

The EU has been working on its own set of regulations prohibiting products made with forced labor from entering the EU market.<sup>1</sup> This alert updates an earlier [alert](#) and preliminary guidance we issued on this subject.

Negotiations on a proposal for a regulation of general scope, presented in September 2022, have now been concluded. However, with limited time left before the EU elections, formal approval may not occur until fall of 2024.

### Prohibiting Forced Labor Products

On March 5, the two co-legislators, the Council of the EU (Council) and the European Parliament (Parliament) reached a provisional agreement with the European Commission (Commission) on a [final text](#) prohibiting products made with forced labor in the EU. The Council approved the final text on March 13, to be followed shortly by approval by the European Parliament's leading committees. However, the next procedural steps required before a formal approval will not be completed before the EU elections, which realistically means the file will only formally be endorsed in the fall of 2024.

Publication of the proposal aligns with EU human rights policy priorities and supports corporate accountability initiatives. The deal strengthens the role of the Commission, tasking it to conduct forced labor investigations in third countries. It also directs collaboration between member state authorities and the Commission throughout the process leading to the "banning" of a product.

The future law is expected to significantly affect companies with supply chains in high-risk jurisdictions, with implications for due diligence and supply chain management. The proposal adopts a "non-discriminatory" approach and covers all products where forced labor has been used at any stage of extraction, harvesting, production or manufacture. It applies to all products placed within the EU market, i.e., products manufactured in the EU for domestic consumption and export, as well as imported products.

### EU Entity List

Implementation of the proposal will fall to the member states. Each member state will appoint one or more competent authorities that will implement and oversee enforcement of the regulation. Member states will name a lead competent authority for cross-border investigations.

Although the Commission initially opted against creating an Entity List similar to the Uyghur Forced Labor Prevention Act (UFLPA) Entity List or Withhold Release Orders issued under 19 U.S.C. 1307 in the US, the Parliament successfully secured such a provision in the final deal. The Commission will be tasked with creating a list of geographical areas and economic sectors at high risk of using forced labor. For goods produced in these high-risk areas, authorities would no longer have to prove that people have actually been forced to work, as the burden of proof would be placed on companies sourcing in those geographies or sectors, similar to the UFLPA's rebuttable presumption.

In addition, the Commission is now also tasked with creating a Forced Labour Database that will contain verifiable and regularly updated information about forced labor risks, including reports from international organizations such as the International Labour Organization (ILO).

The definition of forced labor has now been modified to conform with the International Labour Organization (ILO) standards, encompassing "forced or compulsory labour, including forced child labour as defined in Article 2 of the Convention on Forced Labour, 1030 ('No. 29)."

The enforcement of this regulation will rely on the coordination of the member states and facilitation by customs authorities, as well as the Commission's capacity to lead third country investigations.

<sup>1</sup> The EU regulations are similar to the forced labor import ban (19 U.S.C. 1307) and the Uyghur Forced Labor Prevention Act (UFLPA) (Public Law No. 117-78) in the US, but the EU has implemented some unique provisions of its own.

## Process

The final text establishes a risk-based approach that competent authorities will follow to assess violations, according to the following criteria:

- Scale or severity of suspected forced labor risks
- Quality and volume of forced labor products on the EU market
- Share of the parts of a product likely to be made with forced labor in the final product
- Proximity of economic operators to the suspected forced labor risks

The Commission will issue guidance addressed to economic operators to assist with compliance requirements.

One of the more contentious elements of the negotiations related to the responsibility for conducting investigations. The provisional agreement now stipulates that the Commission will lead investigations where non-EU countries are involved, whereas national competent authorities will lead in cases where there is a risk in their own territory. Competent authorities will collaborate as needed, particularly where an investigation reveals information about forced labor concerns in other territories.

The proposal currently establishes the following process:

- **Preliminary Phase Investigation**

The competent authority will take a risk-based approach based on the aforementioned criteria to assess whether there is a likelihood that an entity is violating the forced labor prohibition. The competent authority will evaluate all relevant information such as submissions or allegations made by third parties, as well as identifiable and verifiable risk indicators such as those identified by international organizations like the ILO. The competent authority will also have access to a database of forced labor risk areas that includes specific products and geographic areas identified by experts. Where a product or parts of a product are enlisted, they can contribute to the decision of opening an investigation.

- **Investigation**

If the authority finds evidence indicating a violation of the forced labor prohibition, then the authority can decide to initiate an investigation of the relevant entity. The relevant entity must be notified within three business days of the decision to investigate, and the authority must clearly state (a) the possible consequences of the investigation, (b) the products subject to the investigation, (c) why the investigation was initiated and (d) how the entity can submit documentation or other relevant information to the authority.

