to take to ensure security of supply despite bans under the new regulation?

Art. 1:

The ban in this Regulation applies to products in the extraction, harvesting, production, processing or manufacturing of which forced labour is or was used.

- Does this also include the transport of these goods or services from forced labour?
- Are fishery products covered (does the notion "harvesting" also include fishery)?

According to ILO Convention No. 29, any kind of work or service which is required of a person under the threat of any penalty and for which he or she has not volunteered is considered forced labour.

- Are there plans to extend the prohibition to violations of the right to freedom of association and collective bargaining (ILO Conventions 87 and 89)?

Consistency of the definition of forced labour:

- It is noteable that the definitions of forced labour in this proposed regulation on the one hand and in the CSDDD on the other hand are not consistent.
- If there are factual reasons for this, the EC should be asked for an explanation.
- Otherwise, the definitions should definitely be harmonized.

Art. 2:

Definition of placing on the market (Art. 2 lit. e):

- The question arises whether this definition is consistent with definitions of this term in other EU legislation.
- If there are deviations, the need for them should be justified.
- Could COM please provide examples, what the term "economic operator" means in the context of Art. 4 para 2, Art. 5 para 3 letter a) and Art. 5 para 6.

According to the definition in Art. 2 lit. l, a transporter is not subject to the provisions of this regulation if she or he merely transfers the goods to an economic operator who then places the goods on the market. Could COM please give further explanation on this paragraph? How will such situations be treated?

Art. 3:

- Will there be a separate regulation for the "further processing" of basic products produced in forced labour?
- More clarity is needed about how the take-back process will take place in practice, including the destruction of products, if necessary.

Art. 4:

This provision speaks of “information requested by the competent authority from other relevant authorities”. Which “other relevant authorities” are meant?

Art. 5:

It is unclear how the specific procedure the competent authorities have to follow is to be designed:

- When and how are the authorities obliged to take action (they are to "monitor the market to identify violations of the ban")?
- Will there be concrete complaint mechanisms?
- How will the authority obtain information if there is no complaint?
- Which stakeholders will be involved in the process?
- Will it be in all or in certain cases be necessary to obtain an expert opinion from the ILO?
- The deadline of 15 days for submitting information seems very short, how will the size and economic resources of an economic operator be specifically taken into account? Will there be a categorization of companies?
- Will the authority also have the possibility to carry out necessary inspections at domestic economic operators (in the proposal, Art. 5 para. 6 only refers to inspections in third countries)?

Art. 6:

Will it be possible to issue a ban not only for one product or a product group, but also for a production site, a specific economic operator, a specific territory (in the case of state-supported forced labour) and a specific cargo ship or fleet, if it is proven that forced labour is used there notoriously?

Art. 8:

How is compliance with these extremely short deadlines to be ensured given the need for review by national courts?

Art. 9:

Will the personal data be aggregated by the Commission?

Art. 11:

We'd like to ask for more information on the proposed database of forced labour risk areas or products according to Art 11.

- What external sources and information will be used?
- Are there any workflows for verifying relevant information in place?
- With regard to the completion of this database, it is remarked that the ILO and the International Trade Union Confederation (ITUC) already have extensive data material on the subject of forced labour. But also the UNICEF statistics, the database of the US Department of Labour on child and forced labour or the 2019 OECD Report on ending child and forced labour could be relevant at this point might be useful in populating the database.

Since such a database is not to be established until 24 months after the entry into force of this Regulation - how will MS and economic operators obtain specific information prior to the publication of this database?

Art. 23:

For what reasons can the guidelines under Art. 23, which contribute significantly to a uniform enforcement, not be published already upon the entry into force of the Regulation?

Art. 26:

- Is it planned also to include trade unions and employee representatives in Article 26 (a) and (e)?

Art. 30:

- How is uniform enforcement and a level playing field within the internal market to be ensured with regard to the competence of national authorities to determine prohibitions?
  - What should be the role of the network regulated in EC 44 and Art. 24? How exactly should it function?
  - How should it be ensured that the penalties under Art. 30 do not diverge too widely and thus jeopardize a level playing field?
- In addition, the ILO Tripartite Declaration on Principles for Multinational Enterprises and Social Policy (ILO MNE Declaration) and the ILO Handbook for Employers & Business on Combating Forced Labor can be used as recommendations for companies and governments as assistance and support.

Art. 31:

With regard to the period between entry into force and application of the Regulation, it is noted that the implementation of this Regulation is a major challenge, especially for SMEs. Therefore, a longer transition period should be provided. This would be advantageous for the textile and clothing industry, among others, as the Digital Product Passport will be implemented in the next few years on the basis of the textile strategy.

Staff working Paper:

- Thank you for the information in this document, will there still be an impact assessment?
- When will the "EU Guidance on due diligence for EU businesses to address the risk of forced labour in their operations and supply chains" publicly available?
- How many more of these guidelines will be published, and when?

Vienna, 9. January 2023

For the Federal Minister:

Mag.iur. Cynthia Zimmermann

Signed electronically

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Comments from Bulgaria- Proposal for a regulation on prohibiting products made with forced labour on the Union market

1. The Commission stated that "Due to the urgency of the measure, the Commission has not had the opportunity to conduct an in-depth impact assessment".
    a. Bearing in mind that the prohibition of forced labor was adopted by the ILO Convention in 1930, ratified by Bulgaria in 1932, we do not find the argument of urgency related to the fact that no impact assessment was carried out to be substantial. In that respect could we expect an impact assessment?
2. How will the proposal affect the education systems of the Member States that have introduced and use vocational education and training system (VET system)? What will be the effect on small family businesses?
3. The proposal implies the establishment of a new competent authority. What are the arguments for that requirement? Is it possible to assign the implementation to the national labour inspections, for example by expanding their competence and responsibilities?

Prague, 9 January 2023

<u>CZ written comments and questions regarding the proposal for a regulation on prohibiting products made with forced labour on the Union market</u>

<u>General comments</u>

While CZ welcomes the general objectives of the proposed regulation, it considers it crucial to strike the right balance between their effective fulfilment and the **expected increase of administrative and financial burden** for all actors involved, particularly the SMEs, but also for the national competent authorities. Especially mid-size and smaller Members States might, due to their limited capacities, struggle with the application of the regulation. It might therefore be appropriate to involve the Commission more in the implementation of the regulation, also in order to **ensure its uniform application and enforcement**. CZ considers the proposal to be ambitious in terms of the suggested scope of products (all products including their components at any stage of their production, manufacture or processing) and the scope of entities to which the regulation will apply (all economic operators including SMEs).

Furthermore, the proposal contains a number of aspects and definitions that need to be explained and clarified in more detail, directly in the text of the regulation. This comment also relates to the **clarification** of the relationship of the proposal to international treaties and other existing or proposed EU legislation, notably with the proposal for a directive on **Corporate Sustainability Due Diligence**. The current proposal also refers in many instances to the Commission's guidelines that shall be issued only after the entry into force of the regulation. This way, the Member States will not have any real influence on the **final scope of the obligations** for the economic operators, which CZ considers problematic. There is also the question of the time frame for taking appropriate measures according to the Commission's guidelines, as CZ does not consider this time to be sufficient.

Finally, it is also crucial for CZ that the final regulation will **not** contain provisions that **discriminate** goods or economic operators from third countries and that the regulation will be compliant with **WTO rules**. It should be therefore guided by the principle of openness and not lead to protectionist tendencies of the EU.

<u>Specific questions and comments</u>

<u>Definitions and requirements</u>

- Definitions of *forced labour* and *due diligence in relation to forced labour* provided in Art. 2 are not sufficiently clear. As raised by other delegations at the WPs, rather than referring to other documents (e.g. ILO Conventions, Commission's Guidelines, delegated acts), **the definitions and requirements should be included directly in the regulation**. CZ considers the precise definition of due diligence to be particularly important, as it is supposed to *de facto* establish rules and obligations for economic operators. The definition also refers to an open list of voluntary guidelines, recommendations and soft law documents, which we do not consider clear enough to determine obligations for economic operators.

Preliminary phase of investigations

- Art. 4(3) provides for a non-exhaustive list of various sources that the competent authority shall consider when evaluating the due diligence of the economic operator. Since this list is rather vague and some of the listed sources are not of binding nature, it creates uncertainty as to how the competent authorities should conduct the investigations. It is therefore very important for the CZ that the guidance on due diligence (Art. 23) will contain more detailed guidelines for SMEs, for which the requirements resulting from the proposal will represent a more demanding burden.
- CZ understands that the Commission's Guidelines should provide some more clarifications in this regard, however, since those are to be published only 18 months after the entry into force of the regulation, they do not provide any guidance at the moment.
- CZ understands that, unlike the decision under Art. 6(3), the decision not to initiate the investigation under Art. 4(7) does not prevent the competent authority to start another investigation at a later stage again – i.e. it is not considered *res iudicata* (matter already decided*).* Could the Commission confirm this? CZ made this conclusion i.a. from the fact that while this decision is listed among the decisions that are to be communicated to the Commission under Art. 9(1), it is not among those that will be published under Art. 9(2).
- The database of forced labour risk areas or products according to Art. 11(2) will be a key source of information for competent authorities, therefore we draw attention to the proposed deadline for making the database publicly available (at the latest 24 months after the entry into force) as insufficient. CZ proposes to make this database available as soon as possible. Competent authorities will need enough time to familiarize themselves with the database and the data contained in it so that they can start the practical application of the regulation soon after its entry into force.
- The scope of application and the exact content of the delegated acts under Art. 16 is not entirely clear – while Art. 16 itself seems to suggest it will be addressed to customs authorities, the Staff Working Document published on 16 December 2022 ("SWD") seems to suggest on page 52 that those will be used by the competent authorities before initiation of the investigation – could the Commission clarify the purpose of those delegated acts?

Decision

- Non-cooperation clause – as raised by other delegations at the WP, the wording of the non-cooperation clause under Art. 6(2) should be more explicit or at least its functioning should be explained in the corresponding recital. CZ requires clarification as to whether, in the case of non-cooperation clause, the provision also applies to cases according to Art. 5(6) when it is not possible to carry out an investigation in third countries (economic operators did not give their consent or the government concerned raised an objection).
- It is CZ understanding that the decision under Art. 6(3) to close the investigation represents *res iudicata* – could the Commission confirm? If yes, does it mean that the competent authorities in other Member States are prevented from initiating their own investigation since they are required to recognize any decision that is related to the same product under Art. 14?
- The decisions under Art. 6(4)(b)(c) seem to be addressed only to the economic operators that have been subject to the investigation. However, as Art. 4(4)(a) contains a general prohibition in relation to the product concerned, can therefore a different economic operator than the one that has been subject to the investigation but that is selling the same product, be in

violation of the decision? Generally, the question of the scope of the decision is not very clear, as under Art. 8, economic operators "affected by a decision" have a right to request a review – does this include anyone placing on the market the same products or only those that have been subject to the investigation? Under Art. 14 it then seems that the scope of the decision is determined by the product.

- CZ would suggest unifying the wording used in Art. 6 related to the products, as currently the proposal uses "product concerned", "relevant product" and "respective product" interchangeably.

Withdrawal of the decisions

- CZ understood from the discussion at the WP that while the decision to withdraw the decision under Art. 6(6) has *ex nunc* effects (decision with effects from now on), the decision to withdraw under Art. 8(4) should have *ex tunc* effect (decision with backdating effects). This should reflect the fact that while the withdrawal under Art. 6(6) is a result of the ex-post activity of the economic operator (i.e. elimination of the forced labour), review under Art. 8(4) should correct the originally wrongful decision. If that is indeed the case, it should be stipulated in the regulation directly (e.g. in the recital).
- CZ points out that the wording of Art. 8(7) will need further clarification, as the meaning of the provision is currently not clear.

Content and publication of the decision

- According to Art. 7(2), the exact content of the decision is to be specified in the implementing acts – given its importance, CZ is of the opinion that the regulation should stipulate a deadline for the publication of those acts.
- Given that some of the decisions are to be published under Art. 9(2) and the fact that they should be mutually recognized under Art. 14, CZ would like to know in what languages will the decision be published. In case they will need to be translated, will it be a task for the Member States or the Commission?

Recognition

- CZ presumes that only those decisions, that will be published under Art. 9(2), are to be recognized and enforced in other Member States under Art. 14, could the Commission confirm?
- Art. 14 seems to provide for an automatic mutual recognition of the decision by the competent authorities – does it mean there are no grounds for refusal, such as existing conflicting decision in regard to the same product, which was e.g. issued due to the fact that the other Member State did not adhere to the *lis pendes* rules of Art. 14(3)-(6) (meaning that in case of two or more competent authorities initiating investigations, the lead authority shall be the one first informing the Commission about initiating its investigation)?
- Rules on mutual recognition and *lis pendens* seem to have a different scope (product with the same identification AND same supply chain in Art. 14(1) X same product OR economic operator in Art. 14(3) X same product AND same operator in Art. 14(4)) – is it intentional?

State liability in case of an unlawful decision

- The Commission mentioned at the WP that the liability will be subject to national law, namely national rules on the liability of the state for the unlawful decision. However, this information is not included either in the proposal or in the SWD. CZ points out that rules on the liability of the state are different among Members States and this may be a reason why Member States will approach to the application of proposed regulation differently.

Missing impact assessment

- As raised by stakeholders during the targeted consultations as well as by other delegations at the WPs, CZ agrees that the lack of an impact assessment for the proposed regulation is problematic. Although the SWD in part 5.4. describes to a certain extent the costs and benefits of the proposal, it relies on analyses done for other Commission proposals in the past (especially the proposal for the directive on Corporate Sustainability Due Diligence). Given i.a. the different scope of applications of those proposals, CZ does not consider this analysis sufficient and requests an additional impact assessment to be carried out by the Commission.
- SWD says that companies that fall within the scope of the proposed directive on Corporate Sustainability Due Diligence will need to address the risks of forced labour in their supply chain in line with the obligations from the future due diligence legislation, which may be sufficient to ensure the absence of forced labour from their supply chain. Could the Commission confirm whether this means that the additional costs arising from this proposal will therefore *de facto* be mainly borne by SMEs?
- Regarding the results of targeted consultation presented in the SWD, CZ would like to point out that it can be assumed that stakeholders participating in the consultations were those that are active in this field, while those not carrying out due diligence are less likely to participate in such public consultation. A statement that a significant proportion of companies operating on the EU market already carry out due diligence in their supply chains, can be therefore misleading.
- CZ also notices that some data given in the SWD are not completely up-to-date, which can be problematic for the overall analysis (e.g. it is stated that "*more than half of consumers would be willing to pay a premium for products from companies committed to positive social and environmental impact*", nevertheless such statement is taken from 2014 analysis and does not reflect current situation with high energy prices and rising inflation).

