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WK 1445/2023 INIT

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MEETING DOCUMENT

From:	European Commission
To:	Delegations

Subject:	Forced Labour Ban Regulation – COM presentation of 31 January on Articles 1 and 2
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EN

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 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.

- There is a contradiction with Article 6(4)(b): the decision orders the withdrawal of products that **have already been placed or made available on the market** (EE);
- What is intended to be excluded? (EE)

- products that reached the end user – **sold**
- products placed or made available – **still on the shelves**

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→ Withdrawal from end users (recall of a product) should not be excluded (PL)

- The current system includes withdrawals and is sufficiently deterrent for economic operators
- Recalls are applicable to dangerous products and would require engagement with the consumers/end-users

Article 1 Subject matter and scope

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→ Are fishery products and animals included? (AT, BE)

→ 'product' means any product [...] extracted, harvested, produced or manufactured [...] – Art. 2(f)

→ Article 38 TFEU – **agricultural product** means the products of [...] **stockfarming and of fisheries** [...]

Article 1 Subject matter and scope

Interplay and consistency of the FL Proposal with the CSDD

→ Different definitions of forced labour (AT)

- In both instruments - definition of forced labour from the ILO Convention no 29. from 1930
 - CSDD – Article 3(c) ('adverse human rights impact') in connection with Annex, Part I Section 1, point 12

Article 2 Definitions

General remarks

- To ensure consistency with customs definitions (IT)
 - DG TAXUD is closely following this process
- To include the definition of 'supply chain'. Both, value and supply chain are used throughout the text. (BE, LT)
 - Definition of chain of activities is being discussed under the legislative process of the CSDD.
- Instead of guidelines, better would be to use annexes for certain indicators (PL)
 - Regarding indicators, just as definitions, we rely on ILO.
 - Guidance seems to be a better tool (it can be adjusted more easily in case of changes).

Article 2 Definitions

- (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;

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→ Referencing to definitions contained in other instruments hinders the understanding and the application (CZ,PL)

→ If the act that contains the definition changes, the definition may change (CZ,PL)

- The objective of this technique is to allow dynamic definitions and coherence in case of changes

Article 2 Definitions

- (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;

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→ To insert ‘*placed and*’ after ‘*are to be...*’ : ***are to be placed and made available on the market...***] (BE)

- Placing on the market is the first making available, therefore it seems fine without the addition.

→ Precise definition is needed for due diligence. Voluntary guidelines, recommendations and soft law documents, are not clear enough to determine obligations for economic operators. (CZ)

- There is no new due diligence procedure and there are no strict rules of evidence that would require or disallow certain types of proof.

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;

→ Consistent implementation requires clear criteria for ‘substantiated concern’, ‘well-founded reason’. What types of objective and verifiable information to take into account? (DK, PT)

- The objective of the preliminary phase of investigation: to collect as much information as possible and decide based on that information
- Support tools (guidelines, network, IT tools) will facilitate consistency

→ Do actions implemented based on Regulation (EU) 2021/2115 in relation to "social dimension" fall within the definition of the proposal? (IT)

- If the beneficiaries under an EU instrument need to respect forced labour related criteria, this will certainly be a reliable information under this Proposal

Article 2

Definitions

- (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;

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→ The objective of the highlighted part is not clear. Could it be redrafted? (NL)

- The objective is to cover online sales. If the online offer is targeted at end users in the Union, it is considered to be made available on the EU market and the competent authorities can check these products.
- We will reconsider the phrasing.

Article 2 Definitions

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

→ Is the definition consistent with the one in the EU product legislation? (AT)

- Article 3(2) of Regulation 2019/1020 on market surveillance and compliance of products:

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

-Article R1(2) of Annex I of Decision No 678/2008 on a common framework for the marketing of products

2. 'placing on the market' shall mean the first making available of a product on the Community market;

Article 2 Definitions

(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;

→ Does the definition of *‘product made with forced labour’* also include the transport of these goods? Transporters are not subject to this Proposal, are they? (AT)

- The definition covers activities related to the extraction, harvest, production or manufacture, including working or processing of the product.
- Transport does not fit into this definition.

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→ Does the Proposal apply to second-hand products/components, spare parts? (LT)

- The Proposal **does not apply to products that reached the end users in the Union.** Second-hand products that previously reached the end user on the Union market, are outside of the scope of the Proposal.

Article 2 Definitions

(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;

→ If the entire production of the product has been made in compliance with the regulation, but **forced labour is used during the packaging** after the production process has ended, is the product then considered non-compliant with this regulation? (DK)

- The definition covers activities related to the extraction, harvest, production or manufacture, including working or processing of the product.
- Packaging would fit into this definition.

Article 2 Definitions

- (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;

→ Recital 16: „the prohibition should apply to all products, of any type, **including their components**[...]”.
What does it mean? What percentage of “bad” components should be the right threshold to start investigation? (LT)

- It means that there is **no *de minimis* rule**, there is no threshold.
- **Proportionality and prioritization** may allow certain flexibility.
- More details will be included in the **Guidelines**.

Article 2 Definitions

(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;

→ The Blue Guide is using only ‘natural or legal person’. Why is the ‘association of persons’ introduced? (LT)

- For the sake for consistency with the UCC:

Article 5 of UCC reads:

“
...

(4) "**person**" means a natural person, a legal person, **and any association of persons** which is not a legal person but which is recognised under Union or national law as having the capacity to perform legal acts;

(5) "**economic operator**" means a **person** who, in the course of his or her business, is involved in activities covered by the customs legislation;

→ In addition – in some articles, e.g. Art 10: ...association not having legal personality

- We will rethink this concept.

Article 2 Definitions

(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;

→ Does the concept of ‘economic operator’ encompass traditional list of *operators*: manufacturer, the authorised representative, the importer and the distributor (Blue guide)? (LT)

- The notion of the economic operator is **wider** in this Proposal than in the NLF
- See: ‘*producer*’ of agricultural products (not an NLF category), as well as the ‘*product supplier*’ defined in Article 2(k), who may intervene in the working or processing related to a product at any stage of its supply chain.

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→ Examples of “economic operator” in the context of Art. 4(2), Art. 5 (3)(a) and Art. 5(6)? (AT)

Article 4(2):

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 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.

- Case-by-case. Could be: manufacturer, producer, importer, product supplier.

Article 2 Definitions

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- The same principle is applicable for **Article 5(3)(a)**:

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

Article 2 Definitions

(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;

- In **Article 5(6)**, the economic operator/s concerned would be those in whose premises the competent authorities intend to carry out the checks and inspections.

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.

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