

ENNHRI Statement on the planned Forced Labour Product Ban in the EU

The [European Network of National Human Rights Institutions](#) (ENNHRI) calls upon EU lawmakers to adopt a comprehensive, human rights-based approach in the proposed Forced Labour Ban (FL Ban). This piece of legislation is aimed at eliminating products made with forced labour from the EU market. ENNHRI believes that while a FL ban can be a critical step in the global fight against forced labour, the current proposal requires key changes to effectively address the complexities of forced labour and ensure a tangible difference in the lives of those trapped in forced labour.

This statement has been drafted by ENNHRI's Business and Human Rights Working Group. In line with a [previous statement](#) on the FL Ban, ENNHRI makes the following comments with a view to informing the legislative process:

- 1. Include remediation as a requirement to lift an enforcement decision:** ENNHRI emphasises the need to apply a human rights-based approach to the proposal, focusing on impacts endured by people in conditions of forced labour. This requires not only prohibiting relevant products from the EU market, but to incorporate incentives and measures for the prevention of forced labour and for remediation where forced labour is identified.
- 2. Ensure an effective implementation:** Given the complex nature and gravity of forced labour, it is crucial to establish an effective enforcement regime. The tasks of gathering evidence and establishing a link between forced labour and specific products, however, are challenging for competent authorities as well as stakeholders. Therefore, EU lawmakers should mitigate the burden placed upon competent authorities by adjusting the evidentiary standards and the burden of proof, especially for contexts of high risk of forced labour including state-imposed forced labour, and by ensuring access to relevant information for legitimate stakeholders.
- 3. Ensuring stakeholder involvement:** Rightsholder representatives, civil society organisations and other stakeholders are crucial for a meaningful implementation and enforcement of the FL Ban. It is key to involve these actors throughout the process to properly identify forced labour instances, determine appropriate remedial measures, as well as to avoid unintended negative consequences.

4. Alignment with the CSDDD: The EU lawmakers should facilitate the synergy effects of the FL Ban and the Corporate Sustainability Due Diligence Directive (CSDDD) and ensure cooperation at the level of enforcement.

The Process so far

Forced labour is a severe human rights abuse that continues to occur in the global economy. The [International Labour Organization \(ILO\)](#) estimates that, in 2021, 27.6 million people were exposed to conditions of forced labour, of which 17.3 million were exploited in the private sector, 6.3 million were found in commercial sexual exploitation, and 3.9 million fell victim to state-imposed forced labour. Between 2016 and 2021, the [number of victims has even risen](#) by 2.7 million. This reality contravenes obligations under international law, EU law, and the objectives of the United Nations Sustainable Development Goals, all of which prohibit and call for the eradication of forced labour (see notably [ILO Forced Labour Convention No. 29 \(1930\)](#), [ILO Abolition of Forced Labour Convention No. 105 \(1957\)](#), Article 4 [European Convention on Human Rights](#), Article 5(2) [Charter of Fundamental Rights of the European Union](#), Target 8.7 [United Nations Agenda 2030](#)).

In view of the challenge described, the European Commission published a [Proposal for a Regulation on prohibiting products made with forced labour on the Union market](#) (Draft Regulation) in September 2022. Under the Draft Regulation, the placing of products on the EU internal market, which were extracted, produced, harvested, or manufactured by forced labour at any stage in the supply chain, would be prohibited. Competent national authorities would enforce this prohibition, with the assistance of EU customs authorities. Enforcement would be structured in a pre-investigation and investigation phase. The Draft Regulation also proposes to set up a database to identify forced labour risks.

In October 2023, the responsible committees of the European Parliament on International Trade (INTA) and on the Internal Market and Consumer Protection (IMCO) adopted a [Report](#) on the file. This report (Parliament Report), which suggests various amendments to the Draft Regulation, will form the negotiation mandate of the Parliament in the upcoming trilogue. The Parliament Report, inter alia, introduces the European Commission as an enforcement authority alongside national competent authorities; includes specific rules on cases of state-imposed forced labour as well as remediation; and introduces a new review clause. The Council of the European Union, in turn, is currently in the process of developing a position on the FL Ban.