International cooperation

- CZ welcomes the possibility of the joint investigations under Art. 24(3)(b), however it would appreciate more detailed information on its functioning, directly in the regulation.
- Similarly, CZ appreciates the incorporation of Art. 26 concerning international cooperation, but with respect to the possible implications of the regulation for international trade and trade relations, it is convinced it would be appropriate to strengthen the text in order to oblige the Commission to cooperate and communicate with, amongst others, international organizations or competent authorities of third countries.
- Regarding the possibility to carry out checks and inspections in third countries, provided for in Art. 5(6), CZ questions the actual effectiveness of those checks, since they require the consent

of the economic operator concerned. CZ is aware of the limited possibilities of the EU authorities to carry out checks and inspections outside of their jurisdiction, however CZ believes other alternatives, e.g. tools of the mutual legal assistance, should be considered too.

- In relation to the question of jurisdiction and third countries, CZ would also like to further clarify the possibilities to impose sanctions on economic operators with their seat outside of the EU.

Entry into force

- CZ considers the planned entry into force and the subsequent date of application (24 months from its entry into force) rather short, especially due to the fact the Commission's Guidelines are to be published only 18 months after the date of entry into force, which gives the Member States only very limited time to prepare. CZ is convinced that economic operators will need a longer period of time to effectively set up their due diligence programs and other required measures.

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The Czech Republic reserves the right to make additional comments at a later stage.

DK written comments for the proposal for a regulation on prohibiting products made with forced labour on the Union market

Comments to specific articles	
Chapter I	**General provisions**
Article 2	It needs to be clear what is considered to be 'well-founded', what types of objective and verifiable information will need to be taken into account, and to what extent does the information on which this reason is founded need to be verifiable. If a ban is to be implemented consistently across member states, it requires that the criteria for what constitutes a substantiated concern are clear.
	(Art. 2 stk. B) If the entire production of the product has been made in compliance with the regulation, but forced labour is used when the products are packed into boxes and stacked on pallets <u>after</u> the production process has ended, is the product then considered non-compliant with this regulation?
Chapter II	**Investigations and decisions of competent authorities**
Article 4	The proposal seems ambiguous on how the competent authorities should assess the due diligence procedures of companies under investigation, and whether the way of assessing due diligence procedures is aligned with the administrative control of due diligence processes in e.g. CSDDD.
	Recital 19 mentions that "Member States should monitor the market to identify violations of the prohibition" while article 4 states that competent authorities shall follow a risk-based approach. To what extent and in what form is this monitoring envisaged if it is to be risk based?
	(Art. 4 (3)) It is unclear what will happen if the competent authorities do not receive "sufficient information" about an economic operator's due diligence in the preliminary part of the investigation? How can the competent authority then assess the need for further investigation? As noted in Article 5 the competent authority shall decide to initiate an investigation when the competent authority <u>*determine*</u> that there is a substantiated concern.
	(Art. 4 (2)) If, to a certain degree, SME's are exempted in the risk evaluation of a given inspection, how can we make sure that other, larger economic operators do not twist this exemption to their advantage e.g. by changing its company structure by creating companies that fit under the SME segment? And in relation to this, if a risk assessment should include the economic means of an economic operator, how does the competent authorities assess

	the economic means of an economic operator in advance of the inspection?
	(Art 4 (3)) If competent authorities conduct investigations of an economic operator, should the investigation only cover the processes related to one product, the economic operator's entire product range, products manufactured at one location, or something else entirely? If the competent authority discovers that an economic operator is non-compliant, what products should then be banned by the competent authority in relation to said investigation?
Article 5	(Art. 5, (6)) As much as it might be necessary to do inspections in third countries, this seems unrealistic to carry out in practice knowing the sensitivity of the issue, potentially impacting relationships with third countries.
Article 6	It is unclear what it takes or to which degree competent authorities have to prove that Article 3 has been violated before adopting a decision.
	The same goes for situations where the risk of forced labour has been eliminated; how can companies prove this and how should competent authorities exercise control of this? Will there be a grace period, and is the respective member state enforcing the ban, also lifting the ban when proper measures are ensured by the company?
	(Art. 6 (1)) Which part of the value chain should be affected by the decision? Will the manufacturer be obliged to destroy all products if the competent authority uncover that a subcontractor uses forced labour? In other words; is it always the end product that should be banned? If this is the case, then (non-compliant) subcontractors would be less likely to feel the actual consequences of the regulation.
Article 8	What will be the impact for companies subjected to potentially wrongful decisions? Who is liable for damages caused by such decisions? Is a public authority liable across the whole of EU in case of a wrongful decision?
Article 11	Does the connection between the database of forced labour risk areas or products (article 11) and the powers the Commission to identify products or product groups for which information should be provided (article 16) for allow the Commission to ban specific products via delegated acts?
Article 12	It is unclear what role national labour inspections will have in the Regulation. It should be of the competence of the Member States to designate national authorities responsible for carrying out the obligations set out in this Regulation, including the coordination with relevant authorities according to national law and practice. In

	Denmark, the national labour inspections have limited fields of competences compared to other EU Member States.
Chapter IV	**Information systems, guidelines and coordinated enforcement**
Article 22	(Art. 22 (7)) Guidelines on the exact type of data required for the notification in ICSMS must be issued as soon as possible, so that competent authorities can start preparing their internal it-systems (i.e. ESDH-systems) accordingly. The data should also be streamlined with the information already required in ICSMS, as this has previously been an issue, and has had consequences for the harmonization of notifications across MS.

General remarks	
Complementarity to CSDDD	
	There seems to be a potential risk that companies start cutting off suppliers in order to eliminate the risk of being linked to forced labour in their value chain. This would conflict with the expectations of the CSDDD, where companies are expected to use disengagement as a last resort.
Online marketplaces	How can we ensure that online marketplaces do not present a loophole for companies to market products that are non-compliant with the regulation?
Openness to trade	How will it be ensured that the ban is made effective in a way that preserves the openness of the single market, does not create unnecessary trade restrictions, and goes hand in hand with dialogue with trade partners as well as multilateral cooperation?
Critical raw materials	How should the competent authorities determine whether products contain critical raw materials or raw materials extracted with forced labour?
Scope	What is the anticipated scope for the proposed inspections? How many yearly inspections does the Commission expect MS to perform in regard to the proposed legislation, and how will this number be calculated?
Notified body conformity assessments	Has it been considered to use notified body conformity assessments instead of competent authorities doing borderline detective work? Why/why not?
Recycled products	Products are often made up of countless subcomponents, that have gone through multiple manufacturing processes. As such, it is unclear where the investigation limit goes, in terms of realistic traceability. Often products contain raw materials (such as gold or copper used in electronic components) that have been recycled. Does an investigation also consider the previous product from which the recycled raw materials of a single subcomponent stems?

Financing	How will the own costs be financed within the EU-budget? Will this happen via reprioritization of finances from existing programs?
Initial comments on the SWD	
Lack of an IA	Denmark finds it highly problematic that the Commission has failed to provide an actual Impact Assessment that could be reviewed by the Commission's own Regulatory Scrutiny Board. This deviates from the better regulation principles. Denmark agrees that the issue of forced labour should be addressed as quickly as possible however this should not compromise a thorough evidence-based legislative process.
IA on CSDDD	Denmark finds it problematic that the IA that was made for the CSDDD proposal, which was turned down on three separate occasions by the Commissions own Regulatory Scrutiny Board, is used as a primary source of reference in the SWD.
SME	What kind of information does the Commission not expect the SMEs to provide to the competent authorities that large companies should provide? Is it simply a longer deadline that is provided to the SME's?
Control of companies in the EU	Due to the serious nature of forced labour, we believe that the natural first step following a substantiated concern that products are made with forced labour in the EU, would be to notify the police in the respective member state. Forced labour is a grave violation of human rights, and a matter that should be dealt with by law enforcement and not an administrative body. In that sense, it is unclear how the regulation will contribute to combat forced labour in the EU.
Effectiveness of the prohibition	The Commission points to the US and Section 307 of the 1930 Tariff Act (19 U.S.C. §1307) as an inspiration for the development of the proposed regulation. According to the SWD, in the years 2016-2021 the legislation only led to 2 findings, which meant that goods were seized. Considering that the US-legislation only needs "probable cause" for a formal finding, and since companies are obligated to provide detailed information to the US authorities unlike the proposed regulation, it seems unlikely that the proposed legislation will result in actual prohibitions of products entering the EU market.
Relationship between CSRD and the Forced Labour ban	Can the Commission elaborate on how the proposed ban and the CSRD interact and how the reporting requirements under the ESRS will affect how companies considers and act on the issue of forced labour. It is our understanding that forced labour will be a central part of the upcoming social standards of the ESRS.
Relations to the CSDDD	The proposal suggests that implementation of due diligence procedures is the most efficient method to comply with the regulation however, without making due diligence mandatory. There does not seem to be an alternative method or guidance on how companies otherwise can live up to the forced labour ban.

	Consequently, and in practice, all companies will need to perform due diligence, including SMEs. In relation to the CSDDD, the Commission argued, that the financial and administrative burden for setting up and implementing due diligence procedures would be relatively high for SMEs hence they were excluded from the scope of the obligation. It is difficult to see how this will be different with this proposal despite not making due diligence a mandatory measure.
Due diligence legislation in different member states	We would like to point out, that Denmark is not currently preparing or considering a national cross-sectoral due diligence legislation. The single parliamentary motion that the SWD refers to was not accepted in the parliament. We therefore disagree with the Commission's assessment that there is a current legislative process in Denmark.
Further comments	Considering the late arrival of the SWD Denmark has not had the opportunity to fully examine the SWD and will therefore follow up at a later time with further questions and comments on the document.

ESTONIAN COMMENTS

- **There is a contradiction between Article 1** (Subject matter and scope of application) **and Article 6** (Decisions of competent authorities) paragraphs (4) (b) and (5) (b) of the Regulation.

Article 1 (2): This Regulation shall not cover the withdrawal of products which have reached the end-users in the Union market.

Article 6 (4): Where competent authorities establish that Article 3 has been violated, they shall without delay adopt a decision containing:

(b) an order for the economic operators that have been subject to the investigation to withdraw from the Union market the relevant products that have already been placed or made available on the market;

Article 6 (5): Where an economic operator has failed to comply with the decision referred to in paragraph 4, the competent authorities shall ensure all of the following:

(b) that the products already placed or made available on the market are withdrawn from the Union market;

What purpose does Article 1 paragraph 2 of the Regulation serve and what is intended to be excluded? Won't the obligation to withdraw and destroy these products cause additional environmental damage? These are not dangerous products as such.

- **Art 4 and Art 5,** general questions: According to Forced Labour Convention Art 25, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence. Staff working document on forced labour points out (p. 53) that „the investigation phase could range from 30 to 90 working days, including the review procedure." Art 6 (1) of the COM proposal states that „*Competent authorities shall assess all information and evidence gathered pursuant to Articles 4 and 5 and, on that basis, establish whether Article 3 has been violated, within a reasonable period of time from the date they initiated the investigation pursuant to Article 5(1).*"

Does the COM foresee that the process within the competent authority makes a decision, includes criminal proceedings/judicial decision? Does the COM foresee that the phases include inspection of working conditions or is the emphasis on inspection of compliance with the due diligence? Does the COM foresee that the application of the regulation would change how the use of forced labour is identified? How does the proposal take into account penal codes in MS and general principles in criminal law, including the presumption of the innocence, until a judgment of conviction by a court enters into force?

- **Art 4 (3) (c):** Technical comment. According to Art 4 (3) (c), „Before initiating an investigation in accordance with Article 5(1), the competent authority shall request from the economic operators under assessment information on actions taken to identify, prevent, mitigate or bring to an end risks of forced labour in their operations and value chains with respect to the products under assessment, including on the basis of any of the following: /…/ c) due diligence guidelines or recommendations of the UN, ILO, OECD or other relevant international organisations. „

It seems that these references are quite general for a regulation, especially in the main text and some concrete references could be useful.

- Art 4 (5): „… the competent authorities shall conclude 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 …"

Could the COM give some concrete examples, in which cases there should be substantiated concern, in addition to the product being of a certain type and/or from a certain region.

- Art 4 (6): „The competent authority shall duly take into account where the economic operator demonstrates that it carries out due diligence on the basis of identified forced labour impact in its supply chain, adopts and carries out measures suitable and effective for bringing to an end forced labour in a short period of time."

Could the COM elaborate, what evidence would be appropriate to prove the fulfilment of due diligence obligations and how to evaluate if the information presented, especially from third countries, is correct and reliable?

- **Art 4(7)** states that "*Competent authorities shall not initiate an investigation […] where, on the basis of the assessment referred to in paragraph 1 and the information submitted by economic operators pursuant to paragraph 4, the competent authorities consider that there is no substantiated concern of a violation of Article 3, for instance due to, but not limited to, the applicable legislation, guidelines, recommendations or any other due diligence in relation to forced labor referred to in paragraph 3 being applied in a way that mitigates, prevents and brings to an end the risk of forced labor*."

Q1: Reading in conjunction the content of Art 3, Art 4(1), (3), (6), (7) and Art 23, it seems that there is an obligation on economic operators to do their due diligence in relation to forced labor. If economic operators have not done their due diligence properly then the penalty is that they are not allowed to sell those products anymore and are obliged to withdraw the products already sold. Why is there no specific article in the proposal (next to current Art 3) obliging economic operators to carry out due diligence in relation to forced labor?

- **Article 5 (6) (Investigations): "**Competent authorities may carry out all necessary checks and inspections including investigations in third countries, provided that the economic operators concerned give their consent and that the government of the Member State or third country in which the inspections are to take place has been officially notified and raises no objection."

Could the COM explain how this third country will be informed/notified (who in particular) and who needs to do so (MS competent authority or COM)?

- **Art 6(1)** states that „*Competent authorities shall assess all information and evidence gathered [...] and, on that basis, establish whether Article 3 has been violated […]"*. Art 6(2) states that *„[…] competent authorities may establish that Article 3 has been violated on the basis of any other facts available where it was not possible to gather information and evidence […]*." Art 3 states that „*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*."

Q1: Does Art 6(2) allow competent authorities to establish a violation based on objective and verifiable information whereby it is likely that a product was made with forced labor? I.e in cases where based on the information provided/not provided by economic operators it is not possible to establish for 100% certainty if forced labor was used to produce a given product.

Q2: For products made exclusively within EU, does the "establishment of a violation" mean a criminal conviction?

- **Art 9(1)(a)** states that „*The competent authority shall without delay inform the Commission and the competent authorities of other Member States using the information and communication system referred to in Article 22(1) about […] any decision not to initiate an investigation following a preliminary phase of investigation, referred to in Article 4(7)*."

Q1: Why is it necessary to systematically inform others about suspicions that turned out to be unfounded? The value of such information compared to the administrative burden it brings seems unsubstantiated.

