Ordine internazionale e diritti umani
International Legal Order and Human Rights
Ordenamiento Jurídico Internacional y Derechos Humanos
Ordre Juridique International et Droits de l'Homme
Diretta da Claudio Zanghì, Lina Panella, Carlo Curti Gialdino
EDITORIALE SCIENTIFICA

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EU RECENT INITIATIVES ON "DECENT WORK FOR ALL": THE REGULATION ON FORCED LABOUR-FREE PRODUCTS

1. *Introduction: Political and Legal Context of the Initiative*

Forced labour constitutes a serious violation of human dignity and fundamental human rights, contributes to the perpetuation of poverty, stands in the way of the achievement of decent work for all and, regrettably, remains prevalent in the global economy. According to estimates by the International Labour Organisation (ILO), the total number of people in forced labour was 27.6 million in 2021.[1] More than three quarters of the cases were imposed by private individuals, groups and companies (so-called privately-imposed forced labour), many of them operating in export-related sectors participating in global supply chains. The remaining cases were imposed by state authorities (so-called state-imposed forced labour).[2] More than 3.3 million of all

* Associate Professor of International Law, University of Naples L'Orientale. This article received Next Generation EU funding, within the project "Circular and Sustainable Made in Italy" – Italian PNRR_ MICS_ PE-11_Spoke 7. However, it reflects only the author's views.

[1] ILO, Walk Free, International Organisation for Migration, Global Estimates of Modern Slavery: Forced Labour and Forced Marriage, Geneva, 2022, p. 2 (hereinafter Global Estimates of Modern Slavery).

[2] *Ibidem*, pp. 3–4. Vulnerable and marginalised groups in a society, such as women, children, ethnic minorities, persons with disabilities, indigenous peoples, and migrants, especially if they are undocumented, are particularly susceptible to be pressured into performing forced labour.

cases of forced labour involved children.[3] The use of forced labour not only remains worldwide widespread but it has registered a significant increase between 2016 and 2021 (approximately 2.7 million) which was entirely driven by forced labour in the private economy.[4] Importantly, the risk of forced labour is present in all countries of the world, without any particular cultural or religious distinctions.[5] As to the EU, according to ILO estimates 880,000 persons were victims of forced labour in 2012; significantly, forced labour is also present in (global) supply chains of brands and companies operating on the Union market.[6]

This reality stands in stark contrast to the demands of international and European law.

At the international level, the (1930) ILO Convention No. 29 on Forced Labour and the (1957) ILO Convention No. 105 on the Abolition of Forced Labour, both of which enjoy nearly universal ratification, envisage the elimination of all forms of forced or compulsory labour. These fundamental ILO Conventions have been supplemented by the (2014) Protocol to ILO Convention No. 29 and the (2014) ILO Recommendation No. 203. In addition, in 2015 the international community committed to eradicate forced labour by 2030 in the United Nations (UN) Sustainable Development Goal 8.7.

In the European context, forced labour is in direct opposition to the respect for human dignity and the universality and indivisibility of human rights as laid down in Article 21 of the Treaty on European Union (TEU), as well as in Article 5(2) of the European Union (EU) Charter of Fundamental Rights and in Article 4 of the European Convention on Human Rights. The EU has adopted dedicated policies and legislative initiatives aimed at eradicate the use of forced labour and promote decent work and labour rights worldwide. As enshrined in the EU Action Plan on Human Rights and Democracy 2020-2024 promoting decent work and a human-centred future of work ensuring the respect of fundamental principles and human rights; contributing to the eradication of forced labour in all its forms; and strengthening responsible management in global supply chain are core priorities of the Union.[7] Additionally, the 2022 Commission's Communication on decent work worldwide reaffirms the EU's commitment to promote the universal concept of decent work (as developed by the ILO) across all sectors and policy areas addressing workers in domestic markets in third countries and in global supply chains as well.[8] Furthermore, there are several

[3] *Ibidem*, p. 2.
[4] *Ibidem*.
[5] *Ibidem*, p. 3.
[6] European Commission, Commission Staff Working Document: Prohibiting products made with forced labour on the Union market, SWD(2022) 439 final, 16.12.22, pp. 8–9 (hereinafter European Commission Staff Working Document).
[7] European External Action Service, EU Action Plan on Human Rights and Democracy 2020-2024, pp. 15–16, 25.
[8] European Commission, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on decent work worldwide for a global just transition and a sustainable recovery, COM(2022) 66 final, 23.2.2022, pp. 4–5 (hereinafter European Commission's Communication on decent work worldwide). As well known, the universal concept of decent work (as developed by the ILO) consists of four inseparable and mutually reinforcing objectives of productive employment, standards and rights at work, social protection and social dialogue; gender equality and non-discrimination are cross-cutting issues in these objectives. See, *ex multis*, N. NIZAMI, N. PRASAD, *Decent Work: Concept, Theory and Measurement*, Cham, 2017.

existing EU pieces of legislation on the issue of forced labour. These include, *inter alia*: unilateral and bilateral trade tools supporting the fight against forced labour;[9] the 2011 Anti-Trafficking Directive on preventing and combating the trafficking in human beings, including trafficking for forced labour;[10] the 2009 Directive on sanctions against employers of migrants in an irregular situation;[11] three (sectoral) pieces of legislation on supply chain due diligence concerning – respectively – conflict minerals, certain commodities and products associated with deforestation and forest degradation, and batteries;[12] and, last but not least, the Corporate Sustainability Due Diligence Directive (hereinafter the CSDDD).[13] As well known, the latter sets out – for companies falling in its scope – horizontal due diligence obligations to identify, prevent and address actual and potential adverse impacts on human rights (including forced labour) and the environment in the company's own operations and chain of activities.[14]

Notwithstanding the above mentioned EU policy and legislative framework on forced labour, there is currently no EU legislation that would *eliminate* forced-labour *products* from the Union market. Over the last five years the EU has been under considerable pressure to respond to high-profile allegations of forced labour practices around the world, including in the People's Republic of China. Regarding the latter case, as documented by the UN, since 2017 forced labour among Uyghur, Kazakh and other minorities in sectors such as agriculture and manufacturing has been occurred in the Xinjian Uyghur Autonomous Region (XUAR) of China.[15] In response, some States – such as the USA, Canada and Mexico – have introduced import restrictions in this respect.[16] Importantly, these legislations do not prevent companies under investigation from redirecting their goods to other countries; there is therefore a heightened risk that, without a forced labour prohibition at EU level, forced-labour goods are not only (directly) *exported* but also *re-exported* to the Union market.

Consequently, as called by the European Parliament[17] and foreshadowed *inter alia* in the Commission's Communication on decent work worldwide,[18] on 14

[9] For details see European Commission Staff Working Document, p. 1.
[10] For details see *ibidem*, pp. 15–16.
[11] For details see *ibidem*, p. 16.
[12] For details see *ibidem*, pp. 13–15.
[13] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, OJ L, 5.7.2024.
[14] For a comment see, *ex multis*, R. GRABOSCH, *The EU Supply Chain Directive: Global Protection for People and the Environment*, Friedrich-Ebert-Stiftung, June 2024.
[15] See, *ex multis*, UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Contemporary forms of slavery affecting persons belonging to ethnic, religious and linguistic minority communities, UN Doc. A/HRC/51/26, 19.07.2022, pp. 7–8.
[16] As to the USA, see Section 1307 of the United States Tariff Act of 1930 (19 U.S.C. §1307) and the Uyghur Forced Labour Prevention Act, Pub. L. No.117-78, 135 Stat. 1525 (2021); for a brief analysis of these legislations see European Commission Staff Working Document, pp. 19–20. As to Canada, see the Canadian S-204 Custom Tariff (Goods from Xinjian) Act (2021). With regards to Mexico see the «Acuerdo que establece las marcancias cuya importación está sujeta a regulación a cargo de la Secreteria del Trabajo y Previsión Social» published on February 17, 2023 in the Federal Official Gazette.
[17] European Parliament, Resolution of 9 June 2022 on a new trade instrument to ban products made with forced labour, P9_TA(2022)0245, 9.6.2022.
[18] European Commission's Communication on decent work worldwide, p. 14. It announces the preparation by the Commission of a new legislative initiative, which will effectively prohibit the placing

September 2022 the European Commission adopted a proposal for a Regulation on prohibiting products made with forced labour on the Union market (hereinafter the 2022 Commission's proposal on a Forced Labour Regulation – FLR).[19] The proposal will follow the ordinary legislative procedure in which the European Parliament and the Council of Ministers must both agree on a legislative text before it becomes law. In November 2023 the European Parliament adopted its negotiation position on the proposed FLR and subsequently in January 2024 the Council adopted its general approach to the 2022 Commission's proposal.[20] Moreover, after intensive inter-institutional negotiations (the so-called "trilogue"), on 5 March 2024 the EU co-legislators reached a provisional agreement on the text of the FLR. On 13 March 2024 the Council's representative body (Coreper) signed off on the negotiated text and the latter was adopted in a plenary session of the European Parliament on 23 April 2024.[21] The formal adoption of the FLR by the Council is still awaited and expected to take place in the second half of 2024.

Against this political and legal background, an analysis of the text of the forthcoming FLR (in its final version at the time of writing, that is as adopted by the European Parliament in April 2024 – hereinafter the April 2024 text version) seems to be very timely. This article, firstly, will extensively examine the rich content of the new initiative on a FLR (section 2), by focusing on – respectively – its aims and legal basis (section 2.1); its material and personal scope of application (section 2.2); its enforcement framework (section 2.3); its governance framework (section 2.4); and its (future) evaluation and review (section 2.5). Secondly, it will highlight the forthcoming FLR's principal improvements in comparison with (in particular) the original 2022 Commission's proposal (section 3). In section 4, the article will also identify some important shortcomings in the recent EU trade initiative addressing forced labour. Finally, some concluding reflections will be devoted to highlighting the key features necessary to ensure the effective implementation and enforcement of this new EU trade instrument (section 5).

