

Our position

Proposed amendments to the Forced Labour Regulation



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.7 trillion in 2022, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

The European Commission proposal to ban products made with forced labour on the Union market comes at a crucial time as companies are integrating due diligence strategies on human and labour rights into their business models. To effectively and efficiently achieve its goals, the Commission should amend the proposal to ensure legislative coherence with due diligence legislation and circular economy rules, harmonisation across Member States, recognition of industry schemes, clarity of its database provisions and a phased-in entry into force, along with other key provisions.

Introduction

The European Commission's proposal for a Regulation on prohibiting products made with forced labour on the Union market aims to prohibit the placing and making available on the EU market and the export from the EU of products made with forced labour. American companies are committed to ensuring that forced labour and human trafficking do not occur in their supply chains by working at the highest level of ethical, environmental and employee-related standards both within their own businesses and their supply chains. Their employees, partners and suppliers are already working together to eradicate forced labour and human trafficking through company human right principles and policies to address the risks of forced labour fees, contracts and resignation terms, worker rights and control systems – such as monitoring recruitment or labour agents – and interviewing foreign and migrant workers.

The following are recommended amendments for Members of the European Parliament to consider, ahead of the **31 May 2023** deadline for tabling amendments in the Internal Market (IMCO) and International Trade (INTA) committees.

European Commission proposalProposed amendment

End Users

Art. 1.2, End users	
This Regulation shall not cover the withdrawal of products which have reached the end-users in the Union market.	This Regulation shall not cover the withdrawal of products which have either reached the end-users in the Union market or been transformed or integrated into another product.
<p><i>Justification:</i></p> <p>Only excluding products that have reached end-users from withdrawal could lead to disproportionate and overly burdensome implications for companies who may discover that a single component in their product has been made with the use of forced labour, e.g. the if paint coating used on cars has been made with use of forced labour the entire stock of produced cars should not be withdrawn.</p>	

Definitions

Art. 2(b), Definitions (Forced Labour)	
‘Forced labour’ means forced or compulsory labour as defined in Art. 2 of the Convention on Forced Labour, 1930 (No. 29) of the International Labour Organization, including forced child labour;	‘Violation of the prohibition of forced labour; this includes all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily, for example as a result of debt bondage or trafficking in human beings; excluded from forced labour are any work or services that comply with Art. 2 (2) of International Labour Organization Forced Labour Convention, 1930 (No. 29) or with Art. 8 (3) (b) and (c) of the International Covenant on Civil and Political Rights’
<p><i>Justification:</i></p> <p>The definition of 'forced labour' should be the same one used in the Corporate Sustainability Due Diligence Directive (CS3D) (Annex, Part I, 12.) to increase legal certainty and legislative coherence. The proposed definition is copied and pasted from the CS3D Annex, Part I, section 12.</p>	
Art. 2(n), Definitions (substantiated concern)	
(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;	(n) ‘substantiated concern’ means a well-founded reason, based on objective, verifiable and well-documented information , for the competent authorities to suspect that products were likely made with forced labour;
<p><i>Justification:</i></p> <p>Any complaints need to be supported by well-documented proof in order to avoid vague claims to help national authorities with their verification tasks.</p>	

Preliminary phase of investigations

Art. 4.2, Preliminary phase of investigations	
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 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.	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 specific item or component suspected of being made with forced labour and on the segment of the values chain as close as possible to where the risk of forced labour is likely to occur. and Authorities shall 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.
<p><i>Justification:</i></p> <p>Investigations should be narrowly scoped to the specific item or component suspected of being made with forced labour and focus on the discrete parts of the supply chain that may be non-compliant. This will ensure that the force of the regulation is targeted at those entities and actors responsible for forced labour and cause minimal disruption to compliant portions of a product's supply chain.</p>	
Art. 4.3(a), Preliminary phase of investigations	
<p>Before initiating an investigation in accordance with Art. 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:</p> <p>(a) applicable Union legislation or Member States legislation setting out due diligence and transparency requirements with respect to forced labour;</p>	<p>Before initiating an investigation in accordance with Art. 5(1), and provided that the assessment undertaken in accordance with paragraphs 1 and 2 has identified facts and evidence sufficient to support the plausibility of there being a substantiated concern, 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:</p>