- Art 12 (5): „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 with the national labour inspections and judicial and law enforcement authorities, including those responsible for the fight against trafficking in human beings."

In which cases does the COM foresee the close coordination with the national labour inspections?

- **Art 14(1)** states that "*Decisions taken by a competent authority in one Member State shall be recognized and enforced by competent authorities in the other Member States in so far as they relate to products with the same identification and from the same supply chain for which forced labor has been found*."

Q1: If and how has the Commission considered resolving situations whereby competent authorities in other Member States do not agree with the decision or have arrived at a different conclusion?

- Article 26 (International cooperation). Only the role of COM in international cooperation has been provided in this Article.

What are the rights of MSs for cross-border cooperation, such as controls and inspections granted to competent authorities?

- The regulation is planned to apply to all companies that produce, process, distribute, import or export products, regardless of the size of the company. **Thus, the proposal of the regulation does not sufficiently take into account the lack of resources resulting from the small size of SMEs. Compliance with due diligence and reporting requirements in this form would place a disproportionate additional burden on these companies.**

- The possible adaptation measures for SMEs currently presented in the proposal are not sufficient to balance this additional burden. When implementing the measure for SMEs, where the size is taken into account when checking compliance with risk-based requirements **(art. 5(3))** or setting deadlines **(art. 5(5)),** does not, however, exempt SMEs from fulfilling due diligence requirements. Therefore, it is necessary to consider how to alleviate the situation of SMEs, whether by, for example, excluding them from the adjustment scope of the regulation or setting simplified requirements for them.

- **In the case of the regulation, it needs to be clarified that what is the sufficient threshold to prove the occurrence or non-occurrence of forced labor?**

- **Art.icle 11 -** It should be noted here that the threat of forced labor in a geographic area or product does not mean that forced labor is used in a specific company in that area. If information is not received from companies or institutions in third countries within a sufficient time, **on what basis can the competent authority confirm the occurrence or non-occurrence of forced labor in a specific case?**

- According to **article 6 (2)** the competent authority may also use other information available to them to make a decision. **What is the threshold for using such other information?** It is important that the decisions of the competent authorities are made on a uniform basis and based on a sufficiently high threshold of evidence to avoid unjustified damage to EU companies.

- When working towards the goal of reducing and preventing forced labour, it is also important that this activity is in line with the EU's obligations and rights within the WTO. Discrimination against EU trading partners based solely on the threat of forced labor and not on factual evidence must be avoided.

19 December 2022
Written comments by Finland

We refer to:
- the EU Commission's Proposal for a Regulation of the EP and of the Council on prohibiting products made with forced labour on the Union market (COM (2022) 453 final), and
- the invitation by the General Secretariat of the Council to the Member States on the possibility to send initial written comments/questions re the said proposal by December 20, 2022.

Finland would kindly wish to bring the following views to your attention, and at the same time point out that all comments are presented with a **scrutiny reservation**, as the Finnish Parliament's final standpoint on the proposal is still pending.

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Finland **welcomes the aims of the proposal** to hinder products made with forced labour from entering or leaving the Union market, and thus strengthen the work to combat a serious and wide global problem, and **agrees with the main elements of the proposed legislative framework**. We find it necessary to take actions at EU level for a challenge like the one in question, with implications on both international trade and human rights. We support taking the existing international conventions and agreements (e.g. ILO) in this area into consideration, while deciding on the content and definitions of the regulation. Also, the rules of the World Trade Organization (WTO) should be respected and unjustified trade barriers avoided.

As a starting point, we agree that the scope of the regulation should be broad, as regards both the target parties and the products concerned, in order to avoid circumvention and enhance the ban's efficiency. However, we stress the need to consider proportionality in respect of SMEs, as may be done with the proposed risk based approach, functional support tools such as guidelines and public databases, and eases in respect of the investigations processes. In order to ensure an efficient and functional legal system for all parties, the planned ban and related legal framework should be made coherent with existing and proposed legislation concerning corporate responsibility, such as the corporate sustainability reporting directive (CSRD) and the proposed directive on corporate sustainability due diligence (CSDDD).

We wish to present **our concerns** regarding the *proposed requirement to destroy the products, which have been made with forced labour*. This part of the proposal is in our opinion presented in an ambiguous way (with only a reference to EU and national requirements in this respect), and a requirement to destroy the products concerned would not be in line with current trends of environmental protection and promoting circular economy. We refer to e.g. the Commission's proposal on EcoDesign in this respect. In addition, we stress *the importance to draft a precise and unambiguous legislation, which is foreseeable and guarantees legal certainty* for the economic operators concerned.

We kindly request the following **questions to be under separate focus**:
- the conformity of the regulation with the WTO rules
- burden of proof/realistic possibilities/practicality of envisaged timeframes for investigations and response to them for sufficient evidence and legal certainty for concerned parties (investigations in third countries, resources of competent authorities)
- *Impact assessment* as regards e.g. economic operators (having in mind all ESG proposals lately and their cumulative cost impacts as well as administrative burden), the amount of forced labour, products made with forced labour on EU markets
- the requirement to destroy/dispose of the products made with forced labour (i.a. relation to EcoDesign proposal)

- *Definition of "product":* how to define a product in a comprehensive and accessible way
- As questions will be raised on *remedy for victims* and whether or not their situation will improve due to this legislation, it would be a good idea to elaborate on the decision to leave it outside this proposal.

Initial Comments from Ireland on the

Proposal for a Regulation on Prohibiting Products made with Forced Labour on the Union Market

1. Ireland fully supports the aims and objectives of the Regulation. There is no place for goods made with forced labour in the EU Single Market and Ireland strongly advocates respect for, and vindication of, human rights throughout the globe.

2. Ireland welcomes an approach to tackling forced labour which is aligned and consistent with other international instruments in order to promote coherent action and to prevent confusion and/or duplication of activity. In particular we note that the Explanatory Memorandum sets out a clear connection between this initiative and the Proposal for a Directive on Corporate Sustainability Due Diligence (CSDD). Ireland would appreciate if the Commission could clearly map the interlinkages that it envisages between the proposed Forced Labour Regulation and the CSDD proposal, but also identify the gaps and how this proposal addresses those gaps. It would also be useful to map out the interlinkages with the ILO Convention on Forced Labour, 1930 and other initiatives referenced in Section 3.2 (EU current and proposed initiatives) of the Staff Working Document.

3. Such a mapping exercise would be necessary to ascertain how the various established and proposed new instruments interact with one another, in particular as regards operational matters of assessment, investigation and enforcement. It is unclear at present how the implementing provisions of the various instruments would relate to one another; whether a complaint on a similar substantive issue could be channelled formally under multiple instruments; and if so, how the operational processes should be handled and prioritised.

4. There needs to be an alignment of definitions between the Forced Labour Regulation and customs regulations. For example, it is noted that the concept of “placing on the market” (Article 2 (e)) does not exist in customs legislation.

5. The operation of the Regulation may overlap with product safety and intellectual property regimes. Ireland notes that considerable expertise will be required if only one CA per Member State is envisaged. Has consideration been given as to the involvement of other authorities with responsibility in these and other overlapping areas? If so, which authorities will be involved? Should the Regulations explicitly outline which other authorities are to be involved in their operation, or should this be left to the discretion of the CAs?

6. Similar considerations apply in respect of the interaction (if any) of this proposal with the operation of National Contact Points under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct; and on how parallel complaints and investigations should be prioritised.

7. We also need to consider how we can increase the effectiveness of international standards, guidelines and instruments in tandem.

8. From first principles, Ireland notes that this proposal has not been subject to a regulatory impact assessment which was one of the most widely shared concerns by stakeholders. There is therefore, at this point, no evidence-based rationale for pressing ahead with this initiative so urgently which, in its present form, is likely to impose very substantial additional resource requirements on Member States and administrative burden upon businesses; nor is there any basis for assessing whether these additional burdens are proportionate to the real and actual risk, as distinct from theoretical risk, presented by products made with forced labour on the EU Single Market. In particular, there is a lack of clarity with regard to the numbers and predominant types of products to be screened. Does the Commission expect to present Member States with a detailed impact assessment? Could the Commission provide some information from the evidence collected in the impact assessment of other initiatives such as the CSDD and the Sustainable Product Initiative?

9. If there is perceived to be a heightened level of urgency associated with this proposal, such as to justify the setting-aside of normal standards regarding regulatory impact assessment, what proposals does the Commission intend to bring forward to support Member States in meeting the additional resource requirements that are now to be imposed, including special exemptions and accommodations with the binding EU fiscal framework? Is it advisable, for example, to re-direct any unallocated resources from the Brexit Adjustment Reserve, National Recovery & Resilience Plans or other sources to enable Member States to meet this onerous new spending requirement? In general terms, it is very poor practice for the Commission to bring forward expensive new programmes such as this - with the burden to be borne by Member States – without providing any indication of what other areas of EU-derived expenditure must be de-prioritised to make way for such spending.

10. We note that Member States will have responsibility through their Competent Authority/Authorities (CA) for the implementation of the proposal. The Commission should please explain why it would not make more sense for the Commission itself (or some agency thereof) to act as the CA for this proposal through a centralised rather than decentralised approach. For example, it is the Commission which carries out investigations under anti-dumping rules and enforces decisions in this area. Noting that individual CA decisions might involve large countries and entail significant geopolitical consequences, it can be argued that it would be unreasonable to devolve such responsibility on to CAs within Member States when such matters can and should be handled more effectively at a collective level and it also poses a risk of fragmentation, lack of predictability and uniformity as some Member States CAs may take different approaches.

11. The previous point is underlined by the requirement in the current Proposal for CAs to travel and undertake investigations "*in the steps of the value chain as close as possible to where the risk of forced labour is likely to occur"*. The extraterritorial nature of investigations and the need for high-level cooperation with major powers again points to a requirement for joint action at EU level rather than imposing this obligation upon local CAs. The Commission has strong dialogue structures in place to facilitate international cooperation (as noted in Section 5.5 of the Staff Working Document), so it would appear more appropriate that the

Commission act as the CA to leverage further cooperation. The Commission also has other levers to influence third countries e.g. labour-related provisions in FTAs, the EU's Generalised Scheme of Preferences, etc.

12. In a similar vein: in instances where the economic operator and/or the government of the third country refuses to provide information, CAs may not be in a position to make a decision and may have to close their investigation in line with Article 6(3). As presently drafted, this provision would amount to a very easy "get out clause" for economic operators or third countries, such as to render the entire Proposal nugatory or void in its effect (but not in its cost). Again, this points to the requirement for a more substantive role at collective level. It also raises questions regarding the validity of a decision reached by the CA which could be challenged in court.

13. If it is decided nevertheless to press ahead with Member State, rather than EU, responsibility for enforcement, what consideration has been given to a more streamlined approach where the functions envisaged for the CA could be incorporated within the functions of an existing agency or entity with broadly analogous functions? Under such a streamlined model, it is arguably sufficient to adopt a more principles-based approach, geared towards achieving the human-rights objectives of the existing Proposals, rather than the current rigid and highly prescriptive approach.

14. Having an array of different information sources is important and we welcome the proposed development of a database. How frequently is it expected to be updated? In connection to complaints/submissions, we need to ensure there is a consistent approach and avoid dealing with any vexatious complaints. What does the Commission envisage as an appropriate and standard submission? Is an online submission form expected, with particular fields to include information to substantiate their concerns?

15. In instances when an organisation issues a complaint to multiple CAs simultaneously, how will it be decided who takes the lead role in the investigation? We note in Article 14(3) it states *"the lead authority shall be the one which first informs the Commission and the competent authorities of other Member States"* but this may not always be the right approach.

16. Ireland is currently examining its legislation to determine if it has national procedural laws in place to allow a CA to effectively use its powers in a cross-border context. At present it is unclear whether the proposal, as currently formulated, might have implications for the EU-UK TCA and the operation of the Northern Ireland Protocol as it would be important to conduct a full impact assessment on this aspect of the proposal before it moves forward.

17. Subject to resolving the major issues set out above, Ireland welcomes the proposed issuance of guidelines to assist enterprises and CAs. It will be important that guidelines are published as soon as feasibly possible to help educate and inform, particularly for SMEs which fall within the scope of the proposal, given their limited resources.

18. Ireland suggests the extension of Article 6 to include a specific provision giving CAs powers of seizure and disposal regarding products prior to and post release. Moreover, under Article 6(1), CAs must reach a decision on a case "within a reasonable period of time". It would be

helpful to specify what is envisaged here to avoid any possible differentiation. Also, can the Commission clarify why it selected the various timeframes in the proposal e.g. 15 working days, 30 working days, etc.

19. Article 7.1(b) specifies a period of not be less than 30 working days for an economic operator to comply with the decision. Will the economic operator always be responsible for holding the goods during this period and if storage costs are incurred, can the economic operator contest paying for these costs? Further detail is requested on the operation of the 30-day deadline in the case of perishable goods.

20. Article 8 provides for a review of decisions. It is not specified who or what entity is responsible for carrying out the review: i.e. whether it should be a completely independent body or simply a different member of the CA team or indeed the same individual who carried out the investigation.

21. Under Article 8(5) economic operators can proceed to the courts based on the decision of a CA to review the procedural and substantive legality of their decision. This threat of judicial proceedings could deter CAs for taking decisions. Should the CA inform Cion and other MS in line with Article 9(1) in instances where the court votes in favour of the economic operator?

22. Where CAs conclude that products have been made with forced labour, Article 19(1) directs them to require customs authorities not to release them for free circulation nor to allow their export. What customs status does the Commission expect the goods to have at this point?

23. In an instance when the CA requests that the decision is enforced which includes disposing of the products, which is later challenged by the economic operator in court and if that decision was overturned by the courts, this could expose the CA to significant additional costs. Does the Commission have any views on such a scenario?

24. On the matter of confidentiality, what information is expected to be made publicly available? In other initiatives where complaints are raised, complainants use campaigning as a means to raise awareness and could potentially name an economic operator in press releases, etc.

25. On the matter of costs, we welcome the information contained in the Staff Working Document. However, it does raise concerns on a number of aspects. Firstly, for Member States, should they be responsible for creating a CA, they could be expected to allocate an additional €8 million per annum. There is also the possibility that this cost could actually be higher. Given the constraints on budgets, this is a significant ask of Member States as there will also be increased costs for customs authorities. On top of this, if a CA is challenged in court over a decision made and is overturned by the court system, the CA could face significant costs. For businesses, particularly SMEs who may for the first time be introducing due diligence practices, they will have to consider additional costs at a time when they are already challenged with heightened costs from energy, etc. Will an EU fund be made available to assist businesses?