The investigated entity must submit any information that is necessary for the investigation, including information about the products, the manufacturer, producers and product suppliers. This information must be submitted within 30 business days of the request. The authority conducting the investigation can order the entity to withhold a product, until it can prove their operations and supply chains are no longer associated with forced labor risks.

The March deal clarified that where there is a part of a product that could be associated with forced labor risk, the entity in question must dispose the part concerned (and not the entire product).

- **Decision**

The competent authority will evaluate all evidence and establish within a reasonable time period from the initiation of the investigation whether an entity violated the prohibition on forced labor. The decision will clearly state the findings of the investigation and the supporting evidence. If it is determined that a violation has occurred, the authority will adopt a decision that will contain (a) a prohibition on the supply, distribution, consumption or use on the union market and export of the products of concern, (b) an order for the entity to withdraw all relevant products already placed or made available on the market and (c) an order for the entity to dispose of, donate or recycle the relevant products according to the national law. The decision will clearly identify the products, manufacturers, producers and product suppliers effected by the order. The entity will have not less than 30 business days to comply with the decision (or not less than 10 business days in case of perishable goods, animals and plants). Notably, all decisions by the competent authorities will be recognized and applied to other member states – meaning a finding by one member state will apply across the entire EU.

The proposal requires the competent authorities of each member state to inform the Commission of their decisions regarding the choices to initiate preliminary investigations, investigations and the decision to prohibit products on the market. The Commission will make decisions available on a dedicated website.

Ultimately, the final decision to ban, withdraw or dispose of a product or parts of a product made with forced labor, will remain at the discretion of the authority leading the investigation.

- **Review of Decision**

If an entity complies fully with the decision and shows that they have fully eliminated forced labor from their operations and relevant products' supply chain, the competent authority will withdraw the decision.

The competent authority can review a decision within 30 business days from the date of receipt of the request by the economic operator. Entities effected by decisions also have the option of judicial review regarding the procedural and substantive legality of the decision.

- **Companies' Role in Responding Effectively**

The EU maintains that the proposal intends to provide adequate incentives for economic operators, first, to cooperate proactively with the competent authorities and stakeholders and, second, to adequately address identified cases of forced labor. Economic operators would be involved and considered through the different phases of the investigations.

## Application

Companies must undertake appropriate measures to identify and eliminate any risk of forced labor in their supply chains. This should include a thorough analysis of the labor conditions in all the countries where they operate and cover their suppliers and subcontractors.

The specific measures to be adopted by each company will largely depend on the sector and supply chain in which a company operates, as well as on the type of product and the company's resources. The EU relies on internationally recognized due diligence instruments (UN, ILO and OECD), which could be used as benchmarks in that exercise. Additionally, companies must begin to develop internal processes to ensure that mitigation and elimination plans for such forced labor risks are in place, not only to ensure compliance with EU norms, but also as a measure to prevent possible reputational risks. The legislative proposal is still under negotiations and, thus, subject to further changes but portends significant new due diligence requirements for business. Companies impacted by these new regulations must begin internal review and compliance actions now to prepare.

### How We Can Help

We combine high end legal expertise with industry leading political and business advisory services to help our clients successfully navigate the complexities of EU policymaking.

Our team is widely recognized as one of the pre-eminent public policy law teams in Brussels and around the world. Our collective knowledge of "how government works" derives from the skill and experience of our lawyers and policy advisers, many of which joined the firm from senior positions in national governments and industry regulatory agencies.

By combining legal and policy advisory services, we help our clients anticipate and counteract threats, and to create business opportunities – while navigating the EU regulatory and policy landscape.

## Contacts



### **Wolfgang Maschek**

Partner, Chair of European Public Policy Practice, Brussels  
T +32 2 627 1104  
E [wolfgang.maschek@squirepb.com](mailto:wolfgang.maschek@squirepb.com)



### **Thomas Delille**

Partner, Paris and Brussels  
T +33 1 5383 7400  
E [thomas.delille@squirepb.com](mailto:thomas.delille@squirepb.com)



### **Ludmilla L. Kasulke**

Partner, Washington DC  
T +1 202 457 5125  
E [ludmilla.kasulke@squirepb.com](mailto:ludmilla.kasulke@squirepb.com)



### **D. Michael Kaye**

Partner, Washington DC  
T +1 202 457 6545  
E [michael.kaye@squirepb.com](mailto:michael.kaye@squirepb.com)



### **Christina Economides**

Public Policy Advisor, Brussels  
T +32 2 627 1105  
E [christina.economides@squirepb.com](mailto:christina.economides@squirepb.com)



### **Amjad Wakil**

Associate, Washington DC  
T +1 202 457 5547  
E [amjad.wakil@squirepb.com](mailto:amjad.wakil@squirepb.com)



### **María Vara Pitarch**

Junior, Madrid  
T +34 91 250 0791  
E [maria.vara@squirepb.com](mailto:maria.vara@squirepb.com)