	(a) applicable Union legislation or Member States legislation setting out due diligence (including the Corporate Sustainability Due Diligence Directive) and transparency requirements with respect to forced labour;
<p><i>Justification:</i></p> <p>Compliance with the due diligence requirements set out in CS3D should mean automatic compliance with the EU Forced Labour Regulation.</p> <p>Even preliminary investigations require economic operators to produce information and documentation against relatively short timescales under threat of sanction/more detailed investigation. There should, therefore, be a threshold level of suspicion/evidence that must be reached before a preliminary investigation is triggered (bearing in mind that the threshold of “substantiated concern” is not relevant at this stage based on the current draft of the Proposal). “Plausibility” is a relatively and appropriately low threshold. It is the threshold used elsewhere, for example in Art 8(1) of the draft replacement Product Liability Directive for triggering disclosure of evidence.</p>	
Art. 4.4, Preliminary phase of investigation	
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 shall respond to the request of the competent authority referred to in paragraph 3 within 15 30 working days from the day they received such request or make a justified request for an extension of that time limit. Reasons for such an extension could include the scope of the request, difficulty in obtaining information from relevant external stakeholders, among other reasons.
<p><i>Justification:</i></p> <p>Companies need time to investigate internally across departments and supply chains before responding to the competent authority’s request.</p>	
Art. 4.5, Preliminary phase of investigation	
Within 30 working days from the date of receipt of the information submitted by	Within 30 working days from the date of receipt of the information submitted by

<p>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.</p>	<p>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.</p> <p>(a) Allegations against economic operators suspected of violation of Article 3 should be duly substantiated, applicable to the company concerned at the time of the allegation, and based on credible sources.</p>
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Investigations

Art. 5.2(c), The reason for the initiation of the investigation	
(c) the reasons for the initiation of the investigation, unless it would jeopardise the outcome of the investigation	(c) the reasons for the initiation of the investigation, unless it would jeopardise the outcome of the investigation
<p><i>Justification:</i></p> <p>During the process, it should be ensured that competent authorities should, under any circumstances, provide companies with the reason for the initiation of an investigation.</p>	
Article 5.3, Investigations, scope of due diligence	
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:	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:
<p><i>Justification:</i></p> <p>Section 3 states that if a company is under investigation by the competent authority to determine if their goods are made with forced labour, the company would be required to disclose their producers and suppliers.</p>	
Art. 5.4, Investigation turnaround period	
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.	Economic operators shall submit the information within 15 30 working days from the request referred to in paragraph 3 or make a justified request for an extension of that time limit.

Justification:

‘Timeline related to companies’ response to a request for information during the main phase of investigation, should be extended to such reasonable timeframes that would allow companies with multiple supply chains, to comply with effectively, particularly when the information requested is of a complicated nature and compliance requires engagement with multiple partners. Furthermore, the current drafting allows economic operators to make requests but does not require competent authorities to respond to them or place any parameters around how they should do so.

Art. 5.7 [NEW], Uniform investigation guidelines

7. The European Commission shall issue guidelines in order to ensure a uniform investigation process across the territory of the Union.