26. Ireland notes that the proposed Regulation makes reference to the EU Customs Single Window Certificates Exchange System (EU CSW-CERTEX), which is not yet operational. It is

very premature to state that it can be used. It would be essential for any other CA IT system used for the enforcement of the proposed Regulation to be linked to EU CSW-CERTEX. Ireland notes that this will have significant cost and human resources implications.

ITALY COMMENTS

Proposal for a Regulation on prohibiting products made with forced labour on the Union market

Italy is still examining the proposal prohibiting products made with forced labour on the Union market, thus is holding a scrutiny reserve to adequately study in deep the text.

On a general level, Italy considers the proposal a positive step in the right direction regarding the common commercial policy. Nevertheless, it should be ensured that the customs definitions contained in the proposal are in line with those contained in Regulation (EU) No 952/2013 laying down the Union Customs Code.

As regards the definition of article 2, letter c), concerning " due diligence in relation to forced labour", it is not clear whether the actions that can be implemented by Regulation (EU) 2021/2115 in relation to "social dimension" may fall within the definition of the proposal.

Moreover, Italy would like to highlight some specific aspects that should be examined carefully to evaluate a possible modification and/or specification:

- *consistency with current existing legislation and, in particular, with the due diligence directive currently under discussion; indeed, it is desirable that this regulation should complement and not conflict with this proposal;*
- *the impact on supply chains and on importing companies unrelated to the production process, also in consideration of the provisions of recital 27 on the destruction, use or disposal of products already placed on the market;*
- *adequacy of the timescale set out in article 4 with which operators must respond to requests from the competent authorities;*
- *the information published in the database and used by the Commission for the preparation of the guidelines should be collected and examined by trained experts and that they follow research and collection methodologies which guarantee balance, heterogeneity, plurality, impartiality and the verifiability of source. It is also important that the collection of information is foreseen also through field research in places of possible violation of human rights in relation to forced labour;*
- *training of national authorities involved in inspection activities does not seem to be adequately addressed by the proposal, but this is a fundamental aspect since the regulation introduces tasks for national authorities which seem to involve new and additional competences compared to ordinary customs control.*

As an alternative to the proposed investigative procedure, exclusively based on national competent authorities, it could be more appropriate that national authorities request the Commission to carry out investigations and inspections in third countries, when these are necessary to ascertain the presence of forced labour in a product (in line with art. 5 c 6). In practice, national authorities would be responsible only for the "national phase" of the investigation procedure. They would collect information and evidences supplied by national legal and natural persons, request evidences and *information to national economic operators, carry out inspections in situ etc. If, as a result of the national investigation, national competent authorities were to conclude that a non-EU based manufacturer is likely to employ forced labour, the national authority would pass over the file to an "EU centralised authority" (for instance in the framework of the Union Network Against Forced Labour – art. 24). The "EU centralised authority" would then follow up on the national preliminary evidence and engage with third country authorities and/or economic operators (for instance in the framework of "International cooperation" – art. 26) and finally takes a decision which is binding for all Member States.*

Indeed, a "EU centralised authority" might be in a better position to enter into a dialogue with non-EU counterparties (and possibly carry out inspections outside the EU) and to take decisions which are binding for all EU Member States, motivated by "breaches of the international legal framework" that happen outside the EU.

Italy shares the concerns that emerged during the consultations about the impact of the proposal on SMEs, although this category of operators is exempt from the obligations set out in the proposal. Indeed, the burden for this category of operators does not end with the investigation or possible sanctions, but it also has effects in the implementation phase of the envisaged obligations.

LT Comments

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

(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[1],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(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, the 2014 Protocol to Convention No. 29 and the ILO Convention No.105 on the abolition of forced labour ('ILO Convention No.105') as fundamental ILO Conventions[2]. 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.[3]

(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.[4] 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.

(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

[1] OJ C , , p. .

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

[3] 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).

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

of the Treaty on European Union. Article 5(2) of the Charter of Fundamental Rights of the European Union and Article 4 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.[5]

(4) All Member States have ratified the fundamental ILO Conventions on forced labour and child labour.[6] They are therefore legally obliged 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 accordance 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.

(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 trade preferences under the Union's General Scheme of Preferences 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[7] (the Anti-trafficking Directive) harmonises the definition of trafficking in human beings, including forced labour or services, and establishes 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.

(8) [In particular, Directive 20XX/XX/EU on Corporate Sustainability Due Diligence sets out horizontal due diligence obligations to identify, prevent, mitigate and account for actual and potential adverse impacts on human rights, including forced labour, and the environment in the company's own operations, its subsidiaries and in its value chains, in accordance 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-

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5 For instance paras. 89 and 102 in *Siliadin v. France* or para. 105 in *Chowdury and Others v. Greece*.

6 https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/publication/wcms_195135.pdf.

7 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.

impact sectors over a certain threshold in terms of number of employees and net turnover.[8]]

(9) In addition, Regulation (EU) 2017/821 of the European Parliament and of the Council[9] requires Union importers of minerals 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 XX/20XX concerning batteries and waste batteries contains obligations for economic operators to carry out due diligence in their supply chains, including with respect to labour rights.[10]] [Regulation (EU) XX/20XX 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[11] requires due diligence regarding the legal and deforestation free character of products and commodities within its scope, including with respect to human rights.]

(10) Articles [XX] of Directive 2013/34/EU of the European Parliament and of the Council require 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.[12] [Furthermore, Directive 20XX/XX/EU on Corporate Sustainability Reporting puts forward 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.[13]]

(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.[14]

(12) As recognised in the Commission's Communication on decent work worldwide[15], 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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8 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.

9 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.

10 REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 20XX/XX, OJ XX, XX.XX.20XX, p. XX.

11 Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No XXX/20XX, OJ XX, XX.XX.20XX, p. XX.

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

13 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 (EU) No 537/2014, as regards corporate sustainability reporting, OJ XX, XX.XX.20XX, p. XX.

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

15 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.[16] 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.

(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. The definition of 'forced labour applied by state authorities' should be aligned with ILO Convention No. 105, which prohibits specifically the use of forced labour as punishment for the expression of political views, for the purposes of economic development, as a means of labour discipline, as a punishment for participation in strikes, or as a means of racial, religious or other discrimination.[17]

(18) 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.

(19) 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, value chain management and due diligence processes. Competent authorities should closely coordinate with national labour inspections and judicial and law enforcement

16 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 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.

authorities, including those responsible for the fight against trafficking in human beings in such a way as to avoid jeopardising investigations by such authorities.

(20) 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.

(21) 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.

(22) 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 value 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 value chains. Appropriate due diligence means that forced labour issues in the value chain have been identified and addressed in accordance with relevant Union legislation and 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.

(23) 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.

(24) During the preliminary phase of investigation, competent authorities should focus on the economic operators involved in the steps of the value 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.

(25) 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 value 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.

(26) 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.

(27) Competent authorities that establish that economic operators violated the prohibition, 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 relevant products 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.

(28) In that decision, competent authorities 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.

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

(30) If the economic operators fail to comply with the decision of the competent authorities by the end of the established timeframe, the competent authorities should ensure that the relevant products 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 at the expense of the economic operators.

(31) Economic operators should have the possibility to request a review of the decisions by the competent authorities, after having provided new information showing that it cannot be concluded that the relevant products have been made with forced labour. Competent authorities should withdraw their decision where they establish on the basis of that new information, that it cannot be established that the products have been made with forced labour.

(32) 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.

(33) 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 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 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.

(34) Decisions of the competent authorities 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 manufactured products 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[18] and its general provisions on the control and supervisory powers of customs authorities.

(35) The information currently 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 competent authorities 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, the implementing acts necessary to specify the details of the information to be 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 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.

(36) Customs authorities that identify a product that may be covered by a decision communicated by 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 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

[18] 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).

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.

(37) Where the competent authorities conclude that a product corresponds to a 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, which excludes re-export in case of non-Union goods.

(38) 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.

(39) 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.

(40) For the collection, processing and storage of information, in a structured form, on issues relating to the 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.

(41) 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[19], 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.

[19] 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.

(42) To ensure effective enforcement decisions taken by a competent authority in one Member State should be recognised and enforced by competent authorities in the other Member States regarding products with the same identification from the same supply chain for which forced labour has been found.

(43) 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[20] and Regulation (EU) 2018/1725 of the European Parliament and of the Council[21].

(44) 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 that facilitate the implementation of joint enforcement activities by Member States, including joint investigations. 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.

(45) 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.

(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[22].

(47) In order to supplement or amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(48) In order to ensure that the customs authorities are provided with all the necessary information about the product to act effectively, including the information identifying

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20 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.

21 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.

22 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.

the relevant product, information about the manufacturer or the producer and information about the product suppliers as regards products entering or leaving the Union market, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. 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.

(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) In order to allow for the prompt application of the measures provided for in this Regulation, this Regulation should enter into force on the day following that of its publication in the Official Journal of the European Union,

HAVE ADOPTED THIS REGULATION:

Chapter I
General provisions

Article 1

Subject matter and scope

1. This Regulation lays down 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.

Article 2

Definitions

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

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

(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 requirements, 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 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 and in the case where the product is offered for sale online or through other means of distance sales, the making available on the market is deemed to take place when the offer for sale is targeted at users in the Union;

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

(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;

(h) ‘economic operator’ means 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 the manufacturer of the product pursuant to the Union legislation applicable to that product;

(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;

(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[23];

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

(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 placed under the customs procedure ‘release for free circulation’;

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

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

Commented [A1]: We subscribe to question raised by other MSs whether proposal applies to second-hand products/components, spare parts. We have noticed that recital 16 mentions that „the prohibition should apply to all products, of any type, including their **components**, <>”. However, the practical implementation remains unclear: products usually are consisted of thousand different components which in itself can also be consisted of other components; what percentage of “bad” components should be right threshold to start investigation?

Commented [A2]: Does the concept encompass traditional list of *operators*: manufacturer, the authorised representative, the importer and the distributor (Blue guide)?

Commented [A3]: Why there is a need for a new concept (*association of persons*)? According to the Blue guide, it is always a natural or legal person.
In addition – in some articles, e.g. Art 4, this concept is followed by additional words “*not having legal personality*”: the reason? Why it was chosen not to include these words in the definition of “economic operator”?

Commented [A4]: This needs more explanation. Does it mean the concept encompasses a person who manufactures components? In addition, how it correlates with e.g. harvesting or extracting activity (which part of the harvest could be considered done “in part”?)

Commented [A5]: This needs more explanation (what other circumstances the COM had in mind?)

[23] 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.

(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) XX/20XX establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013 COM/2020/673 final];

(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) XX/20XX of the European Parliament and of the Council[24].

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.

Commented [A6]: Did the COM consider making exeptions to the obligation? E.g. for military equipment or strategically important products, e.g. medicine.

Chapter II
Investigations and decisions of competent authorities

Article 4

Preliminary phase of investigations

1. Competent authorities shall follow a risk-based approach in assessing the likelihood that economic operators violated Article 3. That assessment shall be based on all relevant information available to them, including the following information:

   (a) submissions made by natural or legal persons or any association not having legal personality pursuant to Article 10;

   (b) the risk indicators and other information pursuant to Article 23, points (b) and (c);

   (c) the database referred to in Article 11;

   (d) information and decisions encoded in the information and communication system referred to in Article 22(1), including any past cases of compliance or non-compliance of an economic operator with Article 3;

   (e) information requested by the competent authority from other relevant authorities, where necessary, on whether the 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.

Commented [A7]: Does the competent authority has the power over its own economic operators, aka established in its territory (country of origin principle)? If is is not the case, does it mean that one economic operator can face numerious investigations from different MS/different competent authorities in the same MS on the same subject?

2. In their assessment of the likelihood that economic operators violated Article 3, competent authorities shall focus on the economic operators involved in the steps of the value chain as close as possible to where the risk of forced labour is likely to occur

Commented [A8]: We maintain scrutiny regarding the scope of the Regulation (*value chain* v. *supply chain*). In addition, for legal clarity we ask the COM to better explain the intended scope as both concepts (*value chain* and *supply chain*) are used throughout the text.

In addition, a definition of *supply chain* in Art 2 would also be welcomed.

24 Regulation (EU) XX/20XX of the European Parliament and of the Council of .... ,OJ, ...

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.

3. Before initiating an investigation in accordance with Article 5(1), the competent authority shall request from the economic operators under assessment information on actions taken to identify, prevent, mitigate or bring to an end risks of forced labour in their operations and value 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 with respect to forced labour;

   (b) the guidelines issued by the Commission pursuant to Article 23, point (a);

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

   (d) any other due diligence in relation to forced labour.

4. Economic operators shall respond to the request of the competent authority referred to in paragraph 3 within 15 working days from the day they received such request. Economic operators may provide to competent authorities any other information they may deem useful for the purposes of this Article.

5. Within 30 working days from the date of receipt of the information submitted by economic operators pursuant to paragraph 4, the competent authorities shall conclude 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 the information submitted by economic operators pursuant to paragraph 4.

6. The competent authority shall duly take into account where the economic operator demonstrates that it carries out due diligence on the basis of identified forced labour impact in its supply chain, adopts and carries out measures suitable and effective for bringing to an end forced labour in a short period of time.

7. Competent authorities shall not initiate an investigation pursuant to Article 5, and shall inform the economic operators under assessment accordingly, where, on the basis of the assessment referred to in paragraph 1 and the information submitted by economic operators pursuant to paragraph 4, the competent authorities consider that there is no substantiated concern of a violation of Article 3, 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 3 being applied in a way that mitigates, prevents and brings to an end the risk of forced labour.

Article 5

Investigations

1. Competent authorities that, pursuant to Article 4(5), determine that there is a substantiated concern of a violation of Article 3, shall decide to initiate an investigation on the products and economic operators concerned.

2. Competent authorities that initiate an investigation pursuant to paragraph 1 shall inform the economic operators subject to the investigation, within 3 working days from the date of the decision to initiate such investigation about the following:

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

(b) the products subject to the investigation;

Commented [A9]: Are MS allowed to define in their national law these criteria in a more detailed way? If yes, there can be a divergence in practical application of the Regulation.

Commented [A10]: Is it possible to appeal the decision during *preliminary phase of an investigation* resulting in investigation in accordance with Article 5(1)?

Commented [A11]: Who will define what period is *short*? Will this be done in the national law?

Commented [A12]: Do all elements are mandatory? Meaning that economic operator should prove that it not only mitigated/prevented but also brought to an end the risk?

Commented [A13]: How to understand to start an *investigation on the product*? Are these two different investigations (on the product and on an operator)? We would be grateful on a better explanation regarding this aspect, including a correlation between this Regulation and general requirements on a prohibition of forced labour (which usually lead to criminal sanctions) and how to ensure the *ne bis in idem*.

Commented [A14]: Is it possible to appeal the decision to start an investigation? E.g. if conditions set out in Art 5.3 are not met.