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on the EU market of products made by forced labour, including child forced labour. The new instrument will build on international standards and complement existing horizontal and sectoral EU initiatives, in particular the due diligence and transparency obligations.

[19] European Commission, Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market, COM(2022) 453 final, 14.9.2022 (hereinafter European Commission's proposal). For a comment see A. FRUSCIONE, *The European Commission Proposes a Regulation to Ban Products Made with Forced Labour*, in *Global Trade and Customs Journal*, 2023, p. 120 *et seq.*; G. HOLLY, L. FELD, *Setting the Scene for an Effective Forced Labour Ban in the EU*, The Danish Institute for Human Rights, November 2023, pp. 8–16.

[20] In the European Parliament, the file was jointly referred to the IMCO (Internal Market and Consumer Protection) and the INTA (International Trade) committees. Their joint report on the Commission's proposal was adopted in October 2023 and was confirmed as the Parliament's position for the "trilogue" negotiations during the November first plenary session; see Report on the proposal for a regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market, A9-0306/2023, 26.10.2023 (hereinafter the European Parliament's position). For the Council's document see General Secretariat of the Council, Proposal for a regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market – Mandate for negotiations with the European Parliament, 5903/24, 14.1.2024 (hereinafter the Council's position).

[21] European Parliament legislative resolution of 23 April 2024 on the proposal for a regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market, P9_TA(2024)0309, 23.3.2024 (hereinafter the European Parliament's final text).

2. *Content of the (Forthcoming) Forced Labour Regulation (FLR)*

As already mentioned, the continued existence of forced labour worldwide, on the one hand, and the risk for the Union market becoming the destination of products *made with* forced labour, on the other, illustrates the need for further EU measures (*in addition* to those focused on company behavior), aimed *at products* as well, to curb this practice. This section will extensively examine the rich content of the new EU trade instrument addressing forced labour by focusing on its aims and legal basis, wide-ranging material and personal scope of application, enforcement and governance framework and (future) evaluation and review.

2.1. *Aims and Legal Basis*

The principal objective of the forthcoming FLR is to *prohibit* the placing and making available on the EU market as well as exporting from the EU market forced-labour products and, hence, further *contributing* to the fight against forced labour worldwide.[22] Additionally, as it will be discussed below, the FLR's main prohibition is supported by a sanction mechanism; thus this Regulation is also aimed at *preventing* the placing and making available on the EU market of forced-labour products. Moreover, as consumers are often not aware that final goods could have been produced with the use of forced labour *at some stage* of the production process, European consumers might indirectly sustain forced labour by unwittingly buying goods made with it.[23] Therefore, the final text of the FLR would furthermore *assure* European consumers that the goods they buy are in compliance with international (labour) standards. Last but not least, being forced labour an unpriced external factor which gives an unfair competitive advantage to the businesses benefiting from it, this Regulation has also an *economic* purpose, ensuring a level playing field for enterprises established within and outside the EU.[24]

As to its legal basis, the (April 2024) final text of the FLR is based on Articles 114 and 207 of the Treaty on the Functioning of the European Union (TFEU). Article 114 TFEU empowers the European co-legislators to issue regulatory measures with the object of establishing or ensuring the proper functioning of the internal market. The FLR will impact on the EU's internal market as it is intended to avoid obstacles to the free movement of goods and remove the risk of distortion of competition that would be caused by the divergence in Member States' laws adopted to ensure that forced-labour products do not end up in their territory.[25] Article 207 TFEU confers exclusive competence to the EU legislators in order to implement the common commercial policy. The FLR will also have a direct impact on EU's external trade

[22] European Parliament's final text, Article 1(1).
[23] European Commission Staff Working Document, p. 9.
[24] European Commission's proposal, Explanatory Memorandum, p. 4.
[25] *Ibidem*, pp. 3–4.

policy insofar as it will result in the prohibition of import and export of forced-labour goods into and from the Union's customs territory.

2.2. *Material and Personal Scope of Application*

As mentioned above, the (April 2024) FLR's text sets out a general *prohibition* on economic operators to place and make available on the Union market or export from it forced-labour products (hereinafter the main prohibition).[26]

The concept of «forced labour», meaning forced or compulsory labour, is defined in the forthcoming FLR by reference to Article 2 of the ILO Convention No. 29 on Forced Labor.[27] Article 2(1) of ILO Convention No. 29 defines forced labour as encompassing «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 voluntary». Some exceptions are set out in Article 2(2) of this international instrument.[28] The scope of the FLR's main prohibition however covers not only (privately-imposed) forced labour, including forced child labour, but also «forced labour imposed by state authorities», the latter being defined as the use of force labour as described in Article 1 of the ILO Convention No. 105 on the Abolition of Forced Labour.[29] Therefore, the regulatory standards of the FLR are well *in line* with international labour law.

As to the *material* scope of this Regulation, it is rather *broad*. In contrast to the European Parliament's proposal, it does not cover (logistical) services (e.g., transport services)[30]. It applies however to «products», understood as «any product that can be valued in money and is capable, as such, of forming the subject of commercial

[26] European Parliament's final text, Article 3.
[27] *Ibidem*, Article 2(a).
[28] *Ibidem*, recital 19. The latter envisages that forced or compulsory labour does not include: a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character; b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country; c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations; d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.
[29] *Ibidem*, Article 2(b). As established in recital 21, Article 1 of the ILO Convention No. 105 prohibits specifically the use of forced labour or compulsory labour as a means of political coercion or education or as punishment for the expression of political views or views ideologically opposed to the establishment political, social or economic system, as a method of mobilising and using it for the purposes of economic development, as a means of labour discipline, as a punishment for having participated in strikes, or as a means of racial, social, national or religious discrimination.
[30] European Parliament's position, Article 2(ga). This proposal was due to the fact that logistical services are part of a sector where there is evidence of existence of forced labour. In the same sense see Global Estimates of Modern Slavery, p. 30.

transactions, whether it is extracted, harvested, produced or manufactured, including working or processing related to a product at any stage of its supply chain».[31] In the same sense, a «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».[32] Products offered for *sale online* or through other means of *distant sales* will fall within the scope of the new legislation and be considered to have been made available on the Union market if the offer on the platform is targeted at end-users in the EU.[33] The latter condition will be satisfied if the activities of the company operating the platform are directed «to one or more Member States».[34] Moreover, in the forthcoming FLR the term «supply chain» is defined as «the system of activities, processes and actors involved at all stages *upstream* of the product being made available on the market, namely the extraction, harvesting, production and manufacturing of a product in whole or in part, including working or processing related to the product at any of those stages».[35] Consequently, the final text of the FLR focuses on the *production/supply chain* (of a product), covering sub-tier suppliers including suppliers of raw materials. In addition, it will not matter whether it is the final product or one of its components that benefited from forced labour. The new Regulation does not target specific sectors or countries (of origin or production) but applies generally to *all* products (included those offered through distance selling) of *any* type (including their components) at *any* stage of the supply chain that have benefited from forced labour. However, it does *not* cover the withdrawal of products once they have reached the end-users in the Union market.[36]

As to its *personal* scope, the FLR's main prohibition is directed at all «economic operators», defined broadly as «any natural or legal person or association of persons who is placing or making available products on the Union market or exporting products from the Union».[37] It covers therefore *all* companies regardless of where they are established (i.e., EU and non-EU enterprises) and regardless of their size. Importantly, it applies *also* to micro, small and medium-sized enterprises (hereinafter SMEs) even if – as it will be discussed below – the size and resources of the economic operators will be taken into account at the enforcement stage. SMEs are covered because it cannot be excluded beforehand that forced-labour goods are placed on the internal market by these companies; therefore, exempting SMEs would have affected the effectiveness of the FLR and created legal uncertainty.[38]

The (April 2024) final text defines «placing on the market» as «the *first* making available of a product on the Union market»,[39] including through importations.

[31] European Parliament's final text, Article 2(f).
[32] *Ibidem*, Article 2(g),
[33] *Ibidem*, Article 4. According to Article 2(m) «end-user» means «any natural or legal person residing or established in the Union, to which a product has been made available either as a consumer outside of any trade, business, craft or profession or as a professional end user in the course of its industrial or professional activities».
[34] *Ibidem*, Article 4 and recital 22.
[35] *Ibidem*, Article 2(h), emphasis added.
[36] *Ibidem*, Article 1(2).
[37] *Ibidem*, Article 2(i).
[38] European Commission's proposal, Explanatory Memorandum, p. 8.
[39] European Parliament's final text, Article 2(e), emphasis added.

«Importer» refers to «any natural or legal person or association of persons established within the Union who places a product from a third country on the Union market».[40] Economic operators established in third countries who export their goods into the Union market will be covered by the main prohibition because «products entering the Union market» refers to «products from third countries intended to be place on the Union market and to be placed under the customs procedure 'release for free circulation'».[41] Moreover, the «making available on the market» is identified as «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».[42]

By combining all the above mentioned definitions it is possible to clarify that the FLR's main prohibition will apply to *all* products, of *any* type, including their components, for which forced labour has been used at *any* stage of their production, manufacture, harvest and extraction, including working or processing related to the goods, regardless of the sector, the origin, whether they are domestic or imported, placed or made available on the market or exported by *any* economic operator. Consequently, the forthcoming FLR represents a (unilateral) trade governance instrument addressing forced labour *with extraterritorial effects*, impacting a broad range of global businesses operating in the Union market.[43]

2.3. *The Enforcement Framework*

The European Commission (hereinafter the Commission) and the EU Member States will be jointly responsible for the enforcement of the FLR's main prohibition. Member States must designate one or more national competent authorities (hereinafter NCAs) responsible for ensuring the effective and uniform implementation of the new Regulation throughout the Union.[44] The enforcement system will be based – respectively – on a two-stage investigation process aimed at identifying forced-labour products and economic operators concerned; and on adopting appropriate decisions according to the procedures and timeframes specified in Chapters III and IV of the final text.