Other countries have similar prohibitions in place, most notably the [United States](#) and [Canada](#), which prohibit the import of products made by forced labour.

ENNHRI's Recommendations

The FL Ban provides an opportunity to address the severe human rights abuse of forced labour that continues to prevail across supply chains. EU companies are deeply integrated in the global economy and their products can therefore be associated with instances of forced labour whether they occur in the EU or in third countries. To address the use of forced labour and avoid unintended consequences, ENNHRI encourages the EU lawmakers to take a human rights-based approach and align the FL Ban with international standards. Attention must be paid not only to exclude products made with forced labour from EU supply chains, but also to facilitate remediation for the victims of exploitation. The right to an effective remedy for a violation of human rights is recognised in international human rights law and demands not only processes to secure justice, but also appropriate reparations.¹ A human rights-based approach to forced labour would also complement the planned Corporate Sustainability Due Diligence Directive (CSDDD), currently in trilogue, which sets out general due diligence obligations for large companies to identify and address impacts on human rights and the environment.

1. Strengthening the focus on rightsholders and remediation

The EU lawmakers should apply a human rights-based approach to the challenge of forced labour. This requires not only excluding products made with forced labour from the common market, but also addressing the negative impacts incurred by victims. For that purpose, the FL Ban should incentivise companies to stay engaged with relevant suppliers with a view to eliminate and remediate cases of forced labour. Otherwise, businesses may choose to comply with the FL Ban by switching suppliers without addressing the situation of affected individuals. To strengthen the focus on rightsholders, the EU lawmakers should:

- **Make the lifting of an import ban conditional upon evidence that forced labour is eliminated and that those affected received remediation, as proposed by the European Parliament.**

¹ See, for instance, Article 2(3) International Covenant on Civil and Political Rights; Article 6 International Convention on the Elimination of All Forms of Racial Discrimination; Article 14 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 39 United Nations Convention on the Rights of the Child.

- Provide additional incentives for companies to stay engaged with relevant business partners in order to eliminate and remediate cases of forced labour, wherever possible.
- Specify what companies must do to 'eliminate' an instance of forced labour from their own operations or supply chains and emphasise the need of responsible disengagement.
- Legally define the term 'remediation' in line with the [United Nations Guiding Principles on Business and Human Rights](#) (UNGPs), as proposed by the European Parliament.

Summary of the EU Proposals: *The proposals of the Commission and the European Parliament for a FL Ban differ on the extent to which companies should eliminate and remediate cases of forced labour. The Draft Regulation only refers to due diligence as a means to identify, prevent, mitigate or bring to an end the use of forced labour (Article 2(d) Draft Regulation). In the preliminary phase of investigation, competent authorities shall consider whether an economic operator carries out due diligence on the basis of identified forced labour (Article 4(6) Draft Regulation) or general risks of forced labour (Article 4(7) Draft Regulation). In addition, competent authorities shall lift a product ban imposed if the economic operator proves that forced labour has been 'eliminated' from the own operations or supply chains with respect to the products concerned (Article 6(6) Draft Regulation). However, the proposal of the Commission does not specify the role of remediation, neither in the context of due diligence processes nor in the 'elimination' of forced labour.*

In comparison to the Draft Regulation, the Parliament Report places more emphasis on the remediation of cases of forced labour. In the preliminary phase of investigation, competent authorities can specifically request information on remedial measures that a company has taken with respect to suspicious products (Article 4(3) Parliament Report). Further, the authorities must consider the leverage of companies to address and remediate an instance of forced labour when requesting information from economic actors during an investigation (Article 5(3)(a) Parliament Report). The most important amendment, however, concerns the conditions for the lifting of a product ban. Whereas the Commission only demands evidence that an instance of forced labour has been 'eliminated', the Parliament Report additionally requires proof of remediation before a competent authority can lift a ban imposed (Article 6(6) Parliament Report).