Decisions of competent authorities, consistency with circular economy rules

Art. 6.4(a, b, c), Decisions of Competent Authorities	
<p>Where competent authorities establish that Article 3 has been violated, they shall without delay adopt a decision containing:</p> <ul style="list-style-type: none"> (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; (c) In well justified cases, competent authorities may order economic operators that have been subject to the investigation to dispose of the respective products in accordance with national law consistent with Union law. This decision has to be proportionate and in line with the Union's environmental objectives. 	<p>Where competent authorities establish that Article 3 has been violated by an economic operator, they shall without delay adopt a decision containing some or all of the following elements, as appropriate:</p> <ul style="list-style-type: none"> (a) a prohibition to place or make the products or product components concerned available on the Union market and to export them; and/or (b) an order for the economic operators that have been subject to the investigation to withdraw from the Union market the relevant products or product components that have already been placed or made available on the market; and/or (c) an order for the economic operators that have been subject to the investigation to recycle or otherwise dispose of the respective products or product components in accordance with national law and consistent with Union law and the Union's environmental and health objectives.
Art. 6.5(a, b, c), Decisions of Competent Authorities	
<p>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:</p> <ul style="list-style-type: none"> (a) that it is prohibited to place or make 	<p>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 as appropriate:</p>

<p>available the products concerned on the market;</p> <p>(b) that the products already placed or made available on the market are withdrawn from the Union market;</p> <p>(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.</p>	<p>(a) that it is prohibited to place or make available the products or product components concerned on the market; and/or</p> <p>(b) that the products or product components already placed or made available on the market are withdrawn from the Union market;</p> <p>(c) that any product or product components remaining with the economic operator concerned is are recycled or disposed of in accordance with national law and consistent with Union law and the Union's environmental and health objectives at the expense of the economic operator.</p>
Art. 6.6, Decisions of Competent Authorities	
<p>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.</p>	<p>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 put in place and are actively put in place and are actively pursuing appropriate actions to bring to an end in a timely manner the relevant forced labour risk with respect to eliminated forced labour from their operations or supply chain with respect to the products or product components concerned, the competent authorities shall withdraw their decision for the future and inform the economic operators.</p>
Article 6.7 [NEW], Decisions of Competent Authorities	
	<p>In determining the contents of a decision or action to be taken for the purposes of paragraphs 4 and 5 above, the competent authorities shall take due account of:</p>

	<p>(a) the absence of any safety concerns related to the relevant products/components;</p> <p>(b) the presence of mitigating circumstances related to the relevant economic operator's conduct; and</p> <p>(c) the costs and potential environmental impacts of withdrawal and/or disposal of the relevant products/components.</p>
Recital 27, Consistency with circular economy rules	
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.	Competent authorities that establish that economic operators violated the prohibition, should without delay prohibit the placing and making available of such products or product components on the Union market and their export from the Union. Competent authorities may and require the economic operators that have been investigated and found to have violated the prohibition to withdraw the relevant products or product components already made available from the Union market and have them donated, recycled, destroyed, rendered inoperable, or otherwise disposed of in accordance with national law and consistent with Union law, including Union legislation on waste management, and the Union's environmental and health objectives.
<p><i>Justification (for all of art. 6 and recital 27):</i> Consistency with circular economy rules.</p> <p>We propose that consideration be given to requiring that non-compliant products be recycled instead of disposed. According to the proposal, if the authorities establish that a product or one of its components was made by forced labour, the relevant products will need to be destroyed, rendered inoperable, or otherwise disposed of and the exclusion of re-export in the case of non-EU goods. Since the European Commission's proposal for Eco-design for Sustainable Products Regulation (2022/0095) aims to prohibit the destruction of unsold consumer products, we consider that competent authorities should ensure that the affected company can recycle such products fully in line with national law (in particular in France and Spain) consistent with EU law (e.g., WEEE directive).</p>	

Recital 28, Role of competent authorities	
<p>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.</p>	<p>In that decision, competent authorities should state the findings of the investigation, and the information underpinning the findings, which should be duly substantiated, applicable to the company concerned at the time of the allegation, and based on credible sources.</p> <p>and Competent authorities should also 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.</p>
<p><i>Justification:</i></p> <p>The proposed regulation does not specify how competent authorities will determine whether a concern is substantiated and whether a source is credible. It should be further clarified how competent authorities will prove that allegations are substantiated and applicable to the company concerned at the time of the allegation, that sources are credible, and that the supplier in question is being used in the product's supply chain. Clear guidance should also be provided to competent authorities on these matters to ensure so far as possible a harmonized and consistent approach across the Union.</p>	