Commented [A15]: What consequences are we talking about? In our opinion this should be paraphrased using more legal terminology and (or) references to certain norms.

(c) the reasons for the initiation of the investigation, unless it would jeopardise the outcome 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.

3. Where requested to do so by competent authorities, economic operators under investigation shall submit to those competent authorities any information that is relevant and necessary for the investigation, including information identifying the products under investigation, the manufacturer or producer of those products and the product suppliers. In requesting such information, competent authorities shall to the extent possible:

(a) prioritise the economic operators under investigation involved in the steps of the value 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, as well as the scale of suspected forced labour.

4. Economic operators shall submit the information within 15 working days from the request referred to in paragraph 3 or make a justified request for an extension of that time limit.

5. When deciding on the time limits referred to in this Article, competent authorities shall consider the size and economic resources of the economic operators concerned.

6. Competent authorities may carry out all necessary checks and inspections including investigations in third countries, provided that the economic operators concerned give their consent and that the government of the Member State or third country in which the inspections are to take place has been officially notified and raises no objection.

Article 6

Decisions of competent authorities

1. Competent authorities shall assess all information and evidence gathered pursuant to Articles 4 and 5 and, on that basis, establish whether Article 3 has been violated, within a reasonable period of time from the date they initiated the investigation pursuant to Article 5(1).

2. Notwithstanding paragraph 1, competent authorities may establish that Article 3 has been violated on the basis of any other facts available where it was not possible to gather information and evidence pursuant to Article 5(3) or (6).

3. Where competent authorities cannot establish that Article 3 has been violated, they shall take a decision to close the investigation and inform the economic operator thereof.

4. Where competent authorities establish that Article 3 has been violated, they shall without delay adopt 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 relevant products that have already been placed or made available on the market;

Commented [A16]: Is economic operator allowed to reject the request on the grounds that the competent institution has not "to the extent possible" complied with the conditions in a and b?

Commented [A17]: The same comment as in art 4(2): Is it possible for MSs to define in a more detailed way these criteria? if yes, there can be a divergence in practical application of the Regulation.

Commented [A18]: In our view, the *quantity of products* concerned, as well as the *scale of suspected forced labour* are also important when deciding on the time limits (these criteria are mentioned in Art 4(2), 5 (3b)), therefore we suggest adding them in para 5.

Commented [A19]: How likely that this possibility will be applied in practice?

Commented [A20]: We wonder if a narrowing down of Art 4 to Art 4 para 1-4 would provide more legal clarity.

Commented [A21]: What does *reasonable period* mean? Who is going to decided on the exact period? National authority on an *ad hoc basis*? It does not give legal certainty for economic operators and contrary – could serve as a blackmail towards them ("if you want faster procedure, you will have to do this or that.."). In addition, why the COM decided not to include **max period** from the date of initiation for the competent authorities **to conclude investigation** and adopt decision (Art. 4(5))? There for it could create uncertainty and affect economic operators, their costs and their operations as products are in operation (for example import to EU not stopped) but face possible withdrawal in future.

Commented [A22]: We find it hard to accept this possibility for the competent authorities to make a decision based not on the legal grounds, but on other considerations. In the DMA (Digital Markets Act) where is also a possibility to make a decision to designate a company as a gatekeeper based on other facts. However, the DMA provides more elaborate procedure /legal grounds.
Therefore we suggest either making the "non-cooperation clause" court-proof, or deleting it.

(c) an order for the economic operators that have been subject to the investigation to dispose of the respective products in accordance with national law consistent with Union law.

5. Where an economic operator has failed to comply with the decision referred to in paragraph 4, the competent authorities shall ensure all of the following:

(a) that it is prohibited to place or make available the products concerned on the market;

(b) that the products already placed or made available on the market are withdrawn from the Union market;

(c) that any product remaining with the economic operator concerned is disposed of in accordance with national law consistent with Union law at the expense of the economic operator.

6. Where economic operators provide evidence to the competent authorities that they have complied with the decision referred to in paragraph 4, and that they have eliminated forced labour from their operations or supply chain with respect to the products concerned, the competent authorities shall withdraw their decision for the future and inform the economic operators.

Article 7

Content of the decision

1. The decision referred to in Article 6(4) shall contain all of the following:

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

(b) a reasonable time limit for the economic operators to comply with the order, which shall not be less than 30 working days and no longer than necessary to withdraw the respective products. When setting such a time limit, the competent authority shall take into account the economic operator's size and economic resources;

(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.

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 made available to customs authorities in accordance with Article 16(3). Those implementing acts shall be adopted in accordance with the examination procedure pursuant to Article 29.

Article 8

Review of decisions

1. Competent authorities shall provide economic operators affected by a decision adopted pursuant to Article 6(4) the possibility of requesting a review of that decision within 15 working days from the date of receipt of that decision. In case of perishable goods, animals and plants, that time limit shall be 5 working days. The request for review

Commented [A23]: We are missing exact terms, conditions and period of time for the competent institutions to declare that economic operator failed to comply with the decision referred to in paragraph 4. Will these procedural aspects be incorporated in the national law?

Commented [A24]: We need more explanation on how this is to be done (e.g. the procedures; who covers the costs of the product withdrawal/disposal), especially if products are kept (stored) in a third country.

Commented [A25]: What evidence national authorities should accept as sufficient to establish that forced labour has been eliminated from e.g. all supply chain? Would a written statement of a manufacturer "we no longer use forced labour in our factory" would be enough?
In our opinion the Regulation should provide an examples of documents/evidence which will be considered as appropriate in proving the compliance with Art 3. Or, in other hand, Art 23 (*Guidelines*) should include a sentence, that guidelines will include the evidence economic operators will be expected to produce.

Commented [A26]: More a technical note: Why in some cases, like this, there is a reference to *"for the future",* while in others, e.g. Art 8.4, - no such reference. What is the difference between this paragraph and Art 8 (*Review of decisions)?*

Commented [A27]: We think the decision should also contain:
-a reference to a possibility to *appeal* the decision
-the application of the art 6 (4) paragraph a, or b, or c, on which the administrative decision is based;
-a summary of the arguments put forward by the economic operator concerned that are relevant for the assessment (i.e. the completeness of the information provided in the administrative decision, so that the operator can appeal it to the courts).

Commented [A28]: Why the third obligation (to dispose the products) is not mentioned? We suggest adding "no longer than necessary to withdraw the respective products **or to dispose them**".

Commented [A29]: In our view, implementing acts should also include details of a right of economic operators (or other stakeholders) to be informed.

Commented [A30]: What is the relationship between Art 8 and Art 6.6 ? In our view, it would be legally better to call the decision of review as **an appeal** (Article 8 *An appeal procedure*).The main reason is that the end result of a review of the decision is a withdraw of a decision, meaning the *in essence* applicant requests for a reversal of the decision/annulment.

Commented [A31]: Does this clause cover only *directly* affected economic operator (who was mentioned in a decisions/ was forced to e.g. withdraw products) or could be interpreted more widely? E.g. a company which manufactures products in question.

shall contain information which demonstrates that the products are placed or made available on the market or to be exported in compliance with Article 3.

2. A request for a review of a decision adopted pursuant Article 6(4) shall contain new information that was not brought to the attention of the competent authority during the investigation. The request for a review shall delay the enforcement of the decision adopted pursuant to Article 6(4) until the competent authority decides on the request for the review.

3. A competent authority shall take a decision on the request for review within 15 working days from the date of receipt of the request. In case of perishable goods, animals and plants that time limit shall be 5 working days.

4. Where a competent authority considers that after taking into account the new information provided by the economic operator in accordance with paragraph 1 it cannot establish that the products have been placed or made available on the market or are being exported in violation of Article 3, it shall withdraw its decision adopted pursuant to Article 6(4).

5. Economic operators that have been affected by a decision of a competent authority pursuant to this Regulation shall have access to a court to review the procedural and substantive legality of the decision.

Commented [A32]: The same comment: Does this clause cover only *directly* affected economic operator (who was mentioned in a decisions/ was forced to e.g. withdraw products) or could be interpreted more widely? E.g. a company which manufactures products in question.

6. Paragraph 5 shall be without prejudice to any provision of national law which requires that administrative review procedures be exhausted prior to recourse to judicial proceedings.

7. Decisions adopted by competent authorities pursuant to Article 6 and to this Article are without prejudice to any decisions of a judicial nature taken by national courts or tribunals of the Member States with respect to the same economic operators or products.

Article 9

Information obligations of the competent authorities

1. The competent authority shall without delay inform the Commission and the competent authorities of other Member States using the information and communication system referred to in Article 22(1) about the following:

   (a) any decision not to initiate an investigation following a preliminary phase of investigation, referred to in Article 4(7);

   (b) any decision to initiate an investigation referred to in Article 5(1);

   (c) any decision to prohibit placing and making available of the products on the market and their export, as well as to order the withdrawal of the products already placed or made available on the market and their disposal referred to in Article 6(4);

   (d) any decision to close the investigation referred to in Article 6(3);

   (e) any withdrawal of the decision referred to in Article 6(6);

   (f) any request of an economic operator for a review referred to in Article 8(1);

   (g) any result of the review referred to in Article 8(4).

2. The Commission shall make available the decisions, and the withdrawals referred to in the paragraph 1, points (c), (d), (e) and (g) on a dedicated website.

Article 10

Submission of information regarding violations of Article 3

1. 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.

2. The competent authority shall, as soon as possible, inform the person or association referred to in paragraph 1 of the outcome of the assessment of their submission.

3. Directive (EU) 2019/1937 of the European Parliament and of the Council[25] shall apply to the reporting of all breaches of this Regulation and the protection of persons reporting such breaches.

Article 11

Database of forced labour risk areas or products

1. The Commission shall call upon external expertise to provide an indicative, non-exhaustive, verifiable and regularly updated database 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 be based on the guidelines referred to in Article 23, points (a), (b) and (c), and relevant external sources of information from, amongst others, international organisations and third country authorities.

2. The Commission shall ensure that the database is made publicly available by the external expertise at the latest 24 months after the entry into force of this Regulation.

3. Economic operators placing or making available on the Union market or exporting products which are not mentioned in the database referred to in paragraph 1 of this Article, or which come from areas that are not mentioned in that database, shall also be required to comply with Article 3.

Article 12

Competent authorities

1. Member States shall designate one or more competent authorities responsible for carrying out the obligations set out in this Regulation. Designated Member State competent authorities shall be responsible for ensuring the effective and uniform implementation of this Regulation throughout the Union.

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 three months after the date of entry into force of this Regulation, Member States shall, through the information and communication system referred to in Article 22(1), provide the Commission and the other Member States with the following information:

[25] 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.

Commented [A33]: In our view, this part should be elaborated to allow competent authorities to make quick decisions whether to proceed with an investigation and eliminate unjustified notifications. Therefore we suggest including in a more detailed way a description *of what kind of information* on economic operator (economic operator contacts? Companies address?) and products (an electronic location of product found on internet, in particular the exact URL or URLs? type, batch or serial number or other element allowing products identification?) should be provided in a submission.
In addition, we suggest to make *reasoning* part more robust, e.g. by adding that not only the basic reasons should be provided, but also facts, proving that there is forced labour involved; written suggestion: "<...>reasons substantiating the allegation **and documents proving these allegations**."
In addition, has the COM considered adding information on **the scope and impact of violations** to the list, as these aspects will also be covered by competent authorities while assessing the breach of Regulation.

Commented [A34]: Does it mean that it is left for each competent authority to establish procedural terms in their internal rules? Do we understand correctly that there are **two** deadlines: (a) – deadline to inform a person who submitted an info; b) – deadline to evaluate the submission?

Commented [A35]: In essence we support all measures which could help authorities and companies to comply with the regulation. However, we still have some questions regarding database. What is a legal status of this database? Could manufacture of a product listed in the database object the decision? On what grounds the product /region will be included in the list? who will check that external expert made a right call to include a product/region? Do products/regions listed will be presumed having links to forced labour?

Commented [A36]: Do we understand correctly that the database will have two sections: one – high risk geographic areas; second – high risk products (sectors)?

Commented [A37]: Do we understand correctly, that the Cion foresees that a competent authority in this Regulation will be **other than** a national labour inspection? Could a competent authority in this Regulation be the same institution as a competent authority under CSDD?

Commented [A38]: In our view, 3 months after the date of entry into force of this Regulation (which enters into force on the day following of its publication) are too short to adopt all necessary national legal acts and to designate competent authority. In addition, we would advice to maintain similar approach as was applied in the CSDD (*by the date indicated in article 30 (1) point (a) [[3 years from the entry into force of Directive*].)], *MS shall inform the COM of the names and contact details of the supervisory authorities designated.*

(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.

4. The Commission shall make the list of the designated competent authorities publicly available on its website and shall regularly update that list, based on the updates received from Member States.

5. Member States shall ensure that the designated competent authorities exercise 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 with the national labour inspections and judicial and law enforcement authorities, including those responsible for the fight against trafficking in human beings.

6. Member States shall confer on their competent authorities the power to impose penalties in accordance with Article 30.

Article 13

Administrative cooperation and communication among competent authorities

1. The Commission shall ensure efficient cooperation among the competent authorities of the Member States through facilitating and coordinating the exchange and collection of information and best practices with regard to the application of this Regulation.

Commented [A39]: How it will be ensured?

2. Competent authorities shall actively participate in the Network referred to in Article 24.

Article 14

Recognition of decisions

Commented [A40]: We are still evaluating this Art. and a legal possibility to establish recognition of the decisions. In addition, there are also disputes related to the administrative decisions, for example, if two institutions start an investigation, there should be formal finalization - grounds for termination of the initiated investigation, as not leading authority won't be able to adopt a decision according to Art 6.

1. Decisions taken by a competent authority in one Member State shall be recognised and enforced by competent authorities in the other Member States in so far as they relate to products with the same identification and from the same supply chain for which forced labour has been found.

2. A competent authority that has received, through the information and communication system referred to in Article 22(1), a request from a competent authority of another Member State for information to verify any evidence provided by an economic operator shall provide that information within 15 working days from the date of receipt of the request.

3. Where two or more competent authorities initiate investigations concerning the same products or economic operators, the lead authority shall be the one which first informed the Commission and the competent authorities of other Member States of the decision to initiate an investigation in accordance with Article 9(1), point (b).

4. Before initiating an investigation in accordance with Article 5, a competent authority shall verify in the information and communication system referred to in Article 22(1) whether there is a lead authority referred to in paragraph 3 investigating the same product and economic operator.

5. Where there is a lead authority as referred to in paragraph 3, competent authorities shall share all the evidence and information they may have with that lead authority to facilitate the investigation and shall not start a separate investigation.

6. The lead authority shall carry out the investigation and adopt a decision in accordance with Article 6 on the basis of the assessment of all evidence before it.

