

Proposal for a Regulation on prohibiting products made with forced labour on the EU market – Final draft text

September 25th 2024

On September 14th 2022, the European Commission presented its [proposal for a EU Regulation on prohibiting products made with forced labour on the EU market](#) (see [ICI's summary](#)). After provisional agreement was found on March 5th 2024, between the EU Council, the EU Commission and the EU Parliament, the final [text has been adopted](#) by the European Parliament on April 23rd 2024. It has now to be approved by the EU Council (expected in fall 2024) to be enforced.

The below offers ICI members a summary overview of the main elements of the final draft text, compared to the initial proposal from the European Commission.

Main elements of the final draft text, compared to the initial proposal

	Initial proposed text (European Commission, September 14 th 2022)	Compromise text (approved in Council, March 13 th 2024)
Instrument	<ul style="list-style-type: none"> – Regulation, to ensure uniform enforcement across the EU and avoid unfair trading conditions. <p><i>(Regulations have general application, meaning that they become entirely and immediately enforceable as law in all EU Member States simultaneously. In contrary, Directives, such as the Corporate Sustainability Due Diligence Directive proposal introduced in February 2022, are binding as to the result to be achieved but leave the choice of form and methods to the Member States)</i></p>	<i>Similar</i>
Objective	<ul style="list-style-type: none"> – Effectively prohibit the placing, making available on the EU market and the export from the EU of any products made with forced labour, including forced child labour. 	<ul style="list-style-type: none"> – Amends: prohibiting economic operators from placing and making available on the Union market or exporting from the Union market products made with forced labour with a view to improving the functioning of the internal market, while contributing to the fight against forced labour. – Specifies: forced labour includes forced child labour. – Specifies: this Regulation does not create additional due diligence obligations for companies besides those already provided by Union or national law.
Scope	<ul style="list-style-type: none"> – Products made in the EU and imported products, of any provenance (excl. services) – Concerns all economic operators (incl. SMEs) yet following a risk-based 	<ul style="list-style-type: none"> – Adds: products offered for sale online or through other means of distance sales.

	<p>approach (see section on proportionality).</p>	
<p>Enforcement</p>	<ul style="list-style-type: none"> - Implementation lies with competent authorities designated by Member States. - Customs authorities primarily act based on the decisions issued by the Member States' competent authorities, to identify and stop products made with forced labour. - Risk-based enforcement framework: competent authorities are advised to focus their efforts where the risks of forced labour are most prevalent, and where the impact is likely to be largest (estimated to be primarily on larger economic operators at early stages of the EU value chain). 	<ul style="list-style-type: none"> - Amends: Implementation lies with competent authorities designated by Member States and the EU Commission for products outside the EU. - Risk-based enforcement framework: Specifies that the focus, is on a) scale and severity of the suspected forced labour, incl. whether possibly state imposed; b) quantity or volume of products placed/made available; c) share of the part suspected to have been made with forced labour in the final product.
<p>Investigation</p>	<ul style="list-style-type: none"> - Competent authorities initiate an investigation where they establish that there is a substantiated concern of violation of the prohibition. - When an investigation is initiated, competent authorities should inform the economic operator subject to the investigation within 3 working days. - Before initiating an investigation, competent authorities should request from the operator information on the actions taken to mitigate, prevent and bring to an end the risks of forced labour. - Where requested to do so, economic operators under investigation shall submit any information that is relevant and necessary for the investigation, incl. information identifying the products. - Economic operators shall respond to the request of the competent authority within 15 working days from the day they receive such request. 	<ul style="list-style-type: none"> - Specifies: before initiating an investigation, lead competent authorities shall request from the company under assessment and, where relevant, other product suppliers, information on their relevant actions taken to identify, prevent, mitigate, bring to an end or remediate risks of forced labour in their operations and supply chains with respect to the products under assessment. - Adds: companies can be heard at all stages of the investigation and that lead competent authorities may request information on those actions from other relevant stakeholders, incl. persons or associations having submitted relevant, factual, and verifiable information or related to the products and geographical areas under assessment, as well as from the European External Action Service and Union Delegations in relevant third countries. Lead competent authorities shall prioritize the economic operator under investigation involved in the steps of the supply chain as close as possible to where the forced labour likely occurs, taking into account scale, severity and quantity. - Specifies: where the suspected forced labour is taking place outside of the EU, the Commission shall act as the lead competent authority. - Adds: in exceptional situations, the lead competent authority shall conduct field inspections . - Specifies: Companies to respond to the request within 30-60 days working days.