Submission of information regarding violations of art. 3

Art. 10.1, Submission of information regarding violations of art.3	
‘Submissions of information by any natural or legal person or any association not having legal personality, to competent authorities on alleged violations of Art. 3 shall contain information on the economic operators or products concerned and provide the reasons substantiating the allegation.’	‘Submissions of information by any natural or legal person or any association not having legal personality, to competent authorities on alleged violations of Art. 3 shall contain well-documented evidence on the economic operators or products concerned and provide the reasons substantiating the allegation’,
<p><i>Justification:</i></p> <p>Any complaints need to be supported by well-documented proof in order to avoid unsubstantiated claims to help national authorities with their verification tasks. Submitted information shall not contain unsubstantiated allegations or conjecture and shall demonstrate more than a remote possibility of a violation. Requiring documentation will impose a low burden of proof on natural or legal persons making claims and will deter frivolous claims being submitted.</p>	

Database of forced labour risk areas or products

Art. 11.1, Database of forced labour risk areas or products	
<p>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 Art. 23, points (a), (b) and (c), and relevant external sources of information from, amongst others, international organisations and third country authorities.</p>	<p>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 Art. 23, points (a), (b) and (c), and relevant external sources of information from, amongst others, international organisations and third country authorities. The database shall rely on relevant external sources of information such as the International Labour Organization (ILO) or the Organization for Economic Cooperation and Development (OECD) and be aligned with other EU due diligence and risk databases. The Commission should clarify how data would be updated in real time based on the rapidly evolving geopolitical circumstances as well as whether and how companies could use and interact with the database. The Commission should make the database available at the same time the Regulation will enter into force so that companies have sufficient time to utilize the database.</p>
<p><i>Justification:</i></p> <p>It is crucial that the database be aligned with other potential future databases and lists, eg under the Conflict Minerals Regulation or the CS3D. Any proceedings must remain confidential until an infringement is proved. Allowing free access to any company names or cases without any investigative conclusions risks unfairly damaging companies' reputations.</p>	
Art. 11.4 [NEW], Database of forced labour risk areas or products	
	<p>EU Member States shall not presume a violation of the prohibition referred to in Art. 3 on the basis that relevant goods originate</p>

	from a geographic area listed on the database referred to in paragraph 1 or are otherwise listed as a product of risk.
<p><i>Justification:</i></p> <p>Listing risk areas or products is too vague and could unfairly stigmatise full ranges of products, even when made by reputable manufacturers.</p>	
Art. 11.5 [NEW], Database of forced labour risk areas or products	
	Any companies subject to investigation should appear publicly in the database only when the competent authority concludes forced labour allegations have been proved.
<p><i>Justification:</i></p> <p>Allowing free access to any company names or cases without any investigative conclusions risks unfairly affecting companies' reputations.</p>	

Measures on products or product components refused for release for free circulation or export

Art. 20, Measures on products refused for free circulation or export	
<p>Measures on products refused for release for free circulation or export</p> <p>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.</p>	<p>Measures on products or product components refused for release for free circulation or export</p> <p>Where the release for free circulation or export of a product or product component has been refused in accordance with Article 19, customs authorities shall take the necessary measures to ensure that the product concerned is recycled or disposed of in accordance with national law and consistent with Union law and the Union's environmental and health objectives. Articles 197 and 198 of Regulation (EU) No 952/2013 shall apply accordingly.</p>
<p><i>Justification:</i> Consistency with circular economy rules</p> <p>We propose that consideration be given to requiring that non-compliant products be recycled instead of disposed. According to the proposal, if the authorities establish that a product or one of its components was made by forced labour, the relevant products will need to be destroyed, rendered inoperable, or otherwise disposed of and the exclusion of re-export in the case of non-EU goods. Since the European Commission's proposal for Ecodesign for Sustainable Products Regulation (2022/0095) aims to prohibit the destruction of unsold consumer products, we consider that competent authorities should ensure that the affected company can recycle such products fully in line with national law (in particular in France and Spain) consistent with EU law (e.g., WEEE directive).</p> <p>Product disposal requirements should also be narrowly scoped to the specific item or component determined to be made with forced labour.</p> <p>Without prejudice to our overall position that removal and disposal are unlikely to be the best environmental solution, we propose the removal and disposing/rendering inoperable requirement should be isolated to the specific component(s) found to be made with forced labour. This allows focusing on the specific entities involved in forced labour in the value chain as well as considering the cost, waste and environmental issues related to disposing of an entire product. For the Information, Communications and Technology (ICT) industry in particular, end products are complex and can be comprised of many discrete parts and components. It would be especially</p>	