Chapter III

Products entering or leaving the Union market

Article 15

Controls

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

2. The application of this Chapter is without prejudice to other Union legislation governing the release for free circulation or export of products, in particular Articles 46, 47, 134 and 267 of Regulation (EU) No 952/2013.

3. The competent authority shall without delay, where no request for a review has been introduced within the time limits referred in Article 8(1) or the decision is definitive in case of a request for a review as referred to in Article 8(3), communicate to the customs authorities of Member States:

(a) any decision to prohibit the placing or making available of the products on the Union market and their export, as well as to order the withdrawal of the products already placed or made available on the Union market and their disposal referred to in Article 6(4);

(b) any decision following the review referred to in Article 8(3).

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 in accordance with Articles 46 and 47 of Regulation (EU) No 952/2013.

5. The competent authority shall without delay communicate to the customs authorities of Member States a withdrawal of the decision referred to in Article 6(6).

Article 16

Information to be made available to customs authorities

1. The Commission is empowered to adopt delegated acts in accordance with Article 27 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, amongst others, on the basis of the database referred to in Article 11 or f information and decisions encoded in the information and communication system referred to in Article 22(1).

2. Customs authorities shall be provided with information identifying the product, information about the manufacturer or the producer and information about the product suppliers as regards products entering or leaving the Union market that have been identified by the Commission pursuant to paragraph 1, unless the provision of such

Commented [A41]: When decisions should be communicated if *they are appealed* ?

Commented [A42]: Do we understand correctly that custom authorities will get information about forced labour via two channels: a) competent authority decisions on a specific product b) delegated act which lists certain products?
Could the Cion provide more information *why* the second channel is also necessary? The Cion in its presentation said that the customs will act ONLY on the basis of the decision of the competent authority.
What is a legal status of an information provided in a delegated act? Will customs authorities be required to act upon it even without a formal decision from the competent authority? Will the competent authorities be required to make a formal decision regarding a certain product included in a delegated act? Is there a difference for the customs authorities in a context of information channel (delegated act v. a decision) if we are talking about products entering single market and products which are being exported?

Commented [A43]: Who is responsible for providing this information? On what basis?

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 further specifying the details of the information to be made available to customs authorities pursuant to paragraph 1.

4. The implementing acts referred to in paragraph 3 shall be adopted in accordance with the examination procedure pursuant to Article 29.

5. Where a specific product has been identified in a decision referred to in Article 6(4), in order for the customs authorities to be able to act immediately, the procedure provided for in Article 28 shall apply to delegated acts adopted pursuant to this Article.

Commented [A44]: We need better understanding of the process, envisaged by the Cion. Any explanation would be helpful.

Article 17

Suspension

Where customs authorities identify a product entering or leaving the Union market that may, in accordance with a decision received pursuant to Article 15(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 15(3).

Commented [A45]: Is our understanding correct that the Regulation provides no interference into normal daily custom procedure (how often customs do checks/on what basis they choose object of inspection, etc)?

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 17, 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.

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 17 is a product made with forced labour pursuant to a decision referred to in Article 6(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 22(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*].

Article 20

Measures on products refused for release for free circulation or export

Where the release for free circulation or export of a product has been refused in accordance with Article 19, customs authorities shall take the necessary measures to ensure that the product concerned is disposed of in accordance with national law consistent with Union law. Articles 197 and 198 of Regulation (EU) No 952/2013 shall apply accordingly.

Commented [A46]: Could the COM provide better explanation on correlation between this Article and Art 6.5, according to which an obligation (and a right) to destroy products falls within a **competent authority** (when an economic operator has failed to comply with a decision). In other words, in which cases the **custom authorities**, relying on this Regulation, **can dispose products**?

Article 21

Exchange of information and cooperation

1. To enable a risk-based approach 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 information necessary for the fulfilment of their respective functions under this Regulation, including through electronic means, shall take place between the following authorities:

   (a) customs authorities in accordance with Article 46(5) of Regulation (EU) No 952/2013;

   (b) competent authorities and customs authorities in accordance with Article 47(2) of Regulation (EU) No 952/2013.

Chapter IV

Information systems, guidelines and coordinated enforcement

Article 22

Information and communication systems

1. For the purposes of Chapters II and III, competent authorities 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.

2. The decisions communicated pursuant to Article 15(3) shall be entered in the relevant customs risk management environment.

3. The Commission shall develop an interconnection to enable the automated communication of decisions referred to in Article 15(3) from the information and communication system referred to in paragraph 1 to the environment referred to in paragraph 4. 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.

Commented [A47]: Technical remark. We recommend avoiding a reference to a paragraph which gives another reference to another paragraph. In a specific case paragraph 4 makes reference again to paragraph 1 (as we understand we are talking about the same IT system – ICSMS – in both paragraphs).

Commented [A48]: We are still evaluating the practicalities of the implementation of this regulation during the transitional period.

4. Requests and notifications exchanged between competent authorities and customs authorities pursuant to Articles 17 to 20 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. The Commission shall interconnect the national single window environments for customs with the information and communication system referred to in paragraph 1 to enable the exchange of requests and notifications between customs and competent authorities pursuant to Articles 17 to 20 of this Regulation. That interconnection shall be provided through [EU CSW-CERTEX pursuant to Regulation XX/20XX][26] within four years from the date of adoption of the implementing act referred to in paragraph 7(c). 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.

7. The Commission is empowered to adopt implementing acts in accordance with the examination procedure pursuant to Article 29 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) the data to be transmitted between the information and communication system referred to in paragraph 1 and the national single window environments for customs for the purposes of paragraph 5;

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

Article 23

Guidelines

The Commission shall issue guidelines no later than 18 months after the entry into force of this Regulation, which shall include the following:

(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;

(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,

Commented [A49]: We are still evaluating the practicalities of the implementation of this regulation during the transitional period.

Commented [A50]: We do welcome a decision to issue guidelines. We are still evaluating whether some aspects shouldn't be incorporated into legal text (e.g. due diligence application). In addition, in our opinion, the guidelines should be reviewed regularly, updated (if need), published online to guarantee better accessibility and searchability. It is also equally important to conduct wide public consultations with businesses while preparing the guidelines.

Commented [A51]: Does the COM think that 6 months (before the full application of the Regulation) are sufficient to prepare for efficient application of the Regulation, e.g. finalizing the database.

26 Established by the Regulation on the EU Single Window Environment for Customs (EU SWE-C).

business organisations, and experience from implementing Union legislation setting out due diligence requirements with respect to forced labour;

(c) a list of publicly available information sources of relevance for the implementation of this Regulation;

(d) further information to facilitate the competent authorities' implementation of this Regulation;

(e) guidance for the practical implementation of Article 16 and, where appropriate, any other provision laid down in Chapter III of this Regulation.

Article 24

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.

Commented [A52]: Will this network be a separate administrative organ? Or e.g. will operate withing EUPCN?

2. The Network shall be composed of representatives from each Member States' competent authority, representatives from the Commission and, where appropriate, experts from the customs authorities.

3. The Network shall have the following tasks:

(a) facilitate the identification of common priorities for enforcement activities, to exchange information, expertise and best practices;

(b) conduct joint investigations;

(c) facilitate capacity building activities and contribute to uniform risk-based approaches and administrative practices for the implementation of this Regulation in the Member States;

(d) contribute to the development of guidance to ensure the effective and uniform application of this Regulation;

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

(f) to promote the cooperation and exchange of expertise and best practices between competent authorities and customs authorities;

4. The Commission shall support and encourage cooperation between enforcement authorities through the Network and participate in the meetings of the Network.

5. The Network shall establish its rules of procedure.

CHAPTER V

Final provisions

Article 25

Confidentiality

1. The competent authorities shall only use information received pursuant to this Regulation for the purpose of applying this Regulation.

2. Where requested, the Commission, Member States and competent authorities shall treat the identity of those who provide information, or the information provided, as confidential. 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.

3. 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 26

International Cooperation

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

Commented [A53]: If information, which is planned to be exchanged, belongs to a MS, does the Cion have an obligation to ask a permission from that MS ?

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 and partner countries efforts and locally available capacities in tackling forced labour.

Article 27

Delegated Acts and 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 16(1) shall be conferred on the Commission for an indeterminate period of time from date of entry force of this Regulation.

3. The delegation of power referred to in Article 16(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[27].

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 16(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 28

Urgency procedure

Commented [A54]: We are still assessing whether there is a need to have an urgency procedure in the cases, which usually requires thorough investigations. We are waiting explanations from the Cion.

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.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 27 (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 29

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Article 3(2) of Regulation (EU) No 182/2011.

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

Article 30

Penalties

Commented [A55]: We are waiting for discussions on penalties. Our primal concern might be divergent application of art 30 (different penalties/ thresholds around MSs). Did the Cion consider including in the Guidelines harmonising aspects of penalties, e.g. how MS should understand „effective, proportionate and dissuasive".

1. The Member States shall lay down the rules on penalties applicable to non-compliance with a decision referred to in Article 6(4) and shall take all measures necessary to ensure that they are implemented in accordance with national law.

2. The penalties provided for shall be effective, proportionate and dissuasive.

3. The Member States shall, by [OP enter DATE = 24 months from entry into force of this Regulation], notify those provisions to the Commission, where they have not previously been notified, and shall notify it, without delay, of any subsequent amendment affecting them.

[27] 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)

Article 31

Entry into force and date of application

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

This Regulation shall apply from [OP enter DATE = 24 months from its entry into force].

Commented [A56]: We want to draw attention to the fact that during trilogues usually EP seeks shorter period. Therefore, it is crutual to maintain 24 months. And, in case of any amendments to Art 31 (especially if 24 months will be made shorter), it should be reflected in other Articles, e.g. Art 23.

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*

Comments from the Netherlands – proposal for a regulation on prohibiting products made with forced labour on the Union market
09-01-2023

The Netherlands thanks the Commission for the proposal for a regulation on prohibiting products made with forced labour on the Union market (forced labour regulation). The Netherlands supports and endorses the objective of the proposal: to effectively prevent products made with forced labour on the EU market, and thereby contribute to tackling forced labour. Forced labour is a serious affront to human dignity, and it is unacceptable that so many people worldwide are affected by it. The proposed regulation can make an important contribution to tackling these abuses. However, the Netherlands would like to raise a few points regarding the proposal.

1) **General questions**

- Could the Commission clarify whether the proposal is mainly aimed at due diligence and investigations in this regards, with the product marketing ban as a last resort, or mainly a risk based approach to products made with forced labor?
- Market surveillance is based on trust in that actors do 'the right thing'. How does this principle relate to the proposed regulation?
- The proposal mentions that forced child labour is included. For clarity and to be able to enforce on this specific issue, what is the definition of forced child labour?
- Can the *end users* as described in article 1(2) only be consumers or can these also be economic operators?
- For clarity reasons, could article 2(d) be redrafted? The objective of the final part of the phrase remains unclear to us ("the making available on the market is deemed to take place when the offer for sale is targeted at users in the Union")
- What is meant by "short periode of time" (article 4(6)).
- In article 5(2): considering that companies may have different suppliers for the same type of raw materials/ products, does this article refer to a batch of one product or a group of similar products that a company buys?
- Art 12(3)(b): should this be without the phrase "the first sub paragraph of"?
- Art. 23(a): how does this relate to the already by the EEAS published guidance? Will this guidance take into account the capabilities of SMEs?
- Art. 30: how does this work in relation to related EU legislation such as the CSDDD? Can a company be fined twice for the same offense?
- Related: the regulation does not provide for a clause on cooperation between the competent authorities of the FLR, CSDDD, deforestation regulation. Conflict Minerals Regulation and the battery regulation. This seems vital because the supervision of this other legislation can also come across relevant signs of forced labour.

2) **Enforceability**

It is crucial that the proposal is feasible, effective and enforceable in order to achieve the objective of the proposed regulation. Further guidance will be required for this purpose since the proposal fails to provide clarity on many points in relation to its enforcement and implementation by the competent authorities and customs authorities. Areas of concern are for instance:

- Art. 6: verification of supposed forced labour can be difficult, especially when it comes to suppliers from abroad/ from outside the Union. What is the Commission's view on this?
- Related: what does the Commission think of a possible large scale of litigations against the decisions of the competent authorities (pursuant to art. 8(5).
- What is the background of the 30 day time limit for the economic operators to comply (art 7 (1)(b))? Has a longer time period been considered in order to give the operator a reasonable time to use its leverage to improve the situation on the ground, in line with the CSDDD? This question also in regard to the potential effect of disengagement.
- And: related to the former question: has the Commission considered distinguishing between state-sponsored forced labour and other forms of forced labour, considering that in the second case there will be more leverage for a business.
- Art. 11(2): why will the database not be published by the Commission itself?
- Art 12(1): could this be redrafted so as to clarify that national competent authorities will only be responsible for their own jurisdiction (as opposed to national competent authority for the entire Union)?
- Art. 16(2): "Customs authorities shall be provided with information identifying etc." – by whom?
- How will the effectiveness of the proposal be evaluated, as well as the effects on businesses (SMEs) and other countries (developing and least developed)? Will the

Commission incorporate an evaluation clause in the regulation to assess the effectiveness of the regulation?

On the role of competent authorities

- In NL the judiciary decides whether forced labor is sufficiently substantiated. What role for judicial power does the Commission foresee in the context of the regulation aimed at *products*? How does the proposal for a regulation relate to existing (criminal law) statutory frameworks?
- Will the authority or the judiciary decide whether forced labour has taken place to make a product (in the EU)? How does this work outside of the EU?
- In NL the national labour inspection works under the public prosecuting office. How does this relationship relate to the discretionary power of the competent authority regarding the prioritisation of cases?
- What is the Commissions view on the burden of proof to decide whether a product has been produced with forced labor and prevent it from being placed on the market? What criteria does the Commission propose?
- Does the Commission consider that a substantiated presumption is sufficient to prevent products are being placed on the market? What if a competent authority cannot investigate the situation in a third country?
- How will the Commission enable investigations by competent authorities?
- Art 23 (d) states the Commission will develop guidance within 18 months after entry into force of the regulation, amongst others with the aim of implementation. How well suited is the timeframe, considering the regulation needs to be implemented from its entry into force by authorities? Could the Commission consider developing such guidance sooner?
- Concerning the database that will be set up with forced labour risks (products, geographical areas): how detailed will this information be? How exactly will this database be established?
- How can competent authorities during the preliminary investigation phase decide whether the provided information on due diligence is sufficient, or that a further investigation is needed? When is the decision to continue with further research substantiated? What does a ‘substantiated concern’ mean? How do we ensure the member states interpret this meaning similarly, so we take uniform decisions as a EU?
- How would the Commission describe the discretionairy- and rule-making competency of the competent authorities of member states in relation to the enforcement of the proposed regulation? And how does the Commission view its own role in relation to the role of the member states in the context of the enforcement of the proposed regulation?