As to the authority responsible for assessing submissions, conducting investigations and taking "ban" decisions (one of the most contentious elements of the FLR), the (April 2024) text version establishes that a NCA *or* the European

[40] *Ibidem*, Article 2(n).
[41] *Ibidem*, Article 2(s).
[42] *Ibidem*, Article 2(d).
[43] It is worth underlining that the new legislation prescribes requirements for products (also) to be sold in the EU; however, it only defines the conditions of importation and does not regulate activities occurring abroad. Therefore, it is in line with the (international) rule on prescriptive jurisdiction, which include the State's sovereign right to choose its import policies. Moreover, being enforced either at the border or within the Union's territory (as it will be explained below) it seems also to be consistent with the (international) rule on enforcement jurisdiction.
[44] European Parliament's final text, Article 5(1). Member States must ensure that the NCAs: a) exercise their powers impartially, transparently and with due respect for obligations of professional secrecy; b) have the necessary powers, expertise, and resources to carry out the investigations, including sufficient budgetary and other resources; and c) coordinate closely and exchange information with the relevant national authorities, such as the labour inspections and judicial and law enforcement authorities (Article 5(5) and (6)).

Commission will be responsible for the enforcement of the new legislation and, therefore, will be designated as the «lead competent authority».[45] It also outlines a cases' *allocation mechanism* based on the *location* of the suspected forced labour. The Commission will serve as the lead competent authority in cases where suspected forced labour occurs *outside* the territory of the Union, while each NCA will take the lead in cases *within* its territory.[46]

2.3.1. *Investigations*

The forthcoming FLR foresees a two-stage investigation process: a preliminary phase of investigation and, if warranted, a formal investigation phase. The burden of proof of establishing that a product has been made with forced labour will fall on the lead competent authority.[47] Importantly, in order to ensure the economic operators' right to due process the latter will have (*inter alia*) the opportunity to provide information in their defence throughout the investigation.[48]

When assessing the likelihood of a violation of the FLR's main prohibition, the Commission and the NCAs must follow a so-called «risk-based approach».[49] First of all, in order to prioritise products suspected to have been made with forced labour, they will use, as appropriate, the following criteria: a) the scale and severity of the suspected forced labour, including whether forced labour imposed by state authorities could be a concern; b) the quantity or volume of products placed or made available on the Union market; and c) the share of the part suspected to have been made with forced labour in the final product.[50] Secondly, in both phases of investigations, lead competent authorities must, to the extent possible, focus on the economic operators involved in the steps of the supply chain as close as possible to where the forced labour likely occurs.[51] Furthermore, they will take into account the size and economic resources of the economic operators, in particular where the economic operator is a SME, and the complexity of the supply chain.[52] Consequently, it can be assumed that

[45] *Ibidem*, Article 2(q).
[46] *Ibidem*, Articles 15 and 20.
[47] *Ibidem*, recital 24. According to recital 26, the NCAs and the Commission should be guided by the principle of proportionality when implementing this Regulation.
[48] *Ibidem*, recital 68 and Article 16(2). Article 41 of the EU Charter of Fundamental Rights includes, *inter alia*, the right of every person to be heard before any individual decision which would affect him or her adversely is taken and the right to good administration in general. For a comment see, *ex multis*, P. CRAIG, *Article 41 – Right to Good Administration*, in S. PEERS, T. HERVEY, J. KENNER, A. WARD (eds.), *The EU Charter of Fundamental Rights: A Commentary*, Oxford, 2014, p. 1069 *et seq*.
[49] *Ibidem*, Article 14(1).
[50] *Ibidem*, Article 14(2).
[51] *Ibidem*, Articles 14(4) and 18(2).
[52] *Ibidem*.

large brands/manufacturers/producers/product suppliers[53] will be targeted for investigation.[54]

The assessment of the likelihood of the violation of the FLR's main prohibition will be based on all relevant, factual, and verifiable information available to lead competent authorities, including (but not limited to) the following sources of information: a) information and decisions encoded in the information and communication system referred to in Article 7(1), including any past cases of compliance or non-compliance of an economic operator with the FLR's main prohibition; b) a public EU database of forced labour risk areas or products (referred to in Article 8); c) the risk indicators and other information pursuant to guidelines to be issued by the Commission (referred to in Article 11(e)); d) submissions made by third parties, including civil society organisations (pursuant to Article 9); e) information received by the lead competent authorities from other authorities relevant for the implementation of this Regulation, such as Member States' due diligence, labour, health or fiscal authorities, on the products and economic operators under assessment; f) any issues arising from meaningful consultations with relevant stakeholders, such as civil society organisations and trade unions.[55]

Importantly, in order to ensure a consistent and efficient coordination of investigations, the forthcoming FLR establishes that the lead competent authority will communicate (via the information and communication system referred to in Article 7(1)) any new information about suspected forced labour taking place in the territory *outside* its competence and may also request information and support from another competent authority.[56]

2.3.1.1. *Preliminary Investigations*

In the preliminary phase of investigations, lead competent authorities must determine whether there is a «substantiated concern» of a violation of the FLR's main prohibition, defined as «a *reasonable* indication, based on objective, factual and verifiable

[53] According to Article 2 «manufacturer» refers to «any natural or legal person who manufactures a product or *has a product designed or manufactured, and markets that products under its name or trademark*» (letter (j), emphasis added), thereby explicitly including European and/or international brands and buyers; «producer» is defined as «the producer of agricultural products as referred to in Article 38(1) TFUE or of raw materials» (letter (k)); and «product supplier» is an operator «in the supply chain who extracts, harvests, produces or manufactures a product in whole or in part, or intervenes in the working or processing related to a product at any stage of its supply chain, whether as manufacturer or in any other circumstances» (letter (l)).

[54] In the same sense see the Commission's proposal which states that «emphasis will likely be placed on larger economic operators at early stages of the EU value chain (e.g., importers, manufactures, producers or product suppliers)»; European Commission's proposal, Explanatory Memorandum, p. 4.

[55] European Parliament's final text, Article 14(3).

[56] *Ibidem*, Article 16(3) and (4). A competent authority that receives a request for information *must* provide an answer within 20 working days from the date of receipt of the request (Article 16(5)). A requested competent authority may refuse to comply with a request *only* if the requested authority demonstrates that complying with the request would substantially impair the execution of its own activities (Article 16(7)).

information, for the competent authorities to suspect that products were likely made with forced labour».[57]

In this phase of investigations, lead competent authorities will request from economic operators under assessment, and where relevant, other product suppliers, information on their relevant actions taken to identify, prevent, mitigate, bring to an end or remediate risks of forced labour in their operations and supply chains, unless such a request would jeopardise the outcome of the assessment. Significantly, lead competent authorities can also request information on those actions from other relevant stakeholders.[58] «Due diligence in relation to forced labour» is a defined concept in the FLR: it refers to «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 placed or to be made available on the Union market or to be exported».[59] It is important to underline, first of all, that the forthcoming FLR does *not* (directly) impose due diligence obligations on economic operators; however, as it will be soon explained, this Regulation (strongly) incentivises companies to conduct due diligence in relation to forced labour because it can help them to *identify* and *address* the risk of forced labour. Secondly, the (April 2024) final text does not introduce any specific requirements for economic operators to carry out due diligence of forced labour. Indeed, companies may refer to: a) applicable Union legislation or Member States legislation setting out due diligence and transparency requirements with respect to forced labour; b) the guidelines on due diligence in relation to forced labour to be issued by the Commission (as explained below); c) due diligence guidelines or recommendations of the UN, ILO, OECD (Organisation for Economic Cooperation and Development) or other relevant international organisations, in particular those guidelines and recommendations relating to geographic areas, production sites and economic activities in certain sectors in which there are systematic and widespread forced labour practices; and d) any other meaningful due diligence or other information in relation to forced labour in their supply chain.[60] Thirdly, although the FLR refers to due diligence measures, it must be underlined that the latter is a *product-based* legislation specifically aimed at *ensuring* that forced-labour products are not imported to and exported from the EU market and, thus, establishing an obligation of *result*. In contrast, other EU pieces of legislation aiming at addressing human rights impacts in the business context, in particular the CSDDD, oblige companies to make reasonable *efforts* to manage human rights adverse impacts in their (global) operations and business relationships through due diligence processes; therefore, they establish an obligation of *means*.[61]

As already highlighted, although under the new initiative on a FLR due diligence is not a (direct) obligation imposed on economic operators, it is an *element* that lead

[57] *Ibidem*, Article 2(p), emphasis added.
[58] *Ibidem*, Article 17(1). The relevant stakeholders include the persons or associations having submitted relevant, factual, and verifiable information pursuant to Article 9 (as it will be explained below) and any other natural or legal persons related to the products and geographical areas under assessment, as well as from the European External Action Service and Union Delegations in relevant third countries.
[59] *Ibidem*, Article 2(c), emphasis added.
[60] *Ibidem*, Article 17(1).
[61] For these different regulatory approaches see, *ex multis*, F. HOFFMEISTER, *The European Regulatory Approach on Supply Chain Responsibility*, in *Zeit. Eur. Stud.*, 2022, p. 221 *et seq.*, pp. 222–223, 247–248.