The FL Ban essentially is a means of trade law and internal market policy that bans products made with forced labour from the common market. Economic actors are prohibited from importing, exporting or making available affected products, which would be enforced by competent authorities in cooperation with customs. The prohibition aims to fight forced labour by excluding companies and states that orchestrate and benefit from this form of exploitation from EU supply chains. While this objective is commendable, it is crucial not to rely only on the macroeconomic effects that the prohibition may have on the prevalence of forced labour over time. Instead, the FL Ban should take a human rights-based approach and provide for measures that relieve the situation of exploited individuals. To that end, the EU lawmakers should create incentives for companies to stay engaged with relevant suppliers in order to eliminate and remediate instances of forced labour, including measures to prevent a recurrence, wherever possible. Otherwise, businesses may choose to comply with the FL Ban simply by switching suppliers without relieving the situation of affected rightsholders. Certainly, there are circumstances, as in the case of state-imposed forced labour, where companies have limited leverage to address an impact – often leaving them no choice but to disengage. Where an elimination and remediation of forced labour is feasible, however, companies should be encouraged to take action.

1.1 Remediation as a condition to lift a product ban

Forced labour is a complex problem that is not easy to identify and address. Many companies hold leverage and insights in their respective sector that are key for driving positive change for affected rightsholders. The FL Ban should tap into corporate capacities by providing incentives for companies to proactively address forced labour in their business context. As a minimum, the lifting of a product ban should be made conditional upon evidence that the company in question has eliminated *and* remedied the instance of forced labour, as proposed by the European Parliament. This would facilitate adequate remediation and decrease the risk of ‘cut-and-run’ forms of compliance.

The failure to address remediation in the Draft Regulation cannot be justified by reference to remediation requirements in the planned EU Directive on Corporate Sustainability Due Diligence (CSDDD). The CSDDD would only apply to large companies whereas the FL Ban targets all entities that make products available on the internal market, including the import and export of goods. Additionally, the extent to which companies will need to provide remediation in a specific case is still the subject of negotiation.

1.2 Additional incentives to alleviate the plight of affected rightsholders

Further, **ENNHRI recommends additional incentives for corporate engagement with relevant business partners to relieve the situation of affected rightsholders.**

Both proposals for a FL Ban grant competent authorities discretion in the preliminary phase of investigations to assess the likelihood of violations of the prohibition to import or export products made with forced labour based on a risk-based approach (Article 4(1) Draft Regulation). Before reaching a decision on whether to open an investigation, competent authorities must consider, inter alia, whether due diligence in relation to forced labour is 'applied in a way that mitigates, prevents and brings to an end the risk of forced labour' (Article 4(7) Draft Regulation). However, there is no requirement to consider any remedial measures taken.² Competent authorities should be explicitly required to also consider whether a company has taken remedial measures in relation to cases of forced labour in the preliminary phase of investigation. This would provide an additional incentive for companies to proactively engage in remediation to prevent the opening of an investigation.

Another option would be to offer benefits, such as sanction reliefs or the postponement of a final enforcement decision, for companies that self-disclose forced labour in their supply chain proactively and commit to eliminate and remediate the impact within an agreed timeframe. Such measures would reduce the risk that economic actors simply disengage from suppliers in response to an instance of forced labour without taking actually feasible steps to relieve the situation of affected rightsholders.

1.3 Clear definitions of key legal terms

In addition, **the FL ban should clearly define key legal terms to ensure a meaningful implementation** in practice. This applies in particular to the notions of 'eliminating' and 'remediating' forced labour.

Neither the Draft Regulation nor the Parliament Report specify what economic operators must do under Article 6(6) to 'eliminate' forced labour from their own operations or supply chains. The EU lawmakers should provide a clear definition of this term and dedicated guidance. A [recent publication](#) by the ILO, for example, describes the 'successful eradication of forced labour' as a situation where 'forced labour was identified, and interventions removed all of the ILO indicators of forced labour present'. The [ILO Indicators of Forced Labour](#) are a set of criteria from 2012 that help assessing whether an individual is subject to forced labour. The EU should draw on these

² The European Parliament proposes that competent authorities consider whether remedial measures were taken before opening an investigation. However, this proposition can only be found in recital 22 but not in the actual provision: compare Article 4(7) of the Parliament Report.

standards and, where necessary, develop them further in cooperation with relevant stakeholders, including the ILO. It must be ensured that the indicators capture the prevailing forms of forced labour today and that they are sufficiently defined to be determinable.