detrimental to companies and consumers to require disposal of an end product where only a single component (out of up to several hundred other components) is found to be made with forced labour. We ask that EU regulation and guidance consider how companies may remove and dispose of the non-compliant component from complex products in lieu of requiring disposal of the whole product.

Guidelines

Art. 23, Compliance, clarity and consistency	
The Commission shall issue guidelines no later than 18 months after the entry into force of this Regulation, which shall include the following:	To assist competent authorities in implementing this Regulation and economic operators in complying with this Regulation, and to ensure clarity of tasks and consistency of action among Member State competent authorities, the Commission shall issue guidelines no later than 18 months after the entry into force of this Regulation, which shall include the following:
Article 23(b), Difference in forced labour risks between the private and public sectors, input from civil society	
(b) information on risk indicators of forced labour, which shall be based on independent and verifiable information, including reports from international organisations, in particular the International Labour Organization, civil society, business organisations, and experience from implementing Union legislation setting out due diligence requirements with respect to forced labour;	(b) information on risk indicators of forced labour, including a clear distinction between forced labour risks in the private sector and public sector , which shall be based on independent and verifiable information, including reports from international organisations, in particular the International Labour Organization, trusted and vetted civil society, business organisations, and experience from implementing Union legislation setting out due diligence requirements with respect to forced labour;
<p><i>Justification:</i></p> <p>The guidance for competent authorities, provided for in Art. 23 of the proposed EU Regulation, should make a clear distinction between forced labour risks in the private sector and forced labour imposed by state authorities, as referenced in Art. 2 (Definitions) of the Commission proposal, in order to feed into the database of forced labour risk areas and products foreseen in Art. 11 of the proposed EU Regulation. Whilst the former can be addressed through effective due diligence and collaborative approaches, the latter will likely involve issues related to forced labour imposed by state authorities which cannot be tackled by companies alone, except through disengagement.</p>	

<p>Art. 4, section 1(b) proposes a risk-based approach that requires companies to consider six categories of information (including the information set out in Section 23(b)). Section 23(b) refers to reliance on input from civil society. The suggestion is that the Commission should enter into formal relationships with trusted and vetted civil society organisations to ensure the quality of information it relies on from such partners.</p>	
<p>Art. 23(e), Sectoral guidance</p>	
<p>(e) guidance for the practical implementation of Art. 16 and, where appropriate, any other provision laid down in Chapter III of this Regulation.</p>	<p>(e) guidance for the practical implementation of Art. 16, clarifying the role of the customs authorities and, where appropriate, any other provision laid down in Chapter III of this Regulation</p> <p>[NEW] The guidelines should be based on existing guiding principles and standards such as the UN Guiding Principles on Business and Human Rights, the International Labour Organization's 1998 Declaration on Fundamental Rights and Principles at Work, and the OECD Guidelines for Multinational Enterprises and Due Diligence Guidance for Responsible Business Practices, as well as fully aligned and coherent with guidance released under the Corporate Sustainability Due Diligence Directive, the Conflict Minerals Regulation, the Battery Regulation and the Regulation on deforestation-free products.</p>
<p><i>Justification:</i></p> <p>Experience with the debates around the proposed Regulation on deforestation-free products and with US legislation on forced labour has shown that businesses need implementation guidance. The Commission's proposal to build on existing relevant guidance already published in July 2021 should be foreseen in Art. 23 of the EU Regulation and clarify the expected due diligence processes necessary to comply with the new EU rules. The guidance should be harmonised at the EU level to avoid divergent requirements across EU Member States, which would otherwise lead to legal uncertainty and increased administrative burden for companies striving to comply with the new EU rules. Adopting an EU legislative framework without providing such guidance at the time of entry into force of the EU Regulation would create difficulties for both operators and enforcement</p>	

