



To:

**MEP Maria-Manuel Leitao-Marques**, Co-Rapporteur;

**MEP Samira Rafaela**, Co-Rapporteur;

**MEP Bernd Lange**, INTA Chair;

**MEP Anna Cavazzini**, IMCO Chair

**Mr Eric Van den Abeele**, Attaché COMPET (Internal Market, Industry, Better Regulation, Competition, State Aid, Public Procurement) – Belgian Presidency

**Ms Constance de Walque**, Attaché COMPET - Belgian Presidency

**Ms Dora Correia**, Director for Africa, Caribbean and Pacific, Asia (II), Trade and Sustainable Development, Green Deal – DG TRADE C

**Ms Maria Martin Prat de Abreu**, Deputy Director General – DG TRADE A1

**Mr Jakub Boratynski**, Director for Networks and governance– DG GROW D

**Mr Mathias Schmidt-Gerds**, Head of Unit Market surveillance – DG GROW D3

Object: European Union (EU) Forced Labour Regulation trilogue

February 5th, 2024

Dear Co-Negotiators, Dear Madam, Dear Sir,

We are writing on behalf of the 33 undersigned civil society organisations and trade unions to outline key issues that should be considered during the upcoming trilogues in order to make the proposed EU Forced Labour Regulation (FLR) a success.

**1. Remediation:** The EU FLR should be worker-centred and include remediation for workers who have experienced forced labour. We strongly support the relevant amendments made by European Parliament to the Commission's proposal, including adding a new definition of remediation, consistently seeking information about remediation throughout the investigation, and requiring proof of such remediation as a condition for withdrawing a product ban requested by an economic operator.<sup>[1]</sup> We believe that failing to do the latter would merely incentivize companies to disengage, in contradiction to the Corporate Sustainability Due Diligence Directive's objectives and obligations.

**2. State-imposed forced labour:** State-imposed forced labour should be treated differently from other kinds of forced labour. The Commission's proposal did not outline any explicit investigative or enforcement measures to address cases of state-imposed forced labour, making it impractical and difficult to investigate and address efficiently such cases at scale. The Parliament's negotiating position made considerable improvements, which would empower the European Commission to identify high risk geographic areas and economic sectors where there is state-imposed forced labour, and to then shift the burden of proof on economic operators sourcing from or operating in these high-risk areas and sectors.<sup>[2]</sup> Additionally, the regulation should enable decisions to prohibit not only single products, but groups of products from entire entities where forced labour is widespread or state imposed, such as at a specific site of production. Allowing decisions to ban defined groups of products would simultaneously provide a stronger deterrent against the use of forced labour at that entity and ease the administrative burden for competent authorities. We believe a clear pathway for tackling state-imposed forced labour, with a strong role for the Commission is essential to ensure strong enforcement and provide clear guidance for national-level regulators as well as companies.

**3. Access to Single-window EU-wide complaints mechanism:** The Council and the Parliament have put forward a single-window EU wide complaints mechanism.<sup>[3]</sup> A single-window mechanism is preferable to the decentralised and fragmented version put forward in the Commission's proposal. However, any single-window mechanism should be accessible to natural and legal persons based both inside and outside of the European Union.<sup>[4]</sup> At a minimum, regulators should ensure that any workers experiencing forced labour and their representatives outside the EU are able to participate in, and access information from, proceedings to ensure they can effectively participate throughout the investigation process.

**4. Transparency and the Right to Equal and Informed Participation by Victims/Complainants:** The regulation should strike a better balance between commercial confidentiality, due process for companies under investigation, the right to information of complainants, the need to safeguard the victims and survivors from retaliation and public interest. In this regard, the regulation should allow publication of all the proceedings and decisions, redacting only identifiable information of victims such as names, age, location, to minimise retaliation risks and commercially sensitive information. The regulation should better balance the opportunities given to complainants, victims and their representatives during the investigation proceedings to respond to counter arguments made in response to initial allegations.

Currently, the Council's negotiating position is skewed with many opportunities being provided only to economic operators to respond to allegations or preliminary findings, whereas the complainants do not have a right to participate on an equal basis. Economic operators alone cannot be given procedural rights to participate to the exclusion of comparable procedural rights to complainants.

Instead of a fair process that affords equal opportunities to participate to the complainant and the economic operator, the Council's negotiating position keeps the complainant in the dark. Risk assessments made by the Commission or competent authorities (under Art 14 of the Council's negotiating position) are "confidential" even in cases where these are initiated after receiving complaints (under Art. 10). At a minimum, complainants and victims should be informed of the outcome of risk-assessment and the next steps.

Similarly, the Council's negotiating position states that the Commission on its own initiative, or "upon request by an economic operator...amend or repeal" its decisions to ban, withdraw, or dispose products on two grounds. However, there are no procedural safeguards to protect the rights and interests of victims or complainants, especially where the decision was taken following information received under Art. 10. The procedure for amending or changing product ban/withdrawal decisions should be evidence-based, including based on information from civil society organisations and labour unions.