The task of eliminating forced labour should further align with the principles of responsible disengagement. Authoritative international standards, like the [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#), and existing [EU Guidance on Forced Labour](#) emphasise that companies should primarily engage with affected business partners with a view to address an impact as part of their due diligence processes. Only where efforts to mitigate fail or where other considerations (like the severity of an impact or limited prospects of change) so require, a business may suspend or terminate the business relationship in response to forced labour while taking any negative implications of such decision duly into account. The credible threat of termination is important to create leverage over business partners and, ultimately, to drive change for affected rightsholders. Where a business has limited or no prospect of facilitating the elimination (or remediation) of an impact, as it is often the case with state-imposed forced labour, terminating the relationship is yet necessary as a last resort.³

As regards the term ‘remediation’, only the Parliament text contains a dedicated definition, according to which remediation ‘means both the process of providing remedy to victims of forced labour for a negative human rights impact and the substantive outcomes that can counteract, or make good, the negative impact of forced labour, such as public apologies, restitution, rehabilitation, compensation, contribution to investigations, and compliance with measures adopted by relevant public authorities, as well as prevention of additional harm’ (Article 2(ba) Parliament Report). ENNHRI endorses the inclusion of this definition because it captures the full spectrum of remedial measures in line with the [UNGPs](#).

2. Evidentiary standards, burden of proof and access to information

Given the complex nature of forced labour, it is crucial to establish an effective enforcement regime. The tasks of gathering evidence and establishing a link between forced labour and specific products are challenging for competent authorities, as well as for stakeholders. Therefore, the EU lawmakers should

³ The Draft Regulation does not specify the role of responsible disengagement as part of due diligence. The Parliament Report, in turn, refers to the concept in Recital 37a, which stresses the need for the Commission to consider the risks of corporate disengagement resulting from either the FL Ban as a whole or individual product bans imposed.

mitigate the burden placed upon competent authorities. To facilitate the enforcement of a FL Ban, ENNHRI recommends:

- Empowering competent authorities to open an investigation based on a lower standard of evidence, such as reasonable suspicion, and make it incumbent on the economic operator to prove that its products are not made with forced labour; ideally, combined with the power to temporarily suspend the release of relevant products for free circulation or export for the length of the investigation.
- Reversing the burden of proof for products coming from high-risk contexts – i.e. specific sectors, geographic areas and/or with respect to specific products, identified in a database set up by the European Commission based on independent and verifiable information, including high risks of state-imposed forced labour – by providing that companies shall demonstrate that the products concerned are not made with forced labour.
- Amending the Union Customs Code to grant legitimate stakeholders access to the customs data needed to identify products made with forced labour and submit relevant information to competent authorities.

Summary of the EU Proposals: *While the Draft Regulation assigns the task of enforcement to competent authorities in each Member State, the Parliament Report additionally empowers the European Commission to implement the regulation. In the course of preliminary and formal investigations, these authorities shall determine whether products that enter or leave the common market were made with forced labour. To that end, they can request information from the companies concerned and rely on other sources of information, in particular submissions by natural or legal persons or associations without a legal personality (Article 10 Draft Regulation) and a database of forced labour risk areas and products (Article 11 Draft Regulation). Under both proposals, competent authorities shall open a formal investigation where there is a “substantiated concern” of a violation of the prohibition to import or export products made with forced labour (Articles 2(n) and 5(1) Draft Regulation). Sanctions in the form of a product ban and a withdrawal of relevant products for disposal are imposed, in turn, where the authorities “establish” such violation (Article 6(4) Draft Regulation).*

Further, the draft FL Ban addresses the specific challenge posed by state-imposed forced labour. State-imposed forced labour describes the use of forced labour by state

authorities for purposes like political coercion, education, or punishment for holding or expressing political views. The Draft Regulation defines state-imposed forced labour (Article 2(b) Draft Regulation) and lists it as one risk category in the database on forced labour risk areas and products (Article 10(1) Draft Regulation). However, the Commission does not stipulate any substantial requirements – unlike the Parliament Report, which defines a reversal of the burden of proof (Article 6(2a) Parliament Report). Thus, companies must demonstrate that the products they are placing on the common market were not made with forced labour where these products come from specific sectors in specific geographic areas with a high risk of state-imposed forced labour. For that purpose, the Commission is tasked to define these areas of heightened risk in a delegated act (see Article 11a Parliament Report).