authorities. Furthermore, this guidance should be coherent with that provided for in the proposed CS3D.	
Article 23(f, g) [NEW], evidentiary guidance	
	<p>(f) standard of evidence required for the submissions from third parties for the correct application of Art. 10 and subsequent investigations.</p> <p>(f) a list of indicative types of documents, information and evidence economic operators need to provide during the investigations as well as after a decision for a ban has been taken so that they can prove that a product is no longer made with forced labour.</p>
<p><i>Justification:</i></p> <p>Any complaints need to be supported by well-documented proof in order to avoid vague claims to help national authorities with verification. It should also be made clear to companies what type of documents, information and evidence they need to provide during the preliminary phase of the investigations as well as after a decision for a ban has been taken so that companies can timely put in place the processes and systems that will allow them to collect the necessary information for submission to the competent authorities. In this regard, there is a need for guidance on which are the acceptable documents and valid proof for companies to demonstrate that they have eliminated forced labour from their operations and/or supply chain with respect to the products concerned so that the competent authorities can withdraw their decision for a ban. The types of documents that are admissible/relevant should be consistent with guidance provided in connection with global regulatory schemes relating to import bans to address forced labour risks. Overall, clear guidance is needed for companies to know what is deemed as acceptable mitigation and remediation as well as what does a company need to do in order to prove that a product is no longer made with forced labour.</p>	

Recognition of due diligence schemes

[NEW] (after art.23), recognition of due diligence schemes	
	<p>1. Governments, industry associations and groupings of interested organisations that have developed and oversee due diligence schemes ('scheme owners') may apply to the Commission for recognition of their due diligence schemes. The Commission shall be empowered to adopt implementing acts establishing the information requirements contained in the application. Those implementing acts shall be adopted in accordance with the examination procedure referred to in art. 27.</p> <p>2. Where, on the basis of the evidence and information provided pursuant to the paragraph 1, the Commission determines that the due diligence scheme referred to in paragraph 1 enables that economic operators to fulfil any requirements set out in Art. 16 of this Regulation, it shall adopt an implementing act granting that scheme a recognition of equivalence with the requirements set out in this Regulation. The OECD Centre for Responsible Business Conduct shall be consulted prior to the adoption of such implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in art. 27.</p> <p>When making a determination on the recognition of a due diligence scheme, the Commission shall consider the diverse industry practices covered by that scheme and shall consider the risk-based approach and method used by that scheme to identify risks.</p> <p>3. The Commission is empowered to adopt delegated acts in accordance with art. 27, setting out the criteria and the methodology according to which the Commission shall determine, in accordance with paragraph 2,</p>

	<p>whether due diligence schemes ensure that economic operators fulfil the requirement set out in art. 16 of this Regulation. The Commission shall also, as appropriate, periodically verify that recognised due diligence schemes continue to fulfil the criteria that led to a recognition of equivalence decision adopted pursuant to paragraph 2.</p> <p>4. The owner of a due diligence scheme for which the recognition of equivalence was granted in accordance with paragraph 2 shall inform the Commission without delay of any changes or updates made to that scheme. The Commission shall assess whether such changes or updates affect the basis for the recognition of equivalence of that scheme and take appropriate action.</p> <p>5. If there is evidence of repeated or significant cases where economic operators implementing a scheme recognised in accordance with paragraph 2 have failed to fulfil the requirements set out in art. 16. of this Regulation, the Commission shall examine, in consultation with the owner of the recognised scheme, whether those cases indicate deficiencies in the scheme.</p>
<p><i>Justification:</i></p> <p>Due diligence schemes are important in order to help economic operators comply with Art. 16 of this Regulation. They should be considered as complementary to an economic operator's due diligence management systems and processes. The recognition of due diligence schemes has been agreed by the EU institutions and is in the legal texts of the Responsible ['Conflict'] Minerals Regulation and the Battery and Battery Waste Regulation.</p> <p><i>NOTE: this text is adapted from the recently adopted Battery Regulation.</i></p>	