competent authorities must *take into account* when assessing the existence of a substantiated concern that a product was likely to be made using forced labour. Indeed, Article 17(5) establishes that lead competent authorities will not initiate a formal investigation if they consider that there is no substantiated concern of a violation of the FLR's main prohibition or that the reasons that motivated the existence of a substantiated concerned have been eliminated «for instance due to, *but not limited to*, the applicable legislation, guidelines, recommendations or any other due diligence in relation to forced labour» being applied in a way that mitigates, prevents and brings to an end the risk of forced labour.[62] Consequently, the due diligence processes applied by economic operators will represent an *important element* – but *not the only factor* – that will be taken into account by the lead competent authority in the preliminary phase of investigations. This is due to the fact that whereas forced labour-related due diligence processes (voluntary or mandatory) allow negative impacts to be *still occurring* in company's supply chain, the new legislation imposes an obligation to guarantee a specific *result* (to *ensure* that operators' products are full clean when it comes to forced labour). This is in fact the *added value* of the FLR compared to (voluntary and/or mandatory, national and/or international) instruments requiring forced labour-related due diligence: the latter are *not* sufficient to stop forced-labour products entering the Union market in cases where due diligence is carried out *incorrectly* or *insufficiently*.[63]

Economic operators must respond to the above mentioned request within 30 working days from the date they receive it. Within 30 working days from the date of receipt of the information submitted by the enterprises, lead competent authorities must conclude the preliminary phase of their investigation. However, those authorities may conclude that there is a «substantiated concern» of forced labour on the basis of any other «facts available» where they have refrained from requesting information from the enterprises under assessment (as mentioned above) or when the latter adopt a non-cooperative behaviour (as it will be explained below).[64]

2.3.1.2. *Formal Investigations*

The formal investigation phase is launched if in the pre-investigation phase the lead competent authority determines that there is a substantiated concern of a violation of the FLR's main prohibition.[65] The economic operators concerned must be informed of – respectively – the investigation's launch and the possible consequences thereof; the products subject to the investigation; the reasons for the initiation of the investigation, unless it would jeopardise the outcome of the investigation; and the possibility to submit additional information.[66] Importantly, during this phase of investigation, the lead competent authority can collect information from or interview any relevant natural or legal person who consents to be interviewed, including relevant

[62] European Parliament's final text, Article 17(5), emphasis added.
[63] In this sense see European Commission Staff Working Document, p. 32.
[64] European Parliament's final text, Article 17(2)(3) and (4).
[65] *Ibidem*, Article 18(1). The formal investigation must be initiated within 3 working days from the date of the decision to launch such investigation.
[66] *Ibidem*.

economic operators and any other stakeholders.[67] Enterprises will submit *additional* documents and *more detailed* information to the lead competent authority. This will include information identifying the products under investigation and, where appropriate, identifying the part of the product to which the investigation should be limited, the manufacturer, producer or product supplier of those products or parts thereof.[68] In essence, companies are required to disclose details of *all* suppliers and sub-suppliers involved in their supply chain within 30-60 working days, although an extension of this deadline may be requested with a justification and be (possibly) granted taking into account the size and economic resources of the economic operators concerned, in particular whether the company is a SME.[69]

In exceptional situations where the lead competent authority may deem it necessary to conduct field inspections, it will undertake this with consideration to where the risk of forced labour is *located*.[70] Where the risk of forced labour is located in the territory of a Member State, the NCA will conduct its own inspection, in accordance with national law in compliance with Union law.[71] In case where the risk of forced labour is located outside the EU, the Commission will undertake investigations provided that the economic operators concerned consented and the government of the third country was officially notified and raised no objection.[72] If the Commission's request is rejected, this may constitute a case of non-cooperation (as explained below).

Lead competent authorities are not under a statutory deadline to complete their investigation, although they must «endeavour to adopt their decisions within 9 months from the date they initiated the investigation».[73]

Finally, it must be highlighted that the European Parliament had initially proposed to reverse the burden of proof for products from high-risk geographic areas with state-imposed forced labour, meaning that companies would have been required to demonstrate that the products concerned were not made with forced labour.[74] This recommendation was due to the fact that a particular challenge is present in cases of state-imposed forced labour, stemming primarily from the difficulty of gathering evidence within regions where the government controls labour practices. In these environments, the state's involvement often leads to restricted access for external investigations and the lack of transparency due to censorship and misinformation.[75] However, during the "trilogue" the above mentioned Parliament's suggestion was not accepted by the Council. Whereas the reversed burden of proof would have mitigated the heavy burden placed on competent authorities (especially) in cases of state-imposed forced labour, admittedly this recommendation was critical for two reasons.

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[67] *Ibidem*, Article 18(5).
[68] *Ibidem*, Article 18(2).
[69] *Ibidem*, Article 18(4).
[70] *Ibidem*, Article 19(1).
[71] *Ibidem*, Article 19(2). If needed, the NCA may ask the cooperation of other national authorities relevant for the implementation of this Regulation, such as labour, health or fiscal authorities.
[72] *Ibidem*, Article 19(3).
[73] *Ibidem*, Article 20(1).
[74] European Parliament's position, Article 6(2a).
[75] See, *ex multis*, S. SCHAEFER, J. HAUGE, *The Muddled Governance of State-Imposed Forced Labour: Multinational Corporations, States, and Cotton from China and Uzbekistan*, in *New Political Economy*, 2023, p. 799 *et seq*., pp. 806–807, 809–811.

Firstly, it could have contravened the companies' right to be heard.[76] Secondly and most importantly, it would have brought limited results. This proposal did *not* envisage the detention of products caught by the presumption pending a "ban" decision. Therefore, products presumed to have been made with state-imposed forced labour would have been able to circulate freely for an undetermined amount of time within the Union market (or even forever, if the company concerned was not able to demonstrate that the products were free from forced labour).

2.3.2. *Decisions of the Lead Competent Authorities*

Lead competent authorities must assess *all information and evidence* gathered during the investigation process and, on that basis, establish whether the FLR's main prohibition has been violated.[77] However, they may establish their conclusions based on any other «facts available», where – in response to requests for information – a *company* or a *public authority*: a) refuses to provide the information requested without a valid justification; or b) fails to provide such information within the time limit prescribed without a valid justification; or c) provides incomplete or incorrect information with the objective of blocking the investigation; or d) provides misleading information; or e) otherwise impedes the investigation, including when the risk of forced labour imposed by state authorities is identify during the investigation.[78] This so-called *non-cooperative clause* is indeed *crucial* because it is much less likely that in cases of state-imposed forced labour third-country governments would be co-operative in facilitating investigations.

The forthcoming FLR aligns the decision-making process with the cases' allocation mechanism established for the investigations. Where the Commission acts as the leading competent authority and concludes that a product is violating the FLR's main prohibition, it will adopt an implementing act, in accordance with the examination procedure referred to in Article 35(2).[79] Where forced labour is taking place in the territory of a Member State and a violation of the FLR's main prohibition is established, the NCA will adopt the decision. Significantly, in order to ensure a uniform application of a decision taken by one Member State throughout the Union market, the principle of mutual recognition will apply in respect to products with the same identification and from the same supply chain for which forced labour has been found.[80]

Where the lead competent authorities cannot establish that the FLR's main prohibition has been violated, they will take a decision to close the investigation and inform the economic operator accordingly.[81] Importantly, closing the investigation will

[76] As already mentioned, the forthcoming FLR explicitly envisages in Article 16(2) (and also in recital 68) that the economic operators benefit from the right to be heard at all stages of the process (as already foreseen in the original Commission's proposal).
[77] European Parliament's final text, Article 20(1).
[78] *Ibidem*, Article 20(2).
[79] *Ibidem*, Article 20(6).
[80] *Ibidem*, Article 20(8).
[81] *Ibidem*, Article 20(3). They will also inform all other competent authorities through the information and communication system referred to in Article 7(1).

not preclude the launch of a *new* investigation into the same product and economic operator in case new relevant information arises.[82]

In the event of a finding of a violation of the FLR's main prohibition by the economic operators concerned, the lead competent authority will without delay adopt a *decision* containing: a) a *prohibition* to place or make the products concerned available on the Union market and to export them; b) an order for the economic operators to *withdraw* from the Union market the products concerned that have already been placed or made available on the market, or to *remove* content from an online platform referring to such products; c) an order for the economic operators to *dispose of* the products concerned in accordance with Article 25.[83] The latter, in line with the waste hierarchy set out in Directive 2008/98/EC,[84] envisages that the sanctioned economic operators must: a) if the product is perishable, donate the products concerned to charitable or public interest organisations; b) if the product is not perishable, recycle the product concerned; and c) if the measures established in letters a) and b) are not possible, dispose of the products concerned by rendering them inoperable. However, at the end of "trilogue", the co-legislators agreed that the disposal of non-compliant products would be subject to *two exceptions*. On the one hand, if parts of a non-compliant product are replaceable, the order to dispose of will apply only to those parts.[85] On the other hand, in order to prevent disruptions of a supply chain of strategic or critical importance for the Union, the lead competent authorities may refrain from ordering the disposal of a non-compliant product and instead order the economic operator to withhold the product for a defined period of time (at his own cost) to allow forced labour to be eliminated.[86] As it will be discussed below, this second exception is particularly problematic.

In the case of the adoption by the lead competent authority of a "ban" decision, the latter must include:[87] a) the findings of the investigation and the evidence considered; b) reasonable time limits for the economic operators to comply with the orders envisaged in Article 20(4)[88] which will take into account the size and economic resources of the economic operators concerned, including whether the operator is a SME, the share of the part of the product and whether it is replaceable; c) details of the product (including, e.g., the manufacturer, producer, the product suppliers and, where appropriate, production site); and d) information on the possibilities for a judicial review against a decision.

If the economic operators disagree with a "ban" decision, they can request (at any time) a review procedure by submitting new substantial information (i.e., information not brought to the attention of the competent authority during the

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[82] *Ibidem*.