Whether the FL Ban can address forced labour depends largely on the effectiveness of the enforcement regime. The current proposals pose substantial challenges in that regard. They impose [considerable standards of evidence](#) upon competent authorities concerning the opening of an investigation (requiring a “substantiated concern”) or the banning of products from the common market (demanding that competent authorities “establish” a violation). As such, competent authorities must gather evidence and establish a concrete connection between forced labour and specific products – a task that is similarly demanding for stakeholders submitting information under Article 10. Supply chains can be difficult to trace due to a lack of transparency and information sharing among the economic actors involved. Victims of forced labour, who could provide information first-hand, often fear retaliation for speaking out, are not organised, and remain out of reach due to physical isolation, language barriers or illiteracy.⁴ Further, where an instance of forced labour can be identified outside of the EU, it remains challenging to link it to a specific batch of products destined for the EU market. Even affected workers may not be able to identify the final product or brand their labour contributes to.

A particular challenge is present in cases of state-imposed forced labour, stemming primarily from the difficulty of gathering evidence within regions where the state controls labour practices. In these environments, the state's involvement often leads to restricted access for external investigators and a lack of transparency due to censorship and misinformation,⁵ making it especially challenging for competent authorities to

⁴ International Labour Organization, [ILO Indicators of Forced Labour](#) (2012); International Labour Organization, [Hard to see, harder to count](#) (2012), page 52.

⁵ E.g. Human Rights Watch, [“We Can’t Refuse to Pick Cotton” Forced and Child Labor Linked to World Bank Group Investments in Uzbekistan](#) (2017); Vicky Xiuzhong Xu et al., [Uyghurs for sale](#) (2020); WSJ, [“Auditors to Stop Inspecting Factories in China’s Xinjiang Despite Forced-Labor Concerns”](#), (Sept. 21, 2020).

obtain the necessary evidence to prove forced labour practices. Moreover, relying on individual decisions for each case of state-imposed forced labour or each affected product would be ineffective. Such an approach would be exceedingly time-consuming, resource-intensive, and impractical considering the scale of forced labour that is orchestrated by public authorities. Instead, a more holistic and streamlined approach is required to tackle this systemic problem effectively.

In view of the difficulties described, the FL ban should account for the complexity and gravity of forced labour along global supply chains in order to ensure an effective enforcement.

2.1. Adapting evidentiary standards and the burden of proof

Considering the challenges of establishing a (potential) violation under the FL Ban, EU lawmakers should consider the following amendments. One pathway would be to adjust the [applicable standards of evidence](#). ENNHRI recommends empowering competent authorities to open an investigation based on a lower standard of evidence, such as reasonable suspicions. Where this threshold is met, the authorities could make it incumbent on the economic operator to prove that the products concerned are not made with forced labour.

[Section 307 US Tariff Act of 1930](#), which prohibits the import of products made with forced labour in the United States, provides a relevant precedent. The enforcing authorities, [Customs and Border Protection](#) (CBP), have the power to intervene based on a lower standard of evidence.⁶ More precisely, they can suspend the release of a product if there is a [reasonable suspicion](#) of a violation, whereupon the importing business can either challenge such decision or re-export the goods.⁷ These measures, called Withhold Release Orders (WROs), are [frequently applied by the US authorities](#) to swiftly address cases of forced labour under Section 307.

Preliminary interventions based on a lower standard of evidence are not unknown in EU law. For example, under the EU Regulation on the enforcement of intellectual property rights, customs authorities can suspend the release of non-perishable goods and detain them if they 'identify goods suspected of infringing an intellectual property right' (see Articles 2(7) and 18(1) [Regulation \(EU\) No 608/2013](#)).

⁶ For a comparison between the evidentiary standards under Section 307 in the US and the Draft Regulation of the European Commission, see Fatmanur Caygın Aydın, [Out of Reach: Analysis of evidentiary standards in EU and US import bans to combat forced labour in supply chains](#) (2023).