With regards to the duties for customs under the new regulation:

- At this moment, it is uncertain how many product groups will fall under this regulation and how this will expand on a yearly basis. The available work-capacity for Customs is limited, especially considering the great volumes that enter the EU and the Netherlands, and the fact that this is not the only proposal that requires customs interference. Is it possible to give a perspective on the ambitions and prioritization on this matter?
- How will the competent authorities be required to deploy their monitoring activities, also in relation to their cooperation with the Customs Administration and how the Customs will have to carry out its duties under the regulation?
- In order to perform effective risk management and in order to identify products subject to a decision on non-compliance, customs need to receive information from the competent authority that corresponds with the specific content (data fields) of the customs declaration. How will this be ensured?
- For the products identified by means of delegated acts based on the database under art. 11 and on information and the decisions of the Customs authorities, economic operators will be asked to provide additional information prior to export and release for free circulation. This additional information is supposed to allow customs to aim at stopping the products subject to the decision of the competent authority. The proposed solution for adding this information to the customs declaration, is putting the additional information in an unstructured data field (field 12 04). This construction raises questions, because an unstructured data field is very prone to error and (therefore) difficult to use in automated processes (like risk assessments). Also, every error potentially creates more manual labour for customs. How does the Commission envisage making this practice effective and efficient?
- Can the Commission elaborate on what part exactly will be facilitated by the Commission and what part is expected to be done by member states with regards to optimizing and

facilitating border checks, specifically 1) the communication from ICSMS to the CRMS, 2) case management (in ICSMS?) and 3) the extraction of relevant customs risk information and its transmission to ICSMS?

3) WTO conformity

NL request the Commission to elaborate on how guiding principles for compliance with WTO-rules have been applied to this proposal.

- How will it be ensured that the proposed regulation ensure equal treatment of like products from the EU and from outside the EU, and how will equal treatment between like products from various countries be ensured?
- What is the relationship between the objective of the measure and extent to which the measure may restrict trade? How can an evaluation (clause) of the measure contribute to further substantiating the need for this measure?
- How will the Commission consult and inform third countries?

4) Clarity for companies about what is expected of them and the relation of the proposal to other EU due diligence legislation

- How does the proposal relate to existing and forthcoming EU legislation on responsible business conduct and due diligence such as the forthcoming corporate Sustainability Due Diligence Directive, the Corporate Sustainability Reporting Directive, the Conflict Minerals Regulation and the forthcoming regulations on deforestation and on batteries? How will coherence between this legislation be ensured – in order for the legislation to be more effective, to promote legal certainty for companies and to prevent the regulatory burden to further increase, with a view to other relevant (proposed) laws and regulations?
- Will the guidance on due diligence which the Commission announced in relation to the regulation build on international frameworks of standards on due diligence and responsible business conduct (the OECD Guidelines for Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights (UNGPs)) and will it be consistent with relevant EU legislation? Will guidance be made available specifically aimed at SME's, in light of the more limited resources of SME's to meet the regulation?
- Could the Commission specify why the proposal does not contain provisions on access to remedy? What possibilities does the Commission see to include such provisions? How will be dealt with potential disengagement of companies from risk areas[1], given that:
    - A) the proposed regulation may result in companies, once they have identified forced labour in their value chain, feel compelled to disengage from the relevant area because the prohibition makes it impossible for them to sell their goods on the EU market.
    - B) companies may, as a preventive measure, disengage from areas designated by the Commission as high-risk areas. Disengagement is contrary to international standards for RBC (OECD Guidelines for multinational enterprises and UN Guiding Principles on Business and Human Rights) and probably also to the CSDDD.

5) The impact on SMEs

Specific attention is required for the implications of the proposal for SMEs. The Netherlands supports the way in which the Commission attempts in the proposal to accommodate the constraints of SMEs by means of assistance measures, without undermining the overall objective of the proposal.

- Although the proposal already includes attempts to accommodate the constraints of SMEs by means of assistance measures, the Netherlands questions if these will be sufficient. What further adjustments could be made to accommodate SMEs?
- What does the Commission think of for instance excluding SMEs from investigations for the first years after entry into force of the regulation?

6) Financial impact of the proposal

- The financial impact of the proposal, including the proposed extra FTEs at the Commission and the additional administrative expenditures and of the potential implementation costs

[1] The OECD Guidelines, the UNGPs and the still under-negotiation CSDDD require companies to endeavour to tackle forced labour; in the context of due diligence, disengagement remains the last resort.

for member states are considerable. What measures will be taken to limit the implementation burden and monitoring costs?

- The availability of ICT systems and interconnections is important for the implementation of the regulation, both for the interconnectedness with ICSMS and the risk analysis for customs. Equipping the customs authorities potentially entails significant additional costs for member states, for example in relation to staffing capacity and IT. The magnitude of these costs is directly related to the amount and difficulty level of the changes needed to implement the envisaged practice: the more the envisaged practice differs from the existing practice, the higher the costs. The exploitation of the data provided by the competent authority and the data provided by economic operators via article 11 (field 12 04) is a primary source of concern. How will this be designed efficiently and effectively? Could monitoring activities for this regulation with those for similar legislation be combined?
- The implementation burden for the Netherlands is expected to be relatively heavy, on account of the transit of products via Dutch ports (where many products first enter the EU market). A realistic period should be set for enforcement and implementation. In this light, it is important to keep in mind that the forced labour regulation is not the only new legislation that has to be implemented that requires significant adjustments in the IT-systems of the Customs authorities, a (possible) change in way of working and an (possible) increase of manual labour for the Customs authorities. Are these challenges, and especially the challenge on the IT-capacity for member states, taken into account in the implementation date of the regulation? (How) will the Commission help the member states in setting priorities, since capacity and funds needed to implement all the new legislation are scarce?
- In the Working Staff Document the Commission refers to the decisions under the US Tariff Act between 2016- 2021 to provide an indication how many decisions to expect per year in the EU. Does the Commission know how many investigations took place that did not lead to a decision in the US? What did the Commission base its estimates for the preliminary investigations and investigations on?

7) Impact on developing countries

The Commission points out that complementary policies will enhance the effectiveness of the proposal. Consideration should be given to complementary policy measures for tackling forced labour, specifically in developing countries, also to avoid disengagement of companies. Questions in this regard:

- What is the impact of this legislation on third countries, specifically developing countries?
- Art. 26 (2): what kind of accompanying measures could this be? Could DG INTPA elaborate on this, for example in a presentation?
- And how will the impact of the regulation on third countries and the expected impact on efforts to tackle forced labour be monitored?
- Will the EU set up (more/other) supplementary policy for developing countries and victims of forced labour, in order to contribute to efforts to permanently eradicate forced labour and to be able to align with this legislation?

Poland's remarks on ***proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market COM/2022/453 final***

Poland, as a democratic country, supports respecting human rights everywhere in the world, including labour rights. Therefore we generally support the initiative to eliminate the forced labour. That is why we support works on the proposed regulation. Nevertheless, we have some concerns about the particular issues and measures we would like to articulate.

First of all, we would like to point out that the European Commission has not presented an **impact assessment** for the proposed regulation. Therefore, it is hard to estimate enforcement costs for public authorities and compliance costs for economic operators. In our opinion, these costs might be significant.

1. **Lack of Impact Assessment**

It remains problematic that the EC has not entirely estimated the costs and benefits of implementing the regulation. The EC only estimates the costs based on similar regulations from the past. In particular, the costs that will be necessary to be incurred by entrepreneurs, in case of the need to change suppliers, were not estimated at all, if it turns out that their current suppliers use forced labour. There is also no reference to the issue of security of supply in any way in the document. The potential lack of certain types of products on the EU market was not analysed if it turns out that the given types of products are mostly produced using forced labour.

The proposal for the regulation will impact commerce by creating an export prohibition on products made with forced labour and a prohibition on products proven to have been made with forced labour from entering the EU market. The influence of this legislation on individual sectors and industries will be significant. We believe that the work on this regulation should be slightly postponed until the EC will provide at least an estimated impact assessment of this regulation and provide information about the sectors that are potentially at the highest risk of disruption in the supply chains.

Staff working document SWD (2022) 439 final published on 16 of December 2022 doesn't replace a proper Impact Assessment and doesn't provide all the necessary information. For example, it states that (p. 35):
"*…However, it is important to clarify that the proposed regulation does not impose due diligence obligations on companies, nor does it extend the requirements included in the proposed CSDDD to companies that are not covered by it. Thus, the proposed regulation* ***does not introduce any specific requirements for economic operators to carry out due diligence on forced labour or any other human rights aspects.*** *The economic operators are free to choose how they monitor the risk of forced labour in their supply chain.*
Companies that fall within the scope of the proposed CSDDD will need to address the risks of forced labour in their supply chain in line with the obligations from the future due diligence legislation, which may be sufficient to ensure the absence of forced labour from their supply chain. For these companies, no additional compliance costs are envisaged under the current proposal on prohibiting products made with forced labour.
Companies outside the scope of the proposed CSDDD mentioned above, may want to use at least parts of due diligence processes established by international organisations or by EU or national legislation to help them comply with their obligations under this proposal. These companies will incur costs related to the due diligence process chosen, but they should be significantly less than those necessary to comply with the CSDDD proposal. Not only does the

current proposal cover only one aspect of the human rights spectrum, unlike the proposed CSDDD which covers both human rights and environmental aspects, but also not all obligations for due diligence included in the proposal for the directive be necessary to address forced labour risks. Moreover, companies in the supply chains of companies within the scope of the due diligence legislation are likely to be requested by the latter to adopt due diligence measures in order to eliminate or mitigate forced labour risks and impacts in their supply chain."

This statement seems to be untrue as all entrepreneurs in the supply chain will have to adapt to requirements of the proposed regulation, otherwise, they will risk the loss of their products imported/exported to/from the EU being stopped by customs, withdrawn from the market, or even destroyed. The statement above is also contradictory with figures evoked in SWD itself (p. 47), which indicates: *Overall cost for the first year of operation based on the recurrent cost estimated for the CSDDD proposal: EUR 4 434 364 000 (for Small and Medium – sized entrepreneurs in mining and quarrying, manufacturing and wholesale trade).*

Moreover, the EC didn't present in SWD the impact of the regulation on possible supply chain disruption, particularly for sectors/branches strongly dependent on the supply of components/products/raw materials from third countries, e.g. electronics, solar systems, textile, footwear, cocoa, coffee, and rubber industries etc. For such a sensitive sectors cost of compliance may be much higher than for other industries. Therefore, it would be recommended that the EC develops such estimations.

2. Compliance with WTO rules

Non-discrimination is the cornerstone principle of the WTO, established under the General Agreement on Tariffs and Trade (GATT). Article III:4 prohibits discriminatory non-tariff barriers, i.e. any policy measure other than tariffs that can impact trade flows, such as quotas, import licensing systems, sanitary regulations, prohibitions, etc. Formal linkages between trade and human rights, such as labour and social standards, have not yet been established in the WTO agreements and in dispute settlement reports. However, Article XX of the GATT offers ten 'general exceptions' to the MFN treatment, according to which WTO members may be exempted from GATT rules. Linked to the issue of forced labour, *WTO Members may adopt measures necessary 'to protect public morals' (Article XX (a)), 'to protect human, animal or plant life or health' (Article XX (b))', or related to 'products of prison labour' (Article XX (e))*. Therefore, Article XX of GATT can be invoked to justify the unequal treatment of domestic products and competing imports.

To be valid, an import ban should also be compliant with the "chapeau" of Article XX, which is rigorously scrutinized by the WTO Appellate Body. The **ban should not constitute arbitrary and unjustifiable discrimination or a disguised restriction on international trade**. This assessment mainly depends on the measure's structure, but in broad terms, it means that a **ban could be considered non-WTO-compliant if this prohibition was not applied equally to all countries with similar forced labour issues**, or if it was applied without respect to due process and transparency requirements. It is believed that such a measure has a good chance of success if it is not targeted (for example in some countries).

Having said that, we have concerns that the measure resulting from decisions of competent authorities defined in Art. 6 par. 2 (*Notwithstanding paragraph 1, competent authorities may establish that Article 3 has been violated on the basis of any other facts available where it was not possible to gather information and evidence pursuant to Article 5(3) or (6))* **could be treated as discriminatory according to the WTO rules**.

In other words: if third-country authorities (e.g. country X) does not allow EU competent authorities to undertake control on their territory to check whether forced labour was used for products imported to the EU, in theory the EU competent authorities can invoke Art. 6 par. 2. In such a case, they could ban products from country X on the basis of a lack of cooperation. However, such a measure would be discriminatory to others. Therefore, to avoid discrimination according to WTO criteria such a measure would have to be imposed by default on every country that didn't allow EU competent authorities to undertake control on its territory, presuming that products from this country are made using forced labour. This aspect should be elaborated further during the work on the proposal.

Apart from doubts stemming from WTO rules compliance, we have concerns about the feasibility of the whole process, mainly regarding the execution of the prohibition of products made with forced labour. In particular, for products from third countries. The competent authorities may carry out all necessary checks and inspections under the condition that the economic operators concerned give their consent and that the government of the Member State or third country in which the inspections are to take place has been officially notified and does not object. It might create a risk that the competent authorities won't be able to collect suitable evidence.

3. **Market surveillance**

The proposal for a regulation aims at eradicating forced labour but the scope of this regulation might significantly interfere with competent market surveillance authorities and create expenses related to the implementation of the proposal. It might create new responsibilities for competent market surveillance authorities who have limited resources already.

We would like to underline that the competent authorities responsible for ensuring the safety of products are qualified to check compliance of products with the requirements set out in the applicable Union harmonisation legislation and to ensure the protection of the public interest covered by that legislation, in particular safety of the consumers. The investigation proposed in the proposal is of a different kind and includes the control of how economic operators are concerned and conduct economic activity. This needs different competencies and resources. It might cause the difficulties in execution of the proposed provisions.

Moreover, the proposal for the regulation is not coherent with other regulations for marketing surveillance, in particular with regulation (*EU) 2019/1020 on market surveillance and compliance of products and with regulation (EC) No 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products*. The proposal includes measures that are non-cohesive to above mentioned regulations concerning market surveillance. Working on the proposal should eliminate or minimize those inconsistencies (more on this subject in the section 9 "More detailed comments").

4. **Risk of disruption in the supply chain of sensitive products**.

The proposal creates a risk of withdrawal from the European Union market products that are used in specific areas, such as medical devices, medicines, vaccinations, and the inability to replace them quickly with other products (a risk to health and life). In the process of making decisions, authorities should have the possibility to make a risk-based analysis. This aspect should also be taken into account during further work.