[83] *Ibidem*, Article 20(4). Clearly, economic operators are responsible for withdrawing and disposing of the products concerned at their own cost.

[84] Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3 *et seq*.

[85] European Parliament's final text, Article 20(4)(c). The removal of parts may therefore be impossible in relation to mixed or compounded products (e.g., tomatoes in a food sauce that were harvested using forced labour).

[86] *Ibidem*, Article 20(5).

[87] *Ibidem*, Article 22(1).

[88] *Ibidem*, Article 22(1)(b). The time limit will not be less than 30 working days; in case of perishable goods, animal or plants, the time limit will not be less than 10 working days.

investigation) which demonstrates that the products concerned were not made with forced labour.[89] They will also have access to domestic courts or tribunals for review, both for substantive and procedural legality of the decision.[90]

Where economic operators provide evidence to the lead competent authority that they have complied with a "ban" decision and, significantly, that they have eliminated forced labour from their operations or supply chain with respect to the products concerned, that authority must withdraw its "ban" decision for the future and inform the economic operators.[91] The initial European Parliament's proposal to include remediation for workers harmed as an additional condition for allowing products back into the Union market (as it will be discussed below) was not accepted by the Council.[92]

2.3.3. *National Competent Authorities' and Customs Authorities' Enforcement Obligations*

Chapter V of the forthcoming FLR establishes the responsibilities of NCAs and customs authorities in enforcing "ban" decisions issued under Article 20(4).

The NCAs will be responsible for the enforcement of decisions pertaining to product prohibitions, removal from the market, and disposal of non-compliance products, including those decisions adopted by the Commission.[93] Additionally, if the economic operators fail to comply with the "ban" decisions, NCAs will imposed either directly, in cooperation with other authorities or by the application to the competent judicial authorities, penalties on them pursuant to Article 37. The latter establishes that the penalties must be effective, proportionate and dissuasive and implemented by the NCAs in accordance with national law. Moreover, these penalties will be determined given due regard to the following factors: a) the gravity and duration of the infringement; b) any relevant previous infringements by the economic operator; c) the degree of cooperation with the competent authorities; and d) any other mitigating or aggravating factor applicable to the circumstances of the case, such as financial benefits gains, or losses avoided, directly or indirectly, from the infringement.

As to Member States' customs authorities, they will (also) play a pivotal role in enforcing "ban" decisions or in respect to suspected forced-labour goods with regards to *products entering or leaving* the Union market.

The lead competent authority is required to communicate its "ban" decision to all Member States' customs authorities without delay. Following that communication, customs authorities will identify any product that is breaching the FLR's main prohibition.[94] Pending verification of the correspondence of the product presented at customs with the one subject to a "ban" decision, the customs authorities must suspend its release for free circulation or export.[95] Such a suspension will be lifted if the NCAs fail to request the customs authorities to maintain the suspension or notified

[89] *Ibidem*, Article 21(1). A lead competent authority will take a decision on the request for review within 30 working days from the date of receipt of the request (Article 21(2)).
[90] *Ibidem*, Article 21(5).
[91] *Ibidem*, Article 21(3).
[92] European Parliament's position, Article 6(6).
[93] European Parliament's final text, Article 23.
[94] *Ibidem*, Article 26.
[95] *Ibidem*, Article 28.

them of their approval of the product's free circulation or export.[96] Custom authorities will prohibit the release for circulation or export of those products for which the NCAs conclude that they correspond to a "ban" decision and will ensure that the product concerned is disposed of in accordance with national law consistent with Union law.[97] In making their enforcement decisions, customs authorities are required to adopt a risk-based approach and cooperate closely with the Commission and NCAs.[98]

Importantly, the Commission is empowered to adopt delegated acts (in accordance with Article 33) to supplement the forthcoming FLR which identify *products* or *products groups* (amongst others, established in the database or identified in "ban" decisions of the NCAs) for which further information is required to be provided to customs authorities. This will include information on the product itself, on the manufacturer or the producer and the product suppliers which are necessary for customs authorities to be able to act immediately on that specific products.[99] In other words, *disruptions at the border* can be expected in some cases as customs authorities may decide on their own initiative to examine products entering or leaving the Union market.

2.4. *The Governance Framework*

Chapter II of the forthcoming FLR focuses on governance; it envisages several tools aimed at facilitating the compliance with the new legislation's main prohibition.

First of all, Article 8 included in this Chapter envisages the establishment by the Commission (with the assistance of external expertise if needed) of a (public EU) *database* with indicative, non-exhaustive, evidence-based, verifiable and regularly updated information of forced labour risks: a) in specific geographic areas; b) with respect to specific products or product groups including with regard to forced labour imposed by state authorities; c) in specific economic sectors in specific geographic areas for which there is reliable and verifiable evidence that there exists forced labour imposed by state authorities. The database will not publicly disclose information that directly names economic operators. Importantly, as suggested by the Council, the database will *prioritise* the identification of widespread and severe forced labour risks and will be based on *independent* and *verifiable* information from international, institutional, research or academic organisations, in particular the ILO and the UN.

Secondly, the Commission, in consultation with relevant stakeholders, will make available and regularly update *guidelines* on *several* issues pertaining to the implementation of the FLR.[100] These guidelines will include: a) guidance for economic operators on due diligence in relation to – respectively – (privately-imposed) forced labour (including forced child labour) and state-imposed forced labour;[101] b) guidance

[96] *Ibidem*, Article 29.
[97] *Ibidem*, Article 30.
[98] *Ibidem*, Article 31. The Commission will have a coordination role with respect to the exchange of information and cooperation.
[99] *Ibidem*, Article 27.
[100] *Ibidem*, Article 11.
[101] *Ibidem*, Article 11(a) and (f). According to Article 11(a) this guidance shall take into account applicable national and Union legislation setting out due diligence requirements with respect to forced labour, guidelines and recommendations from international organisations, as well as the size and economic

for NCAs and customs authorities on the implementation and enforcement of the FLR;[102] c) information on risk indicators of forced labour, including on how to identify them;[103] d) guidance for economic operators and product suppliers on how to engage in dialogue with competent authorities during the investigations, in particular on the type of information to be submitted;[104] e) guidance for Member State on the method for calculating financial penalties and the thresholds applicable;[105] and f) further information to facilitate the competent authorities' implementation of and the economic operator's compliance with the FLR.[106]

Chapter II also includes a pivotal tool aimed at achieving an effective and coherent enforcement regime. Article 6 of the new legislation envisages the establishment of a *Union Network Against Forced Labour Products* (hereinafter the Network) that will serve as a platform for structured coordination and cooperation between the NCAs and the Commission, and to streamline the practices of enforcement of the FLR within the Union.[107] The Network will be composed of representatives from each Member State, representatives from the Commission and, where appropriate, representatives from the customs authorities.[108] The Commission will coordinate the work of the Network, and the latter will have a secretariat and the necessary resources to carry out its tasks.[109] Importantly, the Network will ensure its active participation (*inter alia*) in all the phases of the process leading to the "ban" of a product.[110]

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resources of economic operators, different types of suppliers along the supply chain, and different sectors. Article 11(b) envisages also guidance for economic operators on best practices for bringing to an end and remediating different types of forced labour.

[102] *Ibidem*, Article 11(c) and (d). According to Article 11(c) the guidance for the NCAs will include benchmarks for assisting them in their risk-based assessments of investigations and guidelines on the applicable standard of evidence.

[103] *Ibidem*, Article 11(e). According to the latter this information will be based on independent and verifiable information, including reports from international organisations, in particular the ILO, civil society, business organisations, trade unions, and experience from implementing Union legislation setting out due diligence requirements with respect to forced labour.

[104] *Ibidem*, Article 11(g).

[105] *Ibidem*, Article 11(i).

[106] *Ibidem*, Article 11(j).

[107] *Ibidem*, Article 6(2).

[108] *Ibidem*, Article 6(3). Other relevant Member States authorities can attend meetings on an ad hoc basis. Experts and stakeholders, including representatives from trade unions and other workers' organisations, civil society and human rights organisations, business organisations, international organisations, third countries' relevant authorities, the European Agency for Fundamental Rights, the European Labour Authority or relevant Commission services, Union Delegations and Union agencies with expertise in the areas covered by the Regulation may be invited to attend meetings of the Network or to provide written contributions (Article 6(8)).

[109] *Ibidem*, Article 6(4)(5) and (10). The secretariat will organise the meetings of the Network which are chaired by a representative from the Commission. The Network will establish its rules of procedure (Article 6(11)).