⁷ For an overview of the WRO procedure, see US Congressional Research Service, [Section 307 and Imports Produced by Forced Labor](#) (2023).

The lowering of the standard of evidence is ideally coupled with a competence on the part of the authorities to temporarily suspend the release of relevant products for free circulation or export for the length of the investigation, similar to what is foreseen under Section 307 US Tariff Act or the EU Regulation on the enforcement of intellectual property rights. This would prevent suspicious products from circulating freely on the common market up until competent authorities establish a violation of the prohibition to import products made with forced labour. Once an imported product reaches the end-user, it can no longer be withdrawn (Article 1(2) Draft Regulation).

Another approach to mitigate the burden placed upon competent authorities is to adjust the burden of proof. **ENNHRI recommends reversing the burden of proof for products coming from high-risks contexts** – i.e. specific sectors, geographic areas and/or with respect to specific products, identified in a database set up by the European Commission based on independent and verifiable information, including with a high risk of state-imposed forced labour – **by providing that economic operators shall demonstrate that the products concerned are not made with forced labour**. This approach would facilitate the enforcement of the FL Ban because it would alleviate the burden on the authorities in the challenging task of investigating forced labour, as companies sourcing from high-risk contexts are likely to hold better insights into the relevant sectors and geographies to provide the necessary evidence. This draws from the position adopted by the European Parliament, which takes a similar approach, albeit one limited to state-imposed forced labour, rather than all high-risk contexts. It also draws from the approach of comparable legislation in the United States, i.e. the [Uyghur Forced Labor Prevention Act](#) (UFLPA), which creates a rebuttable presumption that products made in Xinjiang, China, or by [certain entities](#) with economic ties to that region, are made with forced labour. Through a reversal of the burden of proof, the EU would reinforce the efforts of the United States and other countries like [Mexico](#) and [Canada](#) to address forced labour in high-risk contexts, forestall a dumping of products that fall under the UFLPA on the EU market, and prevent actors benefitting from forced labour from outcompeting more responsible companies.

2.3 Access to data for increased transparency

Another approach to facilitate an effective enforcement of the FL Ban is to grant legitimate stakeholders access to information that allows them to better trace EU supply chains. The example of [Section 307 US Tariff Act](#) shows that collaboration between state authorities and civil society organisations is an [important driver of enforcement and remediation](#). The work of civil society actors, however, requires access to relevant information, including customs data which can be requested in the United States under

the [Freedom of Information Act](#). In the EU, by contrast, customs data is not publicly available.⁸ As a result, stakeholders such as civil society organisations, investigative journalists or trade unions cannot readily obtain the information needed, first, to identify forced labour in EU supply chains and, second, to submit their findings to competent authorities. Without customs data, a submission of information on forced labour in a specific place becomes a shot in the dark because it can hardly be determined whether the evidence relates to products destined for the EU. Following the example of other countries, like the United States, Brazil and India, EU customs data should be made available to legitimate stakeholders in order to facilitate the enforcement of the FL Ban.⁹ The relevant legislative framework, the [Union Customs Code](#), is currently undergoing reform providing the EU Lawmakers with an opportunity to grant legitimate stakeholders access to customs data.¹⁰ **ENNHRI hence recommends amending the Union Customs Code in parallel with the adoption of the FL Ban to facilitate access to customs data for legitimate stakeholders.**

3. Ensuring rightsholder involvement

The participation of rightsholder representatives, civil society organisations and other stakeholders are crucial for a meaningful implementation and enforcement of the FL Ban. These actors must be involved throughout the process of identifying, investigating, and remedying instances of forced labour. To ensure meaningful engagement, ENNHRI recommends that:

- Competent authorities and companies involve civil society organisations and rightsholder representatives at every stage of the (preliminary) investigation and enforcement process, including when determining and implementing remedial measures.
- A centralised complaint channel be established at the EU level.
- Persons that submit information to competent authorities be fully protected from retaliation, also in third countries.

***Summary of the EU Proposals:** Under the Draft Regulation, any natural or legal person or any association not having legal personality can submit information on economic*

⁸ Compare Article 12 of [Regulation \(EU\) No 952/2013](#).

⁹ A [resolution of the European Parliament](#) from 2017 also calls for increased access to customs data 'subject to appropriate justification and upon a request made on the grounds of public interest'.

