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Two leading committees of the EU Parliament adopt their position on the proposed Forced Labour Products Ban Regulation

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On 16 October 2023, the Committee on Internal Market and Consumer Protection (“IMCO”) and the Committee on International Trade (“INTA”) of the European Parliament (“Parliament”) adopted their position on the proposed Regulation prohibiting products made with forced labour on the European Union (“EU”) market (“[Committee Draft](#)”). First proposed by the European Commission (“Commission”) in September 2022, the Regulation sets out a general prohibition on economic operators to place or make available on the EU market, or export from the EU, products made, in whole or in part, with forced labour (“Proposed Regulation”).

This client alert summarizes the main changes to the Proposed Regulation included in the Committee Draft. For a more complete overview and assessment of the forced labour products ban, please refer to our previous client alert on this issue ([Client Alert](#), 15 September 2022).

PURPOSE AND SCOPE OF THE FORCED LABOUR PRODUCTS BAN

The proposed forced labour products ban applies to all economic operators “placing or making available” on the EU market, or exporting from the EU, products made through forced labour. The Proposed Regulation sets out a legal framework for investigating the use of forced labour across the supply chains of products destined for the EU market and preventing that products made through forced labour are placed, made available on or exported from the EU market.

The Committee Draft defines “supply chain” as “activities of the company’s **upstream business partners** related to the **extraction, harvest, production or manufacturing of the product**, including working or processing related to the product at any stage of those activities”.

The scope of the Proposed Regulation is very broad. It applies to all products of any type or origin at any stage of the supply chain. However, it does not cover the withdrawal of products once they have reached the end-user on the EU market. According to the Committee Draft, end-users encompass natural or legal persons residing or established in the EU, i.e. consumers and also professional end users to whom a product has been made available in the course of their industrial or professional activities.

FORCED LABOUR AND FORCED LABOUR BY STATE AUTHORITIES

“Forced labour” is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily in accordance with Article 2 of the Convention on Forced Labour, 1930 (No. 29) of the International Labour Organization [“ILO”], including forced child labour”.

“Forced labour imposed by state authorities” means “the use of forced labour: (i) as a means of political coercion or education or as a punishment for holding or expressing political views or opinions ideologically opposed to the established political, social or economic system; (ii) as a method of mobilising and using labour for purposes of economic development; (iii) as a means of labour discipline; (iv) as a punishment for having participated in strikes; (v) as a means of racial, social, national or religious discrimination”.

Both definitions are based on the ILO Convention on Forced Labour, 1930 (No. 29) and the ILO Convention on the Abolition of Forced Labour, 1957 (No. 105).

REVERSED BURDEN OF PROOF FOR “HIGH RISK” PRODUCTS

The Proposed Regulation requires the Commission to establish an indicative EU public database on forced labour risks in specific geographic areas or with respect to specific products. The Committee Draft clarifies that the database must be based on independent and verifiable information, including reports from the ILO and civil society. It also suggests that the database should identify specific economic sectors in specific geographic areas where there is a “high risk” of forced labour imposed by state authorities. In addition, the Commission will be able to adopt delegated acts determining specific economic sectors in specific geographic areas, where a **high risk of forced labour imposed by state authorities has been identified**.

According to the Committee Draft, in the case of products coming from economic sectors or areas identified as presenting a high risk of forced labour imposed by state authorities, enforcement authorities **may assume** that the product is connected to forced labour, allowing them to initiate an investigation on this basis. In this scenario, the burden of proof would then shift to the economic operator in question to demonstrate that the “high risk” goods are free from state-imposed forced labour. This modification represents an important change as compared to the Proposed Regulation, which required competent authorities to demonstrate a “substantiated concern” for all cases of suspected forced labour ban violations.

ALLOWING PRODUCTS BACK INTO THE EU MARKET

Where a determination is made that the product was made with forced labour, the products concerned, or product components may not be placed or made available on or exported from the EU market. According to the Proposed Regulation, competent authorities must withdraw their decisions banning products made through forced labour if economic operators demonstrate that they eliminated forced labour in their supply chains in relation to product concerned.

The Committee Draft includes an **additional criterion to allow products back into the EU market**, requiring the economic operator to also **remediate** the instances of forced labour found during the investigation. Remediation encompasses the provision of remedies to victims of forced labour (e.g., public apologies, restitution, rehabilitation, compensation, contribution to investigations, and compliance with measures adopted by relevant public authorities) as well as the “prevention of additional harm”. The latter may be achieved, according to the Committee Draft, through the use of injunctions or guarantees of non-repetition.

CHANGES TO THE INVESTIGATION PROCEDURE

According to the Committee Draft, in addition to the Member States’ competent authorities, the Commission should also be vested with investigatory powers.

During the **preliminary phase** of an investigation (prior to initiation), according to the Committee Draft, enforcement authorities must consider in their initial assessment “any issues arising from meaningful consultation with relevant stakeholders”, including stakeholders working on the products or regions related to the assessment.

During the **investigation phase**, enforcement authorities must seek information from the economic operators under investigation as well as “relevant product suppliers”. The Committee Draft also directs in clearer terms the Commission and the Member States’ competent authorities to take into account the size and economic resources of the economic operators under investigation, especially if they are SMEs.

With respect to the decision to be issued by the Commission or competent authorities after the investigation, the Committee Draft clarifies how the products (and product components) found to be connected with forced labour can be utilised. In particular, the Committee Draft states that the sanctioned economic operators must:

- i. if the product is perishable, **donate** the products concerned to charitable organisations or organisations that benefit the public interest;
- ii. if the product is not perishable, **recycle** the products concerned; and
- iii. if (i) or (ii) is not possible, **dispose** of the respective products in accordance with national and EU law.

The Committee Draft, like the Proposed Regulation, provides that economic operators are responsible for withdrawing and disposing of the products in accordance with a decision of the competent authorities.

SANCTIONS

Failure to comply with a decision of the Commission or the Member States' competent authorities results in penalties for the concerned economic operator. The Committee Draft clarifies that these penalties must take the form of pecuniary fines. Furthermore, the Commission will have the power to adopt delegated acts to further define how these fines should be calculated, as well as identifying the mitigating and aggravating circumstances to amend them.

NEXT STEPS IN THE LEGISLATIVE PROCESS

The Committee Draft will now be submitted to the next plenary session of the Parliament. The adopted text will constitute the Parliament's negotiating position. Considering that the INTA and the IMCO are jointly in charge of the file, it is likely that the ultimate text that emerges from the plenary vote will be very close to the Committee Draft.

The Council of the EU ("Council") has yet to adopt its position on the Proposed Regulation. Once the Council adopts its general approach, the trilogue process will start to negotiate the final text of the Regulation. It is unlikely that the trilogue will take place before the end of the current Presidency of the Council, on 31 December 2023.

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