



Irish Congress of Trade Unions

**Submission to DETE Consultation on
Proposed Forced Labour Regulation**

October 2023

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Introduction

Together with civil society and trade union organisations across Europe including the ETUC we have been considering the essential conditions to address forced labour in this proposed instrument. As the negotiations on the content of the legislation advance, and in order to ensure that the European Commission proposal fulfils its best potential, we believe that the below elements are essential to make the proposed regulation efficient, implementable and above all, impactful to address forced labour meaningfully.

Indeed, the changes below are crucial to create the sufficient leverage to both foster better working conditions for all and to improve the lives of workers trapped in situations of forced labour by providing them with adequate remedies.

Thus, we consider the elements below as fundamental:

- The inclusion of remedies for all workers (both EU and non-EU based) trapped in forced labour must be a crucial point of the legislation. The provision of remedy - including compensation and back wages - should be a prerequisite to the lifting of a ban in particular (Art 6.6). These remedies should be defined through meaningful stakeholder engagement and ideally include the victims themselves when and wherever possible. (Drafting suggestion below)
- All complainants should be protected, whether or not they are based in the EU and thus under the scope of the Whistle-blower directive. This implies that all complainant's information should be treated as confidential (Art. 10.3 and Art. 25). (Drafting suggestions below)
- To be implementable, the proposed legislation should foresee appropriate lower evidentiary standards to initiate the investigation and to adopt a decision. The available sanctions should, similarly, be adapted as appropriate. For example, the US Customs and Border Protection authorities use "reasonable but not conclusive" as the evidentiary standard to issue a "Withhold Release Order" that allows the re-exportation of goods subject to the order, but uses the "conclusive evidence, i.e., probable cause that the goods were made with forced labour" to issue a final decision (called "forced labour finding") which then allows authorities to seize the goods, as currently foreseen in the European Commission proposal.
- Avoid that due diligence measures reported by companies could be used as a defence against the opening of a full investigation. In particular, social audits and certifications cannot be deemed sufficient defence to ward off an investigation.
- The European Commission should be designated as a competent authority (art. 12), to be able to conduct politically sensitive investigations (such as ones linked to state-imposed

forced labour (SIFL)) or to contribute to the investigation process when appropriate and, in particular, when investigating in third countries is required. (Drafting suggestion below)

- The Regulation should establish a rebuttable presumption of forced labour on specific product groups (like all cotton or all tomatoes) from specified countries or regions (such as Turkmenistan or the Uyghur Region) that would lead to a ban of these specific product groups.
- Ending the use of forced labour shall not mean disengagement with the economic operator except as a measure of last resort. With the exception of situations of state-imposed forced labour where remediation by an economic operator is rendered impossible, the obligation to eliminate forced labour cannot be fulfilled by simply disengaging from their operators (art. 2 and art. 6).
- To avoid a race to the bottom on enforcement, Member States should be required to publish annually aggregated information on the implementation and enforcement of the Regulation (Article 30a(1)). (Drafting suggestion below)

Drafting Suggestions

Article 6.6

6. Where economic operators provide evidence to the Commission or competent authorities that they have complied with the decision referred to in paragraph 4, and that they have provided remedy in accordance with Article 6(a) and eliminated forced labour from their operations or supply chain with respect to the products concerned, and that sustainable and effective processes have been put in place to prevent harms from continuing or taking place again in the future, the Commission or competent authorities shall withdraw their decision for the future and inform the economic operators.

At the exception of situations of State-Imposed forced labour, the obligation to eliminate forced labour cannot be fulfilled by simply disengaging from their operators.

Pursuing prevention, minimisation and remediation efforts where appropriate, must be sought if there is reasonable expectation that these efforts are to succeed in accordance with a joint time-bound plan.

Article 6 a Remediation

1. Evidence of remediation measures must include evidence of the following:
 - a. financial and non-financial compensation, including payment of all due wages and compensation for moral and material damages based on the duration and extent of the forced labour, and any harms suffered;
 - b. restitution for the victims, to restore their position before the forced labour took place, including relevant arrangements for restoring, renewing and/or obtaining relevant documents such as visas and work permits, and returning their passport and any other personal documents;
 - c. rehabilitation (for example, provision of treatment or counselling);

- d. effective preventative measures and guarantees of non-reoccurrence of forced labour; and where it is accompanied by one or more of the above measures, apologies.
- e. other remediation measures as agreed upon by affected workers and stakeholders and the economic operators

Evidence that remediation measures have been correctly implemented should be validated in consultation of the victims and their representatives.

Article 10

- 1a. The Commission shall establish a centralised complaint mechanism to receive complaints and information regarding alleged or suspected forced labour, taking place within or outside the EU, from any natural or legal person, including workers or others affected or potentially affected by forced labour, civil society organisations including trade unions, affected communities, and any other individual or group that may have information regarding goods which are alleged or suspected to be made by forced labour. This mechanism shall be available in all official languages of the institutions of the Union, and it shall be user friendly and free of charge.
- 1b. Complaints may be lodged anonymously. The Commission and competent authorities shall ensure that all mechanisms through which workers who are victims or witness forced labour may lodge complaints and participate in relevant proceedings, allow them to do so without fearing retaliation of any sort, to enforce their rights and prerogatives, in particular their right to remediation under Article 6 of this Regulation and, when applicable, other EU legislation, without prejudice to Directive 2004/81/EC, Directive 2009/52/EC, Directive 2011/36/EU and Directive 2012/29/EU. These rights should not be made conditional on the affected workers' residence status, or on their citizenship or nationality.

Additionally, member States and the Commission shall ensure that the identity of the person or persons reporting complaints, providing evidence, and of any individuals who are potentially being subjected to forced labour in terms of the complaint or investigation, is not disclosed without the explicit consent of that or those persons, to anyone beyond the authorised staff members competent to receive or follow up on complaints. This shall also apply to any other information from which the identity of the reporting person may be directly or indirectly deduced.

- 1c. The Commission shall determine the rules and procedure to assign complaints to the competent authorities. These rules will take into account the specifics of the complaint, the domicile of the economic operator and the capacities of the competent authorities in concerned Member States. The Commission may retain the power to investigate, in particular when multiple member states are involved, investigations in third countries are needed and when related to state-imposed forced labour and when the investigation concerns a supply chain present in more than one Member State.

Article 12

- 1a. The Commission is also empowered to carry out the obligations set out in this Regulation, and it shall also contribute to an effective and uniform implementation of this Regulation throughout the Union.

Article 2

- (xx) bringing to an end (the use of) forced labour shall not mean disengagement as first resort;

Article 31a Review and Annual Reporting

1. No later than four years after the entry into force, the Commission shall carry out a first review of this Regulation with particular attention to the effectiveness of the instrument, proposing additional measures where deemed appropriate.
2. No later than one year after the entry into force, the Commission shall present annually a report to the European Parliament and the Council on the implementation of the regulation.