[110] *Ibidem*, Article 6(7). The latter establishes that the Network will have the following tasks: a) facilitate the identification of common enforcement priorities to achieve the objectives established in Article 1; b) facilitate the coordination of investigations; c) follow-up on the enforcement of "ban" decisions; d) upon the request from the Commission, contribute to the development of guidelines referred to in Article 11; e) facilitate and coordinate the collection and exchange of information, expertise and best practices with regard to the application of the FLR; f) contribute to uniform risk-based approaches and administrative practices for the implementation of this Regulation; g) promote best practices in the application of penalties; h) cooperate, as appropriate, with Commission services, Union agencies or

Furthermore, this Chapter envisages the establishment of an essential *digital infrastructure*. First of all, Article 9 provides for a *single information submission point*. The Commission will set up a user friendly and free of charge dedicated centralised mechanism where any natural or legal person or any association not having legal personality can submit information on alleged violations of the FLR. The submission must contain information on the economic operators or products concerned, provide the reasons and evidence substantiating the allegation, and where possible supporting documents.[111] As a safeguard, the Commission is required to discard submissions «that are manifestly incomplete or unfounded or made in bad faith». Subsequently, this institution will distribute the submissions among the relevant competent authorities and the respective lead competent authority will then have to make an assessment of the information that has been submitted.[112] Secondly, as proposed by the Council, the Commission will set up and regularly update a *Forced Labour Single Portal*.[113] This digital platform available to the public will contain the list and contacts of the NCAs; the database; the guidelines issued by the Commission; "ban" decisions and their withdrawal; the results of the FLR's reviews; the single information submission point; and a list of publicly available information sources of relevance for the implementation of the FLR. Thirdly, with regards to information on issues relating to the investigations, decision-making process, and enforcement on the FLR's main prohibition, the NCAs are obliged to use – respectively – the information and communication system referred to in Article 34 of the Market Surveillance Regulation,[114] which will accessible by the NCAs, customs authorities and the Commission, and other interconnected IT systems. Additionally, the Commission is empowered to create new interconnected IT systems (i.e., between the ICSMS and the EU Single Window Environment for Customs).[115]

Finally, due to the fact that forced labour is a global problem and given the interlinkages of the global supply chains, Chapter II contains a crucial provision aimed at promoting international cooperation against forced labour, which would also improve the effective implementation and enforcement of the forthcoming FLR. The Commission will, as appropriate, cooperate and exchange information with authorities

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Member States authorities relevant for the implementation of the FLR; i) promote the cooperation, exchanges of personnel and visit programmes among competent authorities and customs authorities, as well as between these and third countries' competent authorities and international organisations; j) facilitate the organisation of training and capacity building activities on the implementation of this Regulation for relevant authorities, the Commission and Union Delegations in third countries; k) upon the request from the Commission, provide assistance to the Commission on the development of a coordinated approach for engagement and cooperation with third countries; l) monitor situations of systemic use of forced labour; m) assist in the organisation of information and awareness-raising campaigns about the FLR; n) promote and facilitate collaboration to explore possibilities for using new technologies for the enforcement of this Regulation and the traceability of products; o) collect data on remediation linked to the decisions and evaluation of their effectiveness.

[111] *Ibidem*, Article 9(1) and (2). The Commission is empowered to adopt implementing acts to specify the procedural rules, templates and details of the submissions. It is also tasked to make available guidelines on how to submit the above information (Article 11(h)).

[112] *Ibidem*, Article 9(3) and (4).

[113] *Ibidem*, Article 12.

[114] *Ibidem*, Article 7(1). For that piece of legislation see Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011, OJ L 169, 25.6.2019, p. 1 *et seq*.

[115] *Ibidem*, Article 7(2) to (8).

of third countries, international organisations, civil society representatives, trade unions, business organisations and other relevant stakeholders.[116] As to the international cooperation with third countries' authorities, it will take place in a structured way, as part of the existing dialogue structures with those countries or, if necessary, specific ones that will be created on an ad hoc basis.[117] This cooperation may include exchanges – respectively – of information on forced labour risks areas or products (such as those identified in the database), of best practices for bringing forced labour to an end, and of information on decisions to "ban" products, in particular with countries that have similar legislation in place.[118] Moreover, it may include the development of cooperation initiatives and accompanying measures to support the efforts of economic operators, civil society organisations, social partners and third countries to tackle forced labour and its root causes.[119] Diplomatic representations of the Union will contribute to disseminating information about this Regulation and to facilitate the submission of forced labour risks by relevant stakeholders.[120]

2.5. *Evaluation and Review*

As suggested by both the European Parliament and the Council, the new legislation includes an important provision on an evaluation of the implementation and enforcement of the forthcoming FLR.[121] By two years after the start of the application of this Regulation (and every five years thereafter) the Commission must present a report to the European Parliament, the Council and to the European Economic and Social Committee on the above mentioned evaluation. The latter will in particular include an assessment of: a) whether the mechanism in place contributes to the elimination of products made with forced labour from the internal market as well as to the fight of forced labour (worldwide); b) the cooperation between competent authorities, including within the Network, as well as all other relevant authorities in applying the Regulation; c) the effectiveness of international cooperation to contribute to the elimination of forced labour from global supply chains; d) the impact on businesses, and in particular on SMEs; e) the cost of compliance for economic operators, and in particular for SMEs; f) the overall cost-benefit and effectiveness of the FLR's main prohibition. The report will also assess – respectively – whether the scope of the FLR should be enlarged to include services ancillary to the extraction, harvesting, production or manufacturing of products; the impact of the FLR on victims of forced labour; and the need for a specific mechanism to address and remediate forced labour, including an impact assessment for the implementation of such a mechanism. Importantly, where the Commission finds it appropriate, the report will be accompanied by a legislative proposal for amendment of the relevant provisions

[116] *Ibidem*, Article 13(1).
[117] *Ibidem*, Article 13(2). Existing dialogues include Human Rights Dialogues with third countries; implementation of trade and sustainable development commitments of trade agreements or the Generalised Scheme of Preferences; and EU development cooperation initiatives.
[118] *Ibidem*.
[119] *Ibidem*, Article 13(3).
[120] *Ibidem*, recital 37.
[121] *Ibidem*, Article 38.

of this Regulation. Therefore, this provision is very significant in terms of the scope of, effectiveness and negative impacts of this new piece of legislation.

3. *A First Assessment of the Forthcoming FLR: April 2024 Text's Improvements in Comparison with the 2022 Commission's Proposal*

Turning to a first assessment of the new EU's trade-related regulatory instrument addressing forced labour, it should be noted that the forthcoming FLR certainty constitutes a very positive development towards making trade more sustainable from a human rights perspective. It demonstrates indeed the EU's commitments to promote human rights and it could particularly make a significant contribution to the eradication of forced labour, as well as to the prevention of forced labour in the future.[122]

The April 2024 text version envisages several important/peculiar features that – based on their relevance – will be highlighted below.

First of all, as to the problem of forced labour, it embraces forced labour in *all its forms* (including state-imposed forced labour) as defined by the two ILO's fundamental conventions. It also refers to two important ILO guidelines which present an operational definition of (privately-imposed) forced labour and indicators to help identify it.[123]

Secondly, as to the forthcoming Regulation's scope, the prohibition of placing and making available on the Union market or exporting from it covers *all* products (included those offered through distant selling) made in part or in whole with forced labour at *all* stages of the *production chain*. Although the FLR will not apply to logistical services (such as transport) the April 2024 text version does contain a requirement for the Commission to consider (in the future) a possible enlargement of its material scope, by including services ancillary to the extraction, harvesting, production or manufacturing of products. Moreover, *ratione personarum*, the FLR's trade prohibitions are directed to *all* companies established, incorporated or active in the Union market, including SMEs. However, as well known, the latter have limited resources and ability to ensure that the products they place or make available on the Union market are free from forced labour; additionally, withdrawing goods from the market could pose a heavier burden and increased risks of financial difficulty for them compared to a large company with more resources. Therefore, the April 2024 text version envisages several and specific measures which are addressing the particular situation of SMEs: *i*) before initiating a formal investigation, lead competent authorities must consider the size and

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[122] In this sense see European Commission Staff Working Document, p. 56. For a view that the new FLR is likely to take advantage of the so-called 'Brussels effect' see A. EUSTACE, *The European Union's Forced Labour Regulation: Putting the 'Brussels Effect' to Work for International Labour Standards*, in *European Labour Law Journal*, 2023, p. 1 *et seq*., pp. 8–14.

[123] European Parliament's final text, recitals 1 and 20. Those eleven indicators are: abuse of vulnerability; deception; restriction of movement; isolation; physical and sexual violence; intimidations and threats; retention of identity documents; withholding of wages; debt bondage; abusive working and living conditions and excessive working hours; see ILO, ILO Indicators of Force Labour, Geneva, 2012; ILO, Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children, Geneva, 2012.

the economic resources of the economic operators concerned, knowing that smaller companies have not as many resources for supply chain overview and mapping as larger companies; *ii*) the Commission will issue guidelines on forced labour-related due diligence which focuses in particular on assisting SMEs in complying with the FLR's main prohibition; *iii*) the Commission will also develop accompanying measures to support the efforts of economic operators and their business partners in the same supply chain, in particular SMEs;[124] *iv*) NCAs will designate contact points to provide information (and, as appropriate, assistance) to SMEs in matters related to the application of this Regulation and they may also organise trainings for them on force labour risk indicators and on how to engage in dialogue with authorities throughout an investigation.[125]

With regards to the enforcement framework, the forthcoming FLR shows several improvements compared to the one originally proposed by the Commission.

First of all, according to the 2022 Commission's proposal the enforcement system would have relied *only* on NCAs which – especially in cases related to state-imposed forced labour – could have been subject to threat of "counter-sanctions". In this respect, (as already highlighted) the April 2024 text version envisages a new cases' allocation mechanism under which the Commission will serve as the lead competent authority in cases where suspected forced labour occurs outside the territory of the Union. This choice is to be welcomed because it entrusts the Commission (endowed with greater bargaining power compared to NCAs) with cases of suspected forced labour taking place in third countries, including those related to *state-imposed* forced labour. Moreover, in order to ensure the effective implementation of its tasks, in particular to carry out investigations, it is now explicitly envisaged that the Commission has the possibility to request the assistance of other Union bodies, offices or agencies with an appropriate mandate and should have the means to finance the necessary staff and related costs to carry out those tasks.[126] Considering that (according to ILO estimates) the bulk of the problem of forced labour lies outside the EU,[127] the Commission will thus likely be the most common lead competent authority.

Secondly, as to the risk-based approach to be followed by lead competent authorities to assess the likelihood that forced labour is involved, the final text of the FLR sets out a *list* of (better defined) risk criteria which have the potential of achieving an efficient (targeted) enforcement and, most importantly, of contrasting the possible practice of blocking imports randomly. However, the chosen approach – even if called «risk-based» – seems actually be a rather *hybrid* one, because it uses (true/genuine) risk criteria while, at the same time, applies the principle of proportionality (by taking into account the size and economic resources of the economic operators).