<p>Proportionality</p>	<ul style="list-style-type: none"> - In their assessment of the likelihood of the violation of the prohibition, competent authorities should focus on where the risk of forced labour is likely to occur and take into account the size and economic resources of the economic operator, the quantity of the products concerned as well as the scale of the suspected forced labour. 	<ul style="list-style-type: none"> - Specifies: when initiating the preliminary phase of investigation, lead competent authorities should focus on the companies/product suppliers close to forced labour risks and with the highest leverage to prevent, mitigate and bring to an end the use of forced labour.
<p>Burden of proof</p>	<ul style="list-style-type: none"> - 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. - Economic operators should have the opportunity to provide information in their defence to the competent authorities through investigation. 	<ul style="list-style-type: none"> - <i>Similar</i>
<p>Decisions</p>	<ul style="list-style-type: none"> - Where competent authorities establish a violation, they shall without delay prohibit to place or make the products concerned available to the EU market, to withdraw the relevant products from the EU market that have already been placed or to dispose of the products. <ul style="list-style-type: none"> ▪ In that decision, competent authorities should state the findings and related information of the investigation and set a reasonable time within which the economic operator should comply with the decision, as well as information allowing for the identification of the product to which the decision applies. ▪ Economic operators should have the possibility to request a review of the decision after having provided new information showing that it cannot be concluded that the relevant products have been made with forced labour. - Where competent authorities cannot establish a violation, their investigation shall be closed. 	<ul style="list-style-type: none"> - Amends that lead competent authorities shall endeavour to adopt their decisions within 9 months from the date they initiate the investigation. - Adds [in recitals]: nevertheless, particular attention should be paid to preventing disruptions of supply chains of strategic/critical importance. This means that when assessing the strategic/critical importance of a product for the Union, lead competent authorities could decide to withhold the product for a defined period of time which shall be no longer than the time necessary to eliminate forced labour from the product concerned at the cost of the company (should take into account the list of sectors established).
<p>Penalties</p>	<ul style="list-style-type: none"> - Member States shall lay down the rules on penalties applicable to non-compliances. They shall be effective, proportionate and dissuasive. 	<ul style="list-style-type: none"> - Clarifies: Member States shall confer on their competent authorities the power to impose and implement effective, proportionate and dissuasive penalties in cases where the company has failed to comply with a decision prohibiting the placing on the market of products. - Adds: the rules on penalties for non-compliance with a decision should be

		<p>established by Member States, with due regard to :</p> <ul style="list-style-type: none"> ▪ the gravity and duration of the infringement ▪ previous infringements ▪ the degree of cooperation with lead competent authorities ▪ any other mitigating or aggravating factor
<p>Guidelines</p>	<ul style="list-style-type: none"> - The European Commission shall issue guidelines including information on: <ul style="list-style-type: none"> ▪ Due diligence in relation to forced labour, taking into account the size and the economic resources of the operators, 18 months after the date of entry into force; ▪ Risk indicators of forced labour; ▪ List of publicly available resources for the implementation of the Regulation. - The Commission shall establish a database of forced labour risks and geographic areas, calling upon external expertise. 	<ul style="list-style-type: none"> - Adds: the Commission shall develop measures to support the efforts of small and micro enterprises, and provide for a designated contact point. - Adds: the due diligence guidelines on forced labour will also include forced child labour, and take into account national and EU legislation, as well as different types of suppliers along the value chain and different sector. It will also include guidance on best practices for bringing to an end and remediating different types of forced labour. - Adds: competent authorities may also organize trainings for companies on forced labour risk indicators and on how to engage in dialogue with them through the investigation process. - Adds: the Commission shall set up and regularly update a Forced Labour Single Portal, which shall include: the list of contacts of competent authorities, the guidelines, the database, publicly available information sources; any decision to ban a product; results of reviews. - Clarifies: the database of forced labour risk areas or products shall prioritise the identification of widespread and severe forced labour risks (based on independent and verifiable information from international organisations). - Adds: The Commission should issue guidance for Member States on the method for calculating financial penalties and the thresholds applicable
<p>Administrative & international cooperation</p>	<ul style="list-style-type: none"> - Efficient cooperation among the competent authorities of the Member States shall be ensured by the European Commission, through facilitating and coordinating the exchange and collection of information and best practices. This is to ensure consistency in the actions and decisions taken. - The EU Commission may cooperate, engage and exchange information with, among others, authorities of third 	<ul style="list-style-type: none"> - Adds: The Commission shall, as appropriate, cooperate and exchange information with authorities of third countries, international organisations, CSOs, trade unions, business organisations and other relevant stakeholders. - Specifies: International cooperation with authorities of third countries shall take place in a structured way in the context of existing dialogues (e.g human rights and political dialogue, trade agreements or the Generalised

	countries, international organisations and CSOs or business organisations.	Scheme of Preference, EU development cooperation, etc). – Specifies: the Commission shall coordinate the work of the Network; to be chaired by a representative from the Commission.
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The final draft text also specifies that an evaluation of the implementation and enforcement of the Regulation should be carried out by the European Commission 2 years after the start of the application of the Regulation, and every 5 years thereafter. It shall mainly assess:

- The effectiveness of the mechanism in place
- The cooperation between competent authorities, the Network, and other relevant authorities
- The impact on businesses, in particular on SMEs
- The cost of compliance
- The overall cost-benefit and effectiveness of the prohibition
- The impact of the Regulation on victims of forced labour, with particular regard to women and children. This assessment shall be based on regular monitoring of information from international organisations and relevant stakeholders
- The need for specific mechanisms to address and remediate forced labour.

Next steps

In order to be officially adopted, this final draft text needs to be adopted by the EU Council, which is expected in fall 2024. It will then be published in the EU's Official Journal, which marks its enforcement, and enter into force 36 months after.