



Mr Pierre-Yves Dermagne
Vice Prime Minister and Minister
Chair of the EU Competitiveness Council
Ministry of the Economy and Labour
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Dear Vice Prime Minister and Minister,

As technical discussions in the context of trilogue negotiations on a *Regulation prohibiting products made with forced labour on the Union Market* are accelerating, I would like to reconvey our position including our concerns regarding some aspects of the text being negotiated.

Our starting point and position of principle is clear. **Forced labour is a serious human rights violation that the European business community fully condemns.** Therefore, we welcome the Commission's proposal to address the issue of products made with forced labour on the Union Market. However, **we need a workable Regulation with clear and streamlined implementation and enforcement measures** to ensure the instrument's effectiveness in fighting forced labour. In this respect, the principle of a **risk-based approach when it comes to the implementation of the Regulation** should be fully preserved.

Following the adoption of the Council's general approach and the European Parliament's position we would like to reiterate several aspects that are important for European businesses.

- **We are extremely concerned by the proposal of the European Parliament to reverse the burden of proof** regarding specific sectors and geographic areas where a high risk of state-imposed forced labour has been identified. In addition to being an exception to legal traditions in Europe, the proposal is not clear on how these sectors and areas will be identified and it does not take into consideration the practical problems that economic operators will face in implementing this requirement. In this respect, it is to be noted that **in some jurisdictions it is becoming increasingly difficult, if not illegal, to request and obtain the information** needed to prove that the products were not manufactured or provided with forced labour. All these elements make the **implementation extremely difficult and uncertain.** In addition, applied in a blanket manner across jurisdictions and without proper consideration, the reversal of the burden of proof has the potential to encourage divestment away from certain supply chains and certain countries, thereby removing any opportunity to address any prevalent forced labour. This is because it would make it harder for European companies, operating under high standards, to continue their presence to the benefit of competitors with lower standards.



- **We also call for caution on the proposal by the European Parliament to establish a remediation mechanism** as a condition to withdraw the decision prohibiting the placement of the product on the EU market. We are particularly concerned by the **potential overlap between this provision** and a similar one being considered under the **Corporate Sustainability Due Diligence Directive**, especially if there are situations where a company would be required to provide compensation to damaged parties under both proposals, effectively **duplicating obligations for economic operators**.
- We would like to point to the fact that the reversal of the burden of the proof for economic operators and the proposed provisions on remediation **significantly amend the initial proposal of the European Commission**, which already came without an impact assessment. The EU would be taking a decision without assessing its impact on the EU's economy or in third countries.
- Moreover, the definition in article 2g of a 'product made with force labour' is quite broad. If there is no proportionality in its implementation it can lead to a "catch all" situation in case of complex products incorporating many raw materials, components and services. The decision to ban products **could abruptly stop entire critical value chains**, thus endangering the EU's green and digital transition. For these specific cases, the Regulation must provide for a **derogatory scheme in which the destruction of goods is not immediately required**. Companies would be given a reasonable time to eliminate forced labour, and only if they failed to do so would the Commission be empowered to issue a ban order.
- On a more positive side, **we generally support an enhanced role for the European Commission in the implementation of the Regulation**, especially in the investigation phase and we also consider helpful the proposal to include "Union interest" criteria. **We also welcome the increased timelines in the investigation phase**, and that a channel of communication has been maintained between companies and the competent authority throughout the procedure. This is important to ensure that economic operators and competent authorities are able to fulfil the information requirements. Having said that, we would like to point out the need to maintain confidentiality during the investigation phase and ensure full protection of commercially sensitive information.
- **We welcome the proposals of the European Council that aim at improving coordination between competent authorities and the European Commission for a more streamlined implementation of the Regulation**. We are in favour of the establishment of a Union Network against Forced Labour Products as well as of the creation of a forced labour single portal that will also include data, guidelines and information related to decisions taken in the framework of the Regulation.



We support the **objectives of this Regulation**, yet we believe that they **can be better achieved without imposing excessive burden on European companies**, particularly on SMEs, which are already coping with a massive amount of reporting requirements introduced in the past years.

Given the complexity of the measures under discussion, with important elements also inextricably linked to the Corporate Sustainability Due Diligence Directive, we are concerned that a rushed conclusion will be counterproductive and not beneficial to the objective of the Regulation.

Yours sincerely,

Markus J. Beyrer