Thirdly, with regards to the preliminary phase of investigations, the final text also clarifies the fact that forced labour-related due diligence carried out by a company is *not* a shield against the opening of a formal investigation.[128] However, due diligence

[124] *Ibidem*, Article 10.
[125] *Ibidem*.
[126] *Ibidem*, recital 25.
[127] European Commission Staff Working Document, p. 33.
[128] This key point was not made sufficiently clear in the original Commission's proposal, which included in Article 4 a problematic provision («The competent authority shall duly take into account where the economic operator demonstrates that it carries out due diligence on the basis of identified forced labour

measures constitute a *crucial element* that competent authorities will *take into account* when assessing the existence of a substantiated concern that a product was likely to be made using forced labour because those measure are *very useful* to companies in identifying the risks of forced labour and addressing those risks effectively. Consequently, the forthcoming FLR will (although indirectly) *compel* companies (who want to sell their products on the Union market) to adopt due diligence's policies and processes and to demonstrate (if necessary) that their operations and supply chains are free from forced labour.

Fourthly, the April 2024 final text envisages that at all stages of the investigation process, the lead competent authority will respect the right of the economic operators concerned to be heard; however, an important exception is established when the request of information would jeopardise the outcome of the assessment. Additionally, the inclusion of a (strengthened) non-cooperative clause will give the lead competent authorities the possibility to reach conclusions on any other «facts available».

Finally, as to the penalties for non-compliance of "ban" decisions, it is welcome that the final text of the FLR establishes a *harmonised* level of penalties and, therefore, it avoids a race to the bottom among Member States in this respect and ensures a level playing field.

Turning to the FLR's governance framework, several tools embraced by it are characterised by significant improvements compared to the ones originally proposed by the Commission.

First of all, according to the final text version the database will: a) *prioritise* the identification of widespread and severe forced labour risks; b) include a dedicated *sub-category* on state-imposed forced labour; and c) be based on *independent* and *verifiable* information *only* from international, institutional, research or academic organisations.[129] It is important to underline that, even though the forthcoming FLR covers *all* products and *all* country, the database (as well as the risk indicators of forced labour) will inevitably influence the lead competent authorities' enforcement strategy on what to investigate and to review cases. In addition, (as already mentioned above) customs authorities will be charged with taking the information contained in the database into account and using this as a ground to request further information about products (and relevant supply chains) entering or leaving the Union market. Therefore, the database will constitute a *central* element of the new initiative on a FLR and, importantly, an *impartial* tool.

Secondly, the Commission will make available and regularly update guidelines on *several* issues pertaining to the implementation of the FLR. This is very welcome because clear and comprehensive guidelines are key to help not only economic operators (especially SMEs) but also lead competent authorities and customs authorities to comply with this Regulation.

Thirdly, as to the Union Network Against Forced Labour Products, its capacity has been reinforced because the April 2024 text version envisages the creation of a secretariat that will organise the meeting of the Network (chaired by a representative

impact in its supply chain, adopts and carries out measures suitable and effective for bringing to an end forced labour»). This provision was not retained in the final text of the FLR.

[129] In the Commission's proposal, the database would also be drawn on the guidelines to be put forward by the Commission itself (Article 11(1)); therefore, the credibility of its sources could be questioned in specific cases.

from the Commission) as well as provide technical and logistical support to it. Moreover, additional new tasks have been added (compared to those initially recommended by the Commission)[130], so that it will ensure its active participation in *all* the phases of the process leading to the "ban" of a product *and* the implementation of the latter.

Fourthly, as to the promotion of international cooperation against forced labour, the April 2024 final text explicitly includes cooperation with countries that have similar legislation in place in order to exchange information (*inter alia*) on forced labour risk areas or products and on decisions to "ban" products. This is quite important because the Commission could interact with foreign (e.g., US) authorities that have already identified forced labour risk areas and investigated specific economic operators.

Another significant improvement made by the April 2024 text version in comparison with the original 2022 Commission's proposal concerns then the inclusion of a provision on the periodic evaluation of the enforcement and the implementation of the forthcoming Regulation. This is particularly welcome considering that currently trade governance instruments addressing forced labour still constitute a field of regulatory experimentation and further analysis is needed to understand about the extent to which, and the condition under which, they can contribute to effectively tackling the challenge of forced labour in global supply chains.[131]

A final important area of improvement by the new EU initiative on a FLR concerns its focus on rightsholders and other stakeholders, such as whistleblowers and civil society organisations. In this respect, it must be underlined that whereas the 2022 Commission's proposal focused almost exclusively on the protection of European *consumers*, the European Parliament's position recommended the inclusion of a comprehensive *human rights-based approach* in the new legislation. On this theme, the April 2024 final text is characterised by several strengths; at the same time, some shortcomings persist, as it will be discussed in the next section.

First of all, as to the evidentiary threshold required to initiate a formal investigation, both the Commission and the European Parliament proposals envisaged a *high* level of evidence: a *well-founded reason* for the competent authorities to suspect the violation of the Regulation's main prohibition.[132] This could have rendered the new instrument inefficient in the light of the evidentiary struggles experienced by victims of forced labour who do not have access to all relevant documentation and evidence normally required during an investigation procedure. In contrast, the definition of «substantiated concern» now included in the final text refers to a «*reasonable* indication» (based on objective, factual and verifiable information) and, thus, to an arguably *lower* standard of evidence. However, the latter is still defined rather vaguely and therefore it is to be hoped that the guidance to be issued by the Commission for competent authorities (*inter alia*) on the applicable standard of evidence will take into adequate consideration the challenges faced by the victims of forced labour.

Secondly, the forthcoming FLR strengthens in many ways the stakeholders' engagement in the enforcement system. Civil society organisations, trade unions and other stakeholders have often better visibility of forced labour risks and can play a

[130] See European Commission's proposal, Article 24(3).
[131] On this theme see, *ex multis*, I. PIETROPAOLI, J. OWAIN, A. BALCH, *Effectiveness of Forced Labour Import Bans*, Modern Slavery PEC Policy Brief 2021-3.
[132] See European Commission's proposal and European Parliament's position, Article 2(n).

pivotal role in uncovering whether forced labour occurs, especially in countries outside the EU where the oversight of the Commission may be limited. In this respect, (as already highlighted) the April 2024 text version envisages: a) a dedicated *centralised* mechanism for submission of information; b) an active role of stakeholders in *all* the phases of investigations; and c) their consultation in the drafting of the Commission's guidelines and possible involvement in the activities of the Network. Furthermore, as well known, affected workers and other individuals or organisations that testify, report or investigate forced labour are at risk of threats or retaliations. On this matter, the final text of this piece of legislation (as proposed by the European Parliament), on the one hand, provides for automatic confidentiality for those who provide information, or the information contained therein.[133] On the other hand, it amends the EU Whistleblowing Directive,[134] so that whistleblowers will benefit from the protection granted by this legislation when reporting breaches of the FLR.[135]

4. *Shortcomings of the New EU Initiative on a Trade Instrument Addressing Forced Labour*

Notwithstanding the forthcoming FLR's many improvements in comparison with the original 2022 Commission's proposal, the April 2024 final text is also confronted by a number of issues and challenges that will be highlighted in this section.

One key (legal) concern related to the new EU initiative on a FLR is represented by the remediation measures to those impacted by forced labour. On this topic the final text – first of all – defines (in recital 36)[136] remediation as «the restitution of the affected person or persons or communities to a situation equivalent or as closed as possible to the situation they would be in had forced labour not occurred, proportionate to the company's implication in the forced labour, including financial or non-financial compensation». Secondly, it refers to remediation as an *option* for economic operations under assessment by lead competent authorities (only in the preliminary phase of investigations) to provide information on their relevant actions taken to remediate risks of forced labour in their operations and supply chains.[137] Thirdly, the final text tasks the Commission to make available guidance for economic operators on best practices for remediating different types of forced labour.[138] Fourthly, the Commission (in the context of the future evaluation of the FLR) will assess the need for a specific mechanism to address and remediate forced labour. Whereas all these provisions (and in particular the last two mentioned) are very welcome, (as already highlighted) the final text does *not* bind the relevant economic operators to compensate the affected workers (as a condition for lifting a "ban" decision for the future). This failure clearly stands however in sharp contrast with: a) international human rights law, which establishes the right to an effective remedy for

[133] European Parliament's final text, Article 32(2).
[134] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17 *et seq.*
[135] European Parliament's final text, Article 36.
[136] In the European Parliament's position the definition of «remediation» was inserted in Article 2.
[137] European Parliament s final text, Article 17(1).
[138] *Ibidem*, Article 11(b).

a violations of a human rights;[139] and b) international standards on responsible business conduct, such as the UN Guiding Principles on Business and Human Rights (hereinafter UNGPs) and the OECD Due Diligence Guidance for Responsible Business Conduct (hereinafter OECD Guidance).[140] As well known, according to the latter companies are expected to provide remedial actions when they cause or contribute to harm.[141] Moreover, without remedies, there is limited incentive for those affected to bring complaints and this could impair the effectiveness of the FLR's enforcement regime.