5. Customs issues

The forced labour regulation is another EU act imposing controls on customs authorities on products entering or leaving the EU market (currently, more than 350 EU acts deal with non-fiscal tasks and non-fiscal controls). It should be noted that currently the data made available to customs authorities in customs declarations do not contain the information referred to in the proposed regulations, lacking information on the manufacturer/producer and suppliers of the products, as well as detailed information on the products.

It should also be pointed out that the scope of the regulation is to apply to imports and exports of all products and goods (excluding other procedures: transit, inward processing or warehousing). Therefore the commodity scope and application of the regulation will apply to a very large group of goods imported and exported to the EU (billions of various products are imported from third countries to the EU every month).

As a result, inspections for the occurrence of forced labour may affect the fluidity of the supply chain and flow of goods. It seems reasonable that the entry into force of the legislation should be consistent with the linking of national customs systems with ICSMS and TAXUD, as the proposed transitional manual system may be used differently by every Member State. It may affect fluidity in the flow of goods, as well as uniformity in the application of the regulation. The connections of the aforementioned systems should be highly automated and easy to use, to reduce additional burdens on the part of customs.

According to the information contained in the proposal, customs authorities should be able to identify products entering or leaving the EU market, which violate the regulation and which should therefore be detained at the EU's external borders. Therefore, economic operators should provide them with information enabling them to match the competent authorities' decisions with the product in question. This should include information on the manufacturer or producer and suppliers of the product, as well as any other information about the product itself. The EC to this end is to be empowered to adopt delegated acts specifying the products for which such information should be provided, using, among other tools, the database established under the proposed regulation, as well as information and decisions of competent authorities encoded in the information system.

However, automating inspections and setting up risk profiles will be very difficult, as the data referred to in the decisions and delegated acts are not provided in the customs declaration. Such controls, especially during the transition period, will require great, additional work on the part of customs, additional human resources, specialized training and guidance on the subject.

For products specified in delegated acts, on the basis of the database indicated in Article 11 and the decisions of the specialized national competent authorities, exporters or importers will be asked to provide additional information before releasing them for export. However, this will only be possible if such a consignment is selected for inspection based on risk analysis. Therefore, as already indicated above, during the transition period, when the systems will not be fully connected (the national customs system with ICSMS and TAXUD), indicating entity for control and assessing the risk will require a great deal of work on the part of customs. In particular, customs authorities are expected to detain not only products imported by the same, importer/exporter which is subject to the decision, but also products of the same kind imported or exported by other operators.

6. Coherence with other legislation on forced labour, human trafficking, etc.

According to the explanatory memorandum, this proposal will complement Directive *2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*. It means that we already have a system of solutions for enforcing the prohibition of forced labour, which requires the involvement of relevant Member States authorities, including law enforcement. It creates doubts about the proportionality of the proposed measurements which could create a parallel system of control of the economic operators.

It belongs to the courts to determine whether the crime of human trafficking, including forced labour, has been committed. Practice shows that law enforcement authorities and courts, because this crime is international (and to fulfil the elements of a criminal act it is necessary to show that all the elements of the definition of human trafficking have been in place), have difficulty qualifying the behaviour of perpetrators, acting in a chain of specific activities and different legal systems. It is enough, for example, that the person recruiting the victim was not aware of the purpose for which he was recruiting the person for labour. Therefore, combining the matter covered by the administrative mode (market surveillance decisions) with the criminal mode (human trafficking, including forced labour) raises some concerns about their enforceability.

7. Coherence with other EU acts

The proposal of the regulation has to be in line with other legislation regulating forced labour, due diligence of enterprises, etc., particularly with a proposal for a *Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM/2022/71 final.* Works on this file took place during the French and Czech Presidencies (general approach adopted in December 2022).

The draft CSDD sets horizontal due diligence obligations to identify potential negative human rights impacts (including in the context of forced labour) and environmental impacts of corporate activities caused by the direct operational activities of the company, also its subsidiaries, subcontractors, and entities within its value chains. The goal of CSDD is to prevent, mitigate, and bear responsibility, by international standards on human rights and labour rights and environmental conventions.

The following issues have been discussed/analyzed during the works on the CSDD:
1) point 3 of the Explanatory Memorandum "risk-based enforcement" and Article 4 of the draft regulation (use of a risk-based approach).
Two concepts were considered in the work on the CSDD: the concept of a risk-based approach (based on the provisions of the oldest instrument on responsible business conduct: *OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights*) and the concept of established business relationships.
2) the concept of the value chain that appears in the text of the draft regulation (however not defined – see comments on Article 5 par. 3 letter (a).
It should be noted that during the negotiations, the introduction of the concept of the *supply chain* instead of the concept of the *value chain* was also considered. This is an issue that has a major impact on the scope of the proposed solutions, subsequent implementation issues, as well as the implementation of due diligence processes by companies. In other words: using one term or another may broaden or narrow the scope of regulation. In addition, taking into account some international horizontal standards or, for example, the French or German law on due diligence, it seems that all proposed or existing solutions apply to the activities of an enterprise in the sense of the *supply chain*.

In the end – compromised text of the CSDD proposal (adopted by the Council in general approach) introduced restrictions on the supply chain. **It introduced a new concept of a "*chain of activities*"** that will include only part of the traditional supply chain - by completely omitting the company's products "use phase" or the provision of services. Therefore we have to be aware and follow in which direction the parallel works on the CSDD proposal are going.

8. **Definition of forced labour**:

It should be noted that the definition of forced or compulsory labour under *Article 2 of the Forced Labor Convention of 1930 (No. 29) of the International Labor Organization* was adopted almost 100 years ago, and its scope should be described as broad. A consequence of the broad understanding of forced labour - the broad shaping of the particular type of repercussions - can occur when forced labour is refused by a person.

The basic element that determines the very nature of labour - with such a definition - is voluntariness, which means that any work performed voluntarily cannot be considered forced or compulsory labour. Thus, there is a risk that an assessment of the existence of forced labour will be made not only based on the proposed due diligence assessment but also in the context of the definition of forced labour itself, about the scope of which there are numerous doubts (due to the broad scope of the definition).

We understand that the reference to the definition in the international convention is much more universal, so it has to stay in the text as it is. However, in our view, it should be supplemented. The EC at a previous WP Compet meeting spoke of ILO indicators to accompany the definition to recognize symptoms of forced labour such as: abuse of dependency, fraud, restriction of freedom of movement, isolation, physical and sexual violence, intimidation and threats, confiscation of identity documents, non-payment of wages, debt bondage, poor and unsafe working conditions, overtime, etc.

Thus, one can imagine a situation when a person voluntarily decides to take a job, after which it turns out that conditions on the spot turn out to be completely different from what was previously offered**. It is therefore worth considering whether such indicators should not be listed directly, for example, in an annex to the regulation, to strengthen their legal force**. In our view guidance document instead of an annex (proposed by the EC during the WP Compet meeting on 28/11/2022) is not the right solution. The annex being an integral part of the regulation that strengthens its legislative force, unlike guidance (which is not legally binding).

9. **More detailed comments**

Article 1 par. 2 - the possibility of recalling products from end-users was excluded from the scope of application of the regulation, while the authorities' actions aim to be a sanction in the form of recalling the product from the market, therefore - the possibility of using measures such as notifying end-users/consumers and recalling products, also to this group. The purpose of the regulation is to eliminate or limit forced labour. Thus, the situation should be taken into account when all or most of the goods reach the end-users before the economic operator is obliged to stop placing them on the market or making them available on the market. The absence of such measures will result in the objective of severity and exerting pressure on the economic operator being undermined and the aim to stop the use of forced labour will not be achieved. We propose that this provision should be repealed and the regulation should be supplemented with the obligation to recall products from end users/consumers.

Art. 2 – the glossary, when defining terms, refers to the definitions contained in many legal acts, which may significantly hinder the application/understanding of the regulation (both by business entities and authorities). Moreover, in the case of a revision of the acts referred to in the draft, it may be necessary to change the terms defined; therefore, we propose to consider quoting them directly.

Article 5 par. 1 - according to the provision, the authorities decide to initiate an investigation into the products and economic operators concerned. However, according to Art. 5 par. 2 letter (b), economic operators are informed about the products under investigation, but it is not clear whether all the entities subject to the investigation should also be indicated or whether it should be considered that there will be several separate proceedings (investigations) - if there are several entities in the distribution chain entities.

Article 5 par. 3 letter (a) - the concept of the value chain was used, which was not defined in the glossary in Art. 2 - its definition should be considered (see comments on CSDD in section 7).

Article 5 par. 5 - it has not been specified whether the lack of consent to extend the deadline referred to in par. 4 may be appealed against and in what manner.

Article 5 par. 6 - it is not specified under which provisions checks and inspections are to be carried out, including investigations in third countries - whether they are carried out before or during the investigation referred to in Art. 5. Will the checks/inspections in third countries be carried out under the same rules as those carried out in the single market or under different rules? What procedure should be applied for the consent of a third country and an entity from a third country? At the same time, it is not clear on what basis the authority of one country will be competent to act in a third country because in our opinion consent alone does not constitute grounds for taking legally binding actions against entities from third countries.

Article 6 - the concept of a reasonable period was used. How should this concept be understood? They should be defined/specified.

Article 6 par. 4 letter (a) – the order prohibits the placing on the market or making it available, but the possibility for the economic operator to use the product is not provided. Wouldn't it be more effective to adopt such a ban in the form of an act/decision at the EU level (e.g. by the EC after obtaining an opinion from the Network referred to in Art. 24), instead of issuing individual decisions to individual entities by the competent authorities at the national level? Such an act could be directly applicable in all the Member States.

Article 8 par. 1 and 3 - specify the deadlines for appealing against the decision of the authority, which may be difficult to implement and interfere too much with the functioning of the member states. Therefore we postulate that the deadlines for lodging appeals against decisions should be regulated at the national level (e.g. in Poland we have the code of administrative procedure regulating these issues).

Article 9 par. 1 and Art. 15 - we question the legitimacy of introducing all decisions (including the opening of an investigation). It seems that the purpose of informing is to avoid duplication of activities, so for the authorities, it is the decision that matters, and not only the "concern of infringement" (suspicion?). At the same time since Art. 9 introduces the obligation to immediately enter information about the decision into the information and communication system to which customs authorities are also to have access, what is the purpose of introducing additional regulation with different deadlines for these authorities (customs officers)? In this wording, it is necessary to inform about the same thing twice (because the customs authorities will already have information about the decision from the IT system).

Article 18 par. 1 letter (a) – this provision seems to contradict the idea of the regulation. Once the customs authorities have been informed of a decision prohibiting the placing on the market or making available of a product, or ordering the withdrawal of a product already placed on the market, there is no justification for requesting suspension of release for free circulation, as it has already been established that the product in question has been manufactured using forced labour, and the authority has not withdrawn its decision under Art. 6 par. 6. With this wording, the customs authorities would decide whether the product should not be released for free circulation or exported, destroyed or suspended until the economic operator submits appropriate explanations. It should be considered whether, in the light of the goal the legislator wants to achieve, the institution of a tacit admission to trading is admissible.

Art. 19 - since the IT system contains information that the product is manufactured using forced labour, and the decision that would determine this has not been repealed, the customs authorities have the relevant information. For this reason, they should ex officio assign and place on the documentation the clause referred to in Art. 19 par. 2. There is therefore no justification for involving the competent authorities in this procedure for the sole purpose of submitting an appropriate application.

REPÚBLICA PORTUGUESA

Direção - Geral das Atividades Económicas

COMMENTS AND QUESTIONS

REQUESTED BY THE COUNCIL SECRETARIAT PRIOR TO THE GT COMPETITIVENESS AND GROWTH (SINGLE MARKET)

JANUARY 16, 2023

PROPOSAL FOR A REGULATION REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PROHIBITING PRODUCTS MADE WITH FORCED LABOUR ON THE UNION MARKET

GENERAL COMMENTS AND QUESTIONS:

1. This legislative proposal seems to us to be a **far-reaching proposal,** as it covers products produced internally in EU Member States, as well as imported/exported products. It will be difficult to cover so many parts of trade, namely the challenges of **traceability in supply chains,** inside and outside the EU.

2. The measures proposed in this regulation run the risk of severely affecting the SMEs included in the supply chains, given that their exclusion is not foreseen. While we believe that SMEs make up most companies in the EU and that their full inclusion is essential for the new instrument to have a significant impact, there are **some concerns about the emergence of disproportionate costs and not just 'compliance costs'** as mentioned in the Impact Assessment.

3. **We agree** with the European Commission's approach of following a risk-based approach when it comes to law enforcement.

4. The 'Forced Labour' Regulation is part of the same human rights package as the proposal for a new Directive on 'Corporate Sustainability Due Diligence and Amendment of Directive (EU) 2019/1937' published on 23 February 2022. We recognize the danger of **overlap or (dis)complementarity of the two proposals**. Firstly, the proposed Directive 'Due Diligence' includes issues relating to forced labour, secondly SMEs are excluded from the scope of the Proposed Directive but not in the Proposed Regulation 'Forced Labour. **We request due care for the link between these two proposals.**

5. Bear in mind that Member States may have legislation protection against forced labour, already, and regarding this new proposal Regulation, **it is not clear how they will complement or replace each other.**

REPÚBLICA PORTUGUESA

Direção - Geral das Atividades Económicas

COMMENTS AND QUESTIONS ON SPECIFICITY (PRELIMINARY):

1. **Article 2 ' Definitions'** n) *'substantiated concern' means a well-founded reason, based on objective and verifiable information, for the competent authorities to suspect that products were likely made with forced labour;*: **We consider the clarification of this concept and/or it could be referred to another provision in this regulation to clarify it.**

2. **Article 5.º 3b and 5 'Investigations' and Recital (29)** - *(b) 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.* **It is necessary to clarify this scale relative to the dimension and economic resources. Will COM issue guidance in this regard? Is it up to each Member State to apply it? How is this differentiation processed?**

3. **Article *6 º* Decisions by the competent authorities and Recital (30)** – *After investigation, the competent authorities may: i) prohibit the placing or making available on the Union market of the products in question, as well as the exportation of them; ii) oblige it to withdraw from the Union market the products concerned that have already been placed or made available on the market. If economic operators do not comply with paragraph 4 of this Article, they may be subject to a decision ordering them to iii) eliminate the respective products.* **We consider that these actions can be extremely expensive for companies, especially for micro and SME. In addition to financial burdens, companies can find it very difficult to track products. Furthermore, the disposal of certain products (according to environmental and safety measures) may not be feasible. Even when withdrawing products from the market, it is also necessary to anticipate possible temporary storage, which will possibly entail more charges.**

4. *Article 23º '* **Guidelines':** *No later than 18 months after the entry into force of this Regulation, the Commission shall issue guidelines which shall include* (…). **We believe that 18 months should be reduced to 6-12 months, because prior work is expected to be applied in the Member States in the light of these guidelines.**