**5. An evidentiary regime adapted to forced labour:** Both the European Commission and European Parliament have proposed a high level of evidence to even initiate an investigation (substantiated concern or well-founded reason). The level of proof to initiate an investigation should be lowered as proposed by the Council definition of "substantiated concern" to take into consideration the evidentiary struggles experienced by victims of forced labour who do not have access to all relevant documentation and evidence that may be required during the proceedings. Making even the opening of such an investigation contingent on such a level of proof would render the instrument inefficient.

It is indeed important to note that the evidentiary threshold required to initiate an investigation under the Parliament and Commission proposal appears to already be higher than the first level of sanctioning under the US instrument (that is a Withhold Release Order (WRO) that serves as an import restriction by United States (US) customs authorities).

Furthermore, under the EU proposal (all three institutions), the levels of proof required for sanctions (proof that article 3 has been violated) thus also need more careful reconsideration, where the level of proof is commensurate with the nature of sanction. Currently, the EU proposal foresees just one threshold of proof, that is, conclusive evidence, for all kinds of sanctions, ranging from import restrictions to disposal of goods.<sup>[5]</sup> However, in the US, if following the investigation the authorities determine there is "reasonable but not conclusive" evidence of forced labour, then they can issue an import restriction (WRO). A "finding" of forced labour, which carries additional penalties, is only issued when there is probable cause of forced labour.

We thank you for your consideration of these important matters and stand ready to discuss the proposed EU Forced Labour Regulation and the concerns raised in this letter.

#### **Signatories:**

1. Advocates for Public Interest Law, APIL
2. Anti-Slavery International, ASI
3. Austrian Federal Chamber of Labour, Brussels Office, AK EUROPA
4. Brussels Office of the Austrian Trade Union Federation (ÖGB), ÖGB Brussels Office
5. Campaign for Uyghurs, CFU
6. Clean Clothes Campaign European Coalition, CCC EU
7. Environmental Justice Foundation, EJF
8. European Center for Constitutional and Human Rights, ECCHR
9. European Coalition for Corporate Justice, ECCJ
10. European Trade Union Confederation, ETUC
11. Fair Trade Advocacy Office, FTAO
12. Fairtrade International, FI
13. Fashion Revolution
14. Finnwatch
15. Focus Association for Sustainable Development
16. Freedom United
17. Fundación Libera Contra la Trata de Personas y la Esclavitud en Todas sus Formas, Libera
18. Global Labor Justice - International Labor Rights Forum, GLJ-ILRF

19. Global Legal Action Network, GLAN
20. Human Rights Law Centre
21. Human Rights Watch, HRW
22. IndustriAll European Trade Union, IndustriAll Europe
23. Interfaith Centre for Corporate Responsible, ICCR
24. Investor Alliance for Human Rights
25. Norwegian Uyghur Committee
26. Proyecto de Derechos Economicos, Sociales y Culturales, ProDESC Mexico
27. Social Awareness and voluntary Education, SAVE
28. SÜDWIND-Institut
29. Terre des Hommes International Federation, TDHIF
30. The Human Trafficking Legal Center, HTLC
31. Uganda Consortium on Corporate Accountability, UCCA
32. Uyghur American Association, UAA
33. World Uyghur Congress, WUC

*P.S.: Letter sent in copy to FLR shadow rapporteurs, associated committee rapporteurs, and to COREPER I Ambassadors, COMPET attachés in Member States Permanent Representations and attachés in capitals.*

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[1]

[https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/CJ33/DV/2023/10-16/FinalCAs1-6ArticlesEN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/CJ33/DV/2023/10-16/FinalCAs1-6ArticlesEN.pdf), Article 2(ba), Article 4(3), Article 5(3), Article 6(6).

[2]

[https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/CJ33/DV/2023/10-16/FinalCAs1-6ArticlesEN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/CJ33/DV/2023/10-16/FinalCAs1-6ArticlesEN.pdf), Article 11(1b), Article 11, Article 5(2)(da), Article 6(2a).

[3]

[https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/CJ33/DV/2023/10-16/FinalCAs1-6ArticlesEN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/CJ33/DV/2023/10-16/FinalCAs1-6ArticlesEN.pdf), amendments to Article 10. Council's negotiating position, Article 10.

[4] Council's negotiating position, Article 10. The Council limits access to the single window submission system to natural or legal persons located in the EU.

[5] For a detailed analysis, please see [https://www.antislavery.org/wp-content/uploads/2023/12/231206-Evidentiary-Standard-Research\\_Final\\_digital.pdf](https://www.antislavery.org/wp-content/uploads/2023/12/231206-Evidentiary-Standard-Research_Final_digital.pdf)