The second criticism that can be addressed to the forthcoming FLR concerns its sanction mechanism. In this regard, the initial positions of – respectively – the Commission, the Parliament and the Council envisaged an *extensive* sanction regime which could have had a *powerful* deterrent effect, by including: a) import and export prohibitions for non-compliance products to/from the EU market; b) withdrawal and disposal costs, that it loss of the *entire* economic value of the non-compliant *products* plus the costs for their disposal of, even if *only* a component would have been made with forced labour; c) penalties for non-compliance with "ban" decisions;[142] and d) massive reputational risks for the companies involved. In contrast, (as already mentioned) the April 2024 final text envisages two exceptions to the disposal of non-compliance products, that is: a) the disposal of a replaceable offending component instead of the *entire* product; and b) the temporary withhold in storage of non-compliance products of strategic or critical importance until forced labour is eliminated from the supply chain. As to the first exception, it may be justified in the light of the principle of proportionality; at the same time, it can result in the non-disposal of a "banned" product if the latter has *all* replaceable components. With regards to the second exception, the reasons of its inclusion in the final text are open to much more criticism. In this respect, it is important to underline that – according to recital 48 of the April 2024 text version – account is to be taken of the Net Zero Industry Act and the Critical Raw Materials Regulation when assessing the strategic or critical importance of a product. These two pieces of legislation embrace – respectively – final products, components, and machinery necessary for manufacturing a wide list of net-zero technologies (including solar photovoltaic, renewable, battery/storage and grid technologies) and a list of 34 «critical raw materials» (17 of which also defined as «strategic»), that is, key minerals for the realisation of (*inter alia*) the green transition.[143] As well known, this industrial sector is highly dependent on imports; for example, the

[139] See, *ex multis*, R. PISILLO MAZZESCHI, *Diritto internazionale dei diritti umani. Teoria e prassi*[2], Torino, p. 301 *et seq.*

[140] Human Right Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, UN Doc. A/HRC/17/31, 21.03.2011; OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018.

[141] UNGP 22; OECD Guidance, p. 34.

[142] See, for example, European Commission's proposal, Articles 6(4) and 30.

[143] Regulation (EU) 2024/1735 of the European Parliament and of the Council of 13 June 2024 on establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem and amending Regulation (EU) 2018/1724, OJ L, 28.6.2024; Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020, OJ L, 3.5.2014.

bulk of the solar panels deployed in the Union market is imported from China;[144] in addition, currently, several renewable energy industries are reliant on companies implicated in state-imposed forced labour occurring in the Xinjian Uyghur Autonomous Region (XUAR).[145] As already explained, Article 20(5) of the April 2024 final text gives an economic operators the possibility to place or make available on the Union market strategic or critical products *already made with forced labour* under the condition that the sanctioned economic operators eliminates *in the future* – that is, during the defined period of time established by the lead competent authority – forced labour from the supply of the products concerned. Clearly, this provision contravenes the main objective of the forthcoming FLR (to prohibits the placing and making available on the Union market products *made* with forced labour) and is, therefore, a major point of criticisms. It shows that the green transition of the EU is quite privileged over the elimination of forced-labour products from the internal market. This conclusion is, however and thankfully, tempered by the implementation measures of this critical exception. According to the above mentioned recital 48 changing one's supply chain, in the sense of relying on different suppliers, cannot be considered indeed as a way to *eliminate* forced labour since it would result in a different product. Consequently, the likelihood that strategic and critical goods made with *state-imposed* forced labour are being sold on the Union market is arguably reduced.

As to the *other* criticalities of the April 2024 final text, *two* main concerns can be identified.

With regards to the first, as already highlighted the forthcoming FLR includes two key legal concepts: a) the *bringing to an end* the use of forced labour, envisaged in the forced labour-related due diligence processes that companies are (strongly) encouraged to undertake;[146] b) the notion of *eliminating* forced labour as the condition to withdraw "ban" decisions for the future.[147] The final text, as well as those proposed – respectively – by the Commission, the Parliament and the Council, do *not* specify indeed what these notions mean and which actions are consequently required by a company. However, the UNGPs and OECD Guidance help to answer precisely this question, because they refer to the principles of *responsible disengagement*. These instruments emphasise indeed that appropriate responses to human rights risks associated with business relationship should not mean *cutting-and-running* or disengagement as *first resort*, i.e. simply dropping suppliers where forced labour occurs and thereby eliminating (or bringing to an end) forced labour from their own supply chain because this can potentially lead to *severe* negative impacts for workers (e.g., unpaid wages). Companies should, instead, primarily engage with suppliers causing harm with a view to address it as part of their due diligence processes. Only if efforts to prevent and mitigate human rights adverse impacts have failed or if other considerations so require (like the severity of the adverse impact or limited prospect of change), enterprises should consider terminating the business relationship in

[144] See, *ex multis*, the European Solar Charter, signed on 15 April 2024 by several EU Member States and solar industry representatives, p. 1.
[145] See, *ex multis*, A. CRAWFORD, L. MURPHY *at al.*, *Over-Exposed: Uyghur Region Exposure Assessment for Solar Industry Sourcing*, November 2023, available at https://cdn.shopify.com/s/files/1/0582/5426/2457/files/SHU_Over-Exposed_Report_November_2023.pdf?v=1701446756.
[146] European Parliament's final text, Article 2(c).
[147] *Ibidem*, Article 21(3).

response to forced labour (disengagement as a *last resort*) while taking into account the potential adverse impacts of a decision to disengage.[148] This last scenario often occurs in the case of *state-imposed* forced labour; therefore, companies should swiftly terminate the business relationship because in this case disengagement is the most appropriate action. In sum, it is to be hoped that the dedicated guidance of forced labour-related due diligence that will be issued by the Commission, including best practices for bringing to an end forced labour and on responsible disengagement,[149] will clarify the above-mentioned notions and interpret them according to international standards on responsible business conduct. This will, on the one hand, provide legal certainty to companies and competent authorities and, on the other hand, ensure a *meaningful* implementation of the FLR. Otherwise, there is the risk that the latter, while achieving the objective to avoid products made with forced labour from entering the Union market, misses the aim (now clearly included in Article 1 of the final text) of contributing to the international effort to fight forced labour by changing businesses' and governments' behavior in third countries.

As to the last (but not the least) limit, although the FLR is part of a broad EU legal framework aimed at promoting corporate responsible conduct in global supply/value chains,[150] the final text – in contrast to those early proposed by the Commission, the Parliament and the Council – does *not* mention the CSDDD *at all*. Probably, this is due to the fact that at the time of the inter-institutional negotiations on the FLR the Coreper meetings scheduled to sign off on the provisional agreement on the CSDDD (reached on 14 December 2023) were postponed. Therefore, because the fate of this Directive was uncertain the European co-legislators arguably opted to refer *only* to EU legislation *already in place*. However, as well known, on 15 March 2024 (after the political agreement on the FLR was reached), a new proposal of the Directive was confirmed by a Coreper meeting held on that date and the March agreement was adopted in a plenary session of the European Parliament on 24 April 2024 and subsequently by the Council in May 2024. The final CSDDD has a substantially reduced personal scope but it still *obliges* large companies to conduct human rights (including forced labour) and environmental due diligence throughout their operations and chain of activities. In this respect, (as already underlined) the final text of FLR does *not* (directly) impose on companies falling in its scope due diligence obligations (apart from the ones already established by Union or national laws);[151] however, it requires lead competent authorities to assess the likelihood of forced labour being present in the production chain of their products by taking into account – *inter alia* – due diligence processes used to identify and address forced labour impacts. Consequently, this will result in a due diligence landscape where economic operators will have specific *obligations* in specific fields and *on-demand obligations* in other fields, thereby creating a situation of uncertainty. Furthermore, both the FLR and the CSDDD foresee administrative enforcement but the FLR's final text does not require

[148] Commentary to UNGP 19; OECD Guidance, pp. 30–31.
[149] European Parliament's final text, recital 36 and Article 11(b).
[150] See, *ex multis*, THE DANISH INSTITUTE FOR HUMAN RIGHTS, *How Do The Pieces Fit in the Puzzle?: Making Sense of EU Regulatory Initiatives Related to Business and Human Rights*, April 2024.
[151] According to Article 1(3) of the European Parliament's final text, the FLR does not create additional due diligence obligations for economic operators besides those already provided by Union or national law.

lead competent authorities enforcing its main prohibition to coordinate effectively with national supervisory authorities responsible for the implementation of the CSDDD, leading to possible overlapping investigations.[152]

5. *Concluding Remarks*

As well known, forced labour in global supply chains is a complex phenomenon and its eradication needs multiple regulatory and non-regulatory levers. In this respect, the forthcoming FLR, by providing an ambitious and comprehensive framework for identifying, assessing, and taking actions against products made with forced labour, represents a good starting point to fight forced labour inside the Union market as well as worldwide. Once formally adopted by the Council and published in the Official Journal of the EU, its main obligations will apply 36 months from the date of its entry into force.[153] However, the legislation's effectiveness strictly depends on its *proper* implementation. This will require, *inter alia*: a) sufficient resources available to – respectively – the NCAs, in order to carry out their new tasks; the Commission, charged as a lead competent authority to conduct also inspections in third countries; the national customs authorities, requested to identify products entering or leaving the Union market that may be in violation of the new piece of legislation; b) a great deal of preparatory work by the Commission that includes the adoption of several implementing acts and the development of the various guidance documents as well as the creation and maintenance of the database; c) a well-functioning Union Network Against Forced Labour Products to ensure cooperation and collaboration between the Commission, NCAs and other relevant bodies; d) an efficacious cooperation with international partners, including those that have similar legislation in place, in order to prevent enterprises who are block by one country selling their forced labour products in the EU; and e) a fruitful collaboration between, on the one hand, relevant European and national authorities and, on the other, victims of forced labour, civil society organisations and rightsholder representatives.

[152] Indeed, Article 5(6) of the final text of the FLR envisages that Member States shall ensure that competent authorities coordinate closely and exchange information with the relevant national authorities (such as the labour inspections and judicial and law enforcement authorities) and the authorities designed under the Whistleblower Directive, without mentioning the national authorities designed under the CSDDD.

[153] European Parliament's final text, Article 39.