Union network against forced labour products, customs authorities

Art. 24.4, Union network against forced labour products, customs authorities	
The Commission shall support and encourage cooperation between enforcement authorities through the Network and participate in the meetings of the Network.	The Commission shall support and encourage cooperation between enforcement authorities through the Network and chair the meetings of the Network.
Art. 26.6 [NEW], Union network against forced labour products, customs authorities	
	[NEW] The Commission shall coordinate between enforcement authorities of the Union Network to avoid divergences in the implementation and enforcement of the EU Regulation between Member States.
<p><i>Justification:</i></p> <p>The creation of the EU network for coordination (Art. 24) would ease communication between national competent authorities, Member States and the European Commission. This would ensure harmonised implementation and enforcement across the EU Single Market. The Commission should coordinate with national enforcement authorities at the EU level to avoid divergences in the implementation and enforcement of the EU Regulation between Member States.</p>	

Entry into force, date of application

Art. 31, Entry into force, date of application	
<p>This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.</p> <p>This Regulation shall apply from [OP enter DATE = 24 months from its entry into force].</p>	<p>This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.</p> <p>This Regulation shall apply from [OP enter DATE = 24 30 months from its entry into force].</p>
<p><i>Justification:</i> Coherence with future Directive on Corporate Sustainability Due Diligence.</p> <p>The proposed CS3D should become the cornerstone of EU legislative framework to address the responsibility of businesses to respect human rights in their operations and supply chains through an obligation to carry out human rights due diligence in line with the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises. By undertaking effective due diligence, companies will be able to identify and address forced labour risks in their supply chains. Therefore, to ensure coherence between the two EU legal instruments, a company's compliance with its due diligence obligation foreseen under the CS3D should be considered by competent authorities in carrying out their investigations and enforcement obligations as per the EU Forced Labour Regulation. Given the importance of EU-wide due diligence legislation in enabling companies to demonstrate compliance, the Commission should ensure that the EU Regulation's entry into force is parallel or consecutive to the entry into force and application of the proposed CS3D. This would ensure legal certainty and a level playing field for companies, allowing them to set up their due diligence processes.</p>	

Scope of investigations

Recital 24, Scope of investigations	
<p>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.</p>	<p>During the preliminary phase of investigation, competent authorities should focus on a specific item or component suspected of being made with forced labour 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 of economic operators, in the segment of the value chain of the product or component in question as close as possible to where the risk of forced labour is likely to occur the quantity of products or components concerned and the scale of the suspected forced labour and all other relevant factors.</p>

Withdrawal

Recital 30, Withdrawal	
<p>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.</p>	<p>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. Any such products remaining with the relevant economic operators may be 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. Such decision should be proportionate and do not hamper the Union's environmental objectives.</p>
<p><i>Justification:</i></p> <p>The proposal for immediate penalties for non-compliance on top of the destruction of products and a market ban is potentially disproportionate and in the case of withdrawal could lead to undesirable environmental outcomes. Consideration should be given to how these enforcement mechanisms are put in place and companies should be given sufficient time to put proper processes, procedures, and suppliers in place. Further, it should be considered whether mandatory withdrawal is always proportionate, and whether it should at least fall into the discretion of the competent authority if a withdrawal of products already placed on the market is suitable or whether a prohibition to sell further.</p>	

Conclusion

If the proposal is amended to include these recommendations, the Regulation could help ensure forced labour products are not sold in or exported from the Single Market. American companies stand ready to partner with Members of the European Parliament and other stakeholders to ensure this aim is achieved efficiently and effectively.