¹⁰ Thus far, the legislative proposals do not provide non-governmental actors access to customs information, compare Article 31 [Proposal for a Regulation establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation \(EU\) No 952/2013](#) by the European Commission from May 2023.

operators and products linked to forced labour (Article 10(1) Draft Regulation). Competent authorities must inform persons that submit intelligence about the outcome of the assessment of their submission (Article 10(2) Draft Regulation). The Parliament Report suggests several amendments that are relevant for the involvement of stakeholders. According to Article 4(1)(ea), for example, competent authorities shall consider issues arising from meaningful stakeholder consultations when assessing potential cases of products made with forced labour in the preliminary phase of investigation. In a similar vein, the authorities can request information from stakeholders on companies' due diligence practices in relation to forced labour, including on companies' measures of remediation (Article 4(3) subparagraph (1a) Parliament Report). In the course of a formal investigation, the Parliament Report further demands that competent authorities seek information from stakeholders as well as from diplomatic representations of the EU in relevant third countries (Article 5(6b) Parliament Report). Finally, the Commission is tasked to consult relevant stakeholders and partners when drafting guidance (Article 23(1)(1d) Parliament Report).

3.1 Involvement of stakeholders

For the enforcement of a FL Ban, the role of rightsholder representatives, civil society organisations and other stakeholders is indispensable and should be integrated at every stage of the process. The involvement of these stakeholders is crucial not only in the initial stage, where they can contribute vital information leading to the identification of potential cases of forced labour, but also during the investigative process and enforcement of a product ban. Civil society organisations and trade unions are often equipped with on-the-ground knowledge and networks and can play a pivotal role in uncovering whether forced labour occurs, especially in regions outside the EU where the oversight of EU competent authorities is limited.

Moreover, stakeholder input is essential in assessing the broader implications of banning products. They help in understanding the potential negative impacts such decisions might have on the workers themselves, who are often the most vulnerable in these situations. This perspective ensures that the enforcement of a FL Ban does not inadvertently harm those it aims to protect. In addition, stakeholders can identify and highlight local initiatives already in place, which a ban might counteract. An import ban under Section 307 in the United States, for example, was [modified](#) following the intervention of civil society actors because the measure posed a threat to the implementation of a local agreement (the [Dindigul Agreement](#)), which aims to eliminate gender-based violence and harassment in the garment industry in India. The example showcases that an involvement of stakeholders is also important when it comes to the modification or lifting of a product ban. The same applies to the determination and

implementation of appropriate and effective remedial measures.¹¹ Civil society actors and other relevant stakeholders are uniquely positioned to ascertain what constitutes meaningful remediation, taking into account the local context and the needs of the affected workers.

Against this background, **ENNHRI endorses the amendments proposed by the European Parliament in relation to stakeholder engagement**, including the demand for competent authorities to consider issues arising from meaningful consultations with relevant stakeholders in the preliminary phase of investigation (Article 4(1)(ea)), and the option for competent authorities to request further information from relevant stakeholders in the course of a formal investigation (Article 4(3) subparagraph (1a) Parliament Report). In addition, however, **the EU lawmakers should demand engagement with rightsholders and other stakeholders when competent authorities assess whether an instance of forced labour has been eliminated and remedied as a condition for the lifting of an import ban.**

3.2 Centralised complaint channel

Further, **the implementation of the FL Ban should include the establishment of a centralised complaint channel at the EU level.** This channel would enable individuals to directly submit information about forced labour cases, without having to identify which of the 27 Member States authorities is competent or best suited. Such a streamlined approach would not only facilitate the reporting of violations but also enhance the effectiveness of the FL Ban by ensuring prompt and coordinated action across the EU.

Moreover, **rightsholder representatives, civil society organisations and other stakeholders should be consulted and play an active role in the enforcement and implementation of the FL Ban overall**, including in activities of the Union Network Against Forced Labour Products (see Article 24 Draft Regulation). Their inclusion is also essential for establishing comprehensive and effective guidelines and ensuring that the enforcement of the regulation is grounded in a deep understanding of the complexities surrounding forced labour.

3.3 Protection against retaliation

Considering the risk of retaliation, the FL Ban should provide for sufficient **measures to protect affected workers and other individuals or organisations within and outside**

¹¹ See also The Remedy Project, Putting things right: Remediation of forced labour under the Tariff Act 1930 (2023), page 21 f.

of the EU that testify, report or investigate forced labour, especially by preserving their anonymity. Such measures will not only enhance the effectiveness of the regulation but also ensure that its implementation is humane, context-sensitive, and ultimately more impactful, particularly in cases of forced labour occurring outside the EU.

4. Alignment with the CSDDD

EU lawmakers should facilitate synergy effects between the FL Ban and the Corporate Sustainability Due Diligence Directive (CSDDD) and ensure cooperation at the level of enforcement.

- **While competent authorities may consider due diligence measures carried out by companies under investigation, these measures should not prevent the authorities from investigating and potentially sanctioning the import or export of products made with forced labour.**
- **Competent authorities should coordinate effectively with the authorities enforcing the CSDDD.**

The legislative process on the FL Ban evolves in parallel to the negotiations for an EU Corporate Sustainability Due Diligence Directive (CSDDD). Both pieces of legislation aim to address human rights impacts in the business context, even though they take a different approach. The CSDDD obliges companies to manage human rights and environmental impacts in their global operations and business relationships through due diligence processes (an obligation of means). The planned FL Ban, by contrast, is product-based and only prohibits the import or export of goods made with forced labour (an obligation of result). Considering these differences, the EU lawmakers should promote synergies between the different approaches in the two initiatives and ensure complementary enforcement.

The added value of a FL Ban is that it could address cases of forced labour where the approach of the CSDDD reaches its limits. Forced labour is particularly difficult to identify through conventional due diligence measures like social audits.¹² In case of state-imposed forced labour, companies also face challenges to exercise leverage as part of their due diligence – often leaving business actors no alternative but to

¹² An [analysis by Sedex](#) - a platform providing sourcing data on supply chains - from 2021 holds that '[g]iven the limited amount of time allocated for audits - typically one to two days - further investigation is usually required to confirm and evidence criminal activity such as forced labour'. Yet, the study also finds that audits can 'regularly pick up the indicators of forced labour'. For an overview of the advantages and limitations of surveys to identify forced labour, see International Labour Organization, [Hard to see, harder to count \(2012\)](#), pages 50 f.

disengage.¹³ Import bans and the public attention allegations receive, by contrast, provide an additional avenue to drive change even at state level.

The FL Ban and the CSDDD also take a distinct approach to due diligence processes. The FL Ban neither requires due diligence measures nor relevant reporting. It only recommends businesses to conduct 'due diligence in relation to forced labour' because it can help companies to both comply with the regulation and to address impacts identified. Due diligence in relation to forced labour is hereby defined as efforts '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 made available on the Union market or to be exported' (Article 2(c) Draft Regulation). This targeted definition calls for less comprehensive due diligence processes than the CSDDD. **While due diligence processes support compliance with the FL Ban, the fact that a company carries out due diligence (voluntarily or to comply with the CSDDD) should not prevent competent authorities from investigating and potentially sanctioning the import or export of products made with forced labour.** Whereas the Draft Regulation of the Commission remains ambiguous on this point (compare Article 4(6) Draft Regulation), the Parliament Report deletes the respective provision clarifying that due diligence measures as such do not provide a safe harbour against the imposition of a product ban. However, **competent authorities may, among other factors, consider actual due diligence measures that a company takes to eliminate and remedy an instance of forced labour during the enforcement process.**

Both the FL Ban and the CSDDD foresee administrative enforcement. To facilitate the coherent and effective enforcement of either legislation, the EU lawmakers should clarify how the competent authorities enforcing the FL Ban interact or cooperate with national supervisory authorities responsible for the implementation of the CSDDD.

¹³ See Anti-Slavery International and European Center for Constitutional and Human Rights, [Briefing note on import controls to address forced labour in supply chains](#) (2021), page 6; United States Department of Labor, Steps Toward a Worker-Driven Social Compliance System, [Step 6: Remediate Violations, Key Topic: Developing a Corrective Action Plan](#).