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EU Reaches Provisional Agreement on Banning Products Made With Forced Labour

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On 5 March 2024, European Union legislators reached provisional agreement on new rules that, once formally adopted, will ban products made with forced labour from being placed or made available on the EU market or exported from the EU market. The EU's ban on products made with forced labour regulation (FLR) will apply to products which in whole or in part benefited from forced labour. The FLR supplements the existing EU rules combatting human trafficking. The FLR will now be subject to formal approval and is likely to apply across all EU member states from mid-2027.

The potential impact of the FLR and the need for companies to achieve greater supply chain visibility is made clear by the recent impounding of thousands of vehicles at US customs over component parts linked to allegations of forced labour in violation of the US Forced Labor Prevention Act (House Resolution 6256). The EU's ban would take effect in a similar way, but it would be broader than the US requirements, as it is not limited to forced labour in specific geographic areas.

FLR's key elements

The full text of the provisional agreement has not been published and is expected to become publicly available in the next few weeks. In the meantime, based on what we know at this stage, we have listed below some highlights of the agreement.

Products subject to the FLR and the meaning of 'forced labour'

The ban is expected to apply to products used in whole or in part at any stage of the supply chain (i.e., whether extracted, harvested, produced or manufactured using forced labour). It would not matter whether the occurrence of forced labour arose within the EU or outside, nor whether it was the final product or one of the product components that benefited from forced labour. Prior versions of the FLR defined 'forced labour' by referencing the International Labour Organization Convention – '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 [themselves] voluntarily'.

In-scope companies

The FLR will apply to small and medium-sized enterprises (SMEs), as well as large companies, placing products on the EU market, distributing products within the EU, or exporting products outside the EU.

Investigations and enforcement will follow a risk-based approach

The provisional agreement sets out clear criteria to be applied by enforcement authorities when assessing risks and violations:

- The scale and severity of suspected forced labour, including the likely presence of state-imposed forced labour.
- The quantity or volume of the noncompliant product made available on the EU market.
- The proportion of parts within the final products likely to have been made with forced labour.
- The proximity of the company to the suspect forced labour risks, as well as the company's leverage to address them.

Enforcement is likely to focus on high-risk areas and products

According to the text, the European Commission (EC), at the European Parliament's insistence, will develop a list of high-risk areas and products which enforcement authorities will need to consider when assessing the likelihood of noncompliance with the FLR. The EC, however, has the power to identify products or product groups for which importers and exporters will have to submit extra details to EU customs, such as information on the manufacturer and suppliers of these products.

Enforcement authorities

Investigatory and decision-making powers will be divided between the EC and the competent authorities of the relevant member state, depending on whether the risks of forced labour were identified outside of the EU or within a particular member state. The final decision of the lead investigatory authority will, however, apply in all member states. Investigations will be supported by a new ‘Forced Labour Single Portal’, which will include information on bans, a database of risk areas and sectors, publicly available evidence and a whistleblower portal. Third-country cooperation, in particular with countries with similar legislation, also should be expected, with cooperation and information-sharing agreements envisaged by the agreed text.

Risks of product seizures, disposal and fines

If investigations conclude that forced labour has been used, the enforcement authorities can ban or require the withdrawal and disposal of the relevant goods from the EU market and online marketplaces. Noncompliant goods also may be confiscated at customs. The goods would then have to be donated, recycled or destroyed. The provisional agreement clarifies that the requirement to dispose of the product only relates to the noncompliant component and not necessarily the product as a whole if it is possible to replace the individual noncompliant component. However, if companies eliminate forced labour from their supply chains, banned products can be admitted back on EU market. Companies that do not comply also can be fined.

Publication of guidelines

Guidelines are to be published for companies and enforcement authorities to support compliance efforts and set out best practices. These guidelines, which will include accompanying measures for micro-companies and SMEs, will be available through the ‘Forced Labour Single Portal’ to be launched by the European Commission.

The FLR will not place specific due diligence requirements on businesses. However, it is clear that businesses will need good supply chain visibility to mitigate potentially costly consequences of noncompliance.

Next steps

Historically, a provisional agreement has provided near certainty that legislation will be adopted without significant further changes. Recently, however, we have seen examples of provisional agreements not being formally adopted by the European Parliament and member states in the Council of the European Union.

EU member states and the European Parliament now need to adopt the FLR for the ban to take effect. Following approval by the EU Council on 13 March 2024, the final step is for the European Parliament to approve the legislation during its April plenary. Once the law has entered into force, EU countries will have three years to start applying